

**From:** [Tsacalos, Ashley](#)  
**To:** [Pitney, Sarah](#)  
**Cc:** [Greig, Mitchell](#); [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Thursday, 13 October 2022 1:32:38 AM  
**Attachments:** [image001.png](#)

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Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; [SVC\\_DPPCases](#) [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

## External Email

OFFICIAL

Good morning

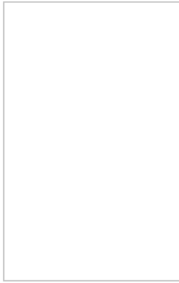
That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

Please note that I do not work Thursday mornings or Fridays.

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For a full range of victims rights, please go to [www.dpp.act.gov.au](http://www.dpp.act.gov.au) and go to the Witnesses and Victims link

---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email**

OFFICIAL

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED]? Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be



in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED] evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails attached), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**  
[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED]  
[REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]  
[REDACTED]). I will show them into the witness room where they will await the dial-in from ACT  
Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the  
witness. There aren't any drink fountains in this area, however they are welcome to bring  
a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)



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---

**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards



Office of Senator the Hon Linda Reynolds csc



[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Pitney, Sarah  
**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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-----  
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-----

**From:** [Tsacalos, Ashley](#)  
**To:** [Pitney, Sarah](#)  
**Cc:** [Greig, Mitchell](#); [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Thursday, 13 October 2022 6:35:25 PM  
**Attachments:** [image001.png](#)

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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**From:** Tsacalos, Ashley  
**Sent:** Thursday, 13 October 2022 1:33 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] [SVC\\_DPPCases](#) [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] [SVC\\_DPPCases](#) [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM

**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]



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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tscalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED] Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
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3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

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**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Dear Sarah

I note the contents of your email.

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2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

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**Clayton Utz**

[REDACTED]

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED] evidence on 10 October 2022.

Kind regards

Sarah Pitney



Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails attached), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]). I will show them into the witness room where they will await the dial-in from ACT Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

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---

**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]

**Sent:** Thursday, 22 September 2022 5:05 PM

**To:** Pitney, Sarah [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Pitney, Sarah  
**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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-----

**From:** [Pitney, Sarah](#)  
**To:** [Tsacalos, Ashley](#)  
**Cc:** [Greig, Mitchell](#); [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Thursday, 13 October 2022 7:45:55 PM  
**Attachments:** [image001.png](#)

---

## External Email

OFFICIAL

Good evening

The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 13 October 2022 6:35 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah



I am yet to hear from you in response to my email below yet, in the meantime, I see from media reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Tsacalos, Ashley  
**Sent:** Thursday, 13 October 2022 1:33 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this

stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [Redacted]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [Redacted]  
**Cc:** Greig, Mitchell [Redacted]; SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**Caution:** This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Dear Sarah

I assume this means that [Redacted] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted]  
[Redacted]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [Redacted]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [Redacted]  
**Cc:** Greig, Mitchell [Redacted]; SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email****OFFICIAL**

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED]? Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards

**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)**Please note that I do not work Thursday mornings or Fridays.**

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

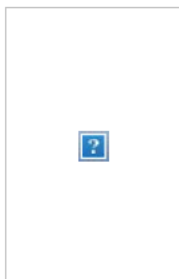
Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED] evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails attached), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED]  
[REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED])  
[REDACTED] I will show them into the witness room where they will await the dial-in from ACT Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Pitney, Sarah



**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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-----



**From:** [Tsacalos, Ashley](#)  
**To:** [Pitney, Sarah](#)  
**Cc:** [Greig, Mitchell](#); [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Friday, 14 October 2022 4:04:19 AM  
**Attachments:** [image001.png](#)

---

Dear Sarah

I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

In any event, I have been instructed that Senator Reynolds would be available to give evidence on Tuesday 18 October 2022 or Wednesday 19 October 2022. Please indicate which date you prefer. I assume, based on the contents of your email below and contrary to media reports, that no date has been set for Senator Reynolds to give evidence. In light of this, can you advise how the media reached the conclusion that Senator Reynolds would be giving evidence on Tuesday 18 October 2022?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 13 October 2022 7:46 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] [SVC\\_DPPCases](#) [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Good evening

The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 13 October 2022 6:35 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Tsacalos, Ashley  
**Sent:** Thursday, 13 October 2022 1:33 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of

returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

## External Email

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

## External Email

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]

**Sent:** Monday, 10 October 2022 2:15 PM

**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]

**Sent:** Thursday, 6 October 2022 12:47 PM

**To:** Tsacalos, Ashley [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED]? Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]  
[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]



**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED]' evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails **attached**), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]). I will show them into the witness room where they will await the dial-in from ACT Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards

Sarah Pitney



Prosecutor  
Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Pitney, Sarah  
**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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-----  
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**From:** [Pitney, Sarah](#)  
**To:** [Tsacalos, Ashley](#); [Greig, Mitchell](#)  
**Cc:** [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Monday, 17 October 2022 11:09:52 AM  
**Attachments:** [image001.png](#)

---

## External Email

OFFICIAL

Good morning

The Court has enquired whether Senator Reynolds could be available to give her evidence this morning. Could you please **urgently** confirm Senator Reynolds' availability?

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[Redacted contact information]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Pitney, Sarah  
**Sent:** Monday, 17 October 2022 9:09 AM  
**To:** 'Tsacalos, Ashley' [Redacted]; Greig, Mitchell [Redacted]  
**Cc:** SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

OFFICIAL

Dear Dr Tsacalos

We note your email, and will pass this onto the Chief Justice this morning.

In relation to your other questions:

1. that she will be able to be dropped off (and picked up) at the back entrance?
  - The court have advised us that they will no longer allow entrance via the back entrance.
2. what time this drop off should occur?
  - Court commences at 10.00am, and Senator Reynolds should be at Court ready for a 10.00am start.

3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
  - The courtroom has been well below capacity, so we imagine there will be ample room.
4. the estimate length of her evidence.
  - It is difficult to say accurately at this stage, but it is anticipated that it will be less than 2 hours.



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Sunday, 16 October 2022 11:57 PM  
**To:** Greig, Mitchell [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED] Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

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Dear Mitchell

I can confirm that Senator Reynolds can attend first thing on Tuesday to give evidence.

Can you please advise in relation to the following:

1. that she will be able to be dropped off (and picked up) at the back entrance?
2. what time this drop off should occur?
3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
4. the estimate length of her evidence.

I look forward to hearing from you as soon as possible.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Greig, Mitchell [REDACTED]  
**Sent:** Friday, 14 October 2022 9:09 AM  
**To:** Tscalos, Ashley [REDACTED] Pitney, Sarah [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Dear Dr Tscalos,

The Court has requested Senator Reynolds attend at the earliest possible opportunity.

Kind regards,



**Mitchell Greig**  
Prosecutor Associate  
Office of the Director of Public Prosecutions (ACT)  
[REDACTED]  
[REDACTED]  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

For a full range of victims rights, please go to [www.dpp.act.gov.au](http://www.dpp.act.gov.au) and go to the Witnesses and Victims link.

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**From:** Tscalos, Ashley [REDACTED]  
**Sent:** Friday, 14 October 2022 4:04 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would



give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

In any event, I have been instructed that Senator Reynolds would be available to give evidence on Tuesday 18 October 2022 or Wednesday 19 October 2022. Please indicate which date you prefer. I assume, based on the contents of your email below and contrary to media reports, that no date has been set for Senator Reynolds to give evidence. In light of this, can you advise how the media reached the conclusion that Senator Reynolds would be giving evidence on Tuesday 18 October 2022?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted signature block]

Please consider the environment before printing this e-mail

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**From:** Pitney, Sarah [Redacted]  
**Sent:** Thursday, 13 October 2022 7:46 PM  
**To:** Tsacalos, Ashley [Redacted]  
**Cc:** Greig, Mitchell [Redacted]; SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Good evening

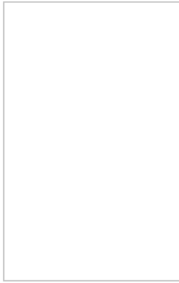
The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[Redacted signature block]



[Redacted]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [Redacted]  
**Sent:** Thursday, 13 October 2022 6:35 PM  
**To:** Pitney, Sarah [Redacted]  
**Cc:** Greig, Mitchell [Redacted]; SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted]

Please consider the environment before printing this e-mail

---

**From:** Tsacalos, Ashley  
**Sent:** Thursday, 13 October 2022 1:33 AM  
**To:** Pitney, Sarah [Redacted]  
**Cc:** Greig, Mitchell [Redacted]; SVC\_DPPCases [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner  
Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

## External Email

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

[REDACTED]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

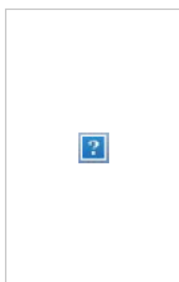
## External Email

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED] Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards

**Sarah Pitney**  
Prosecutor



Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**Caution:** This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**  
[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email**

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED]' evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails **attached**), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On

the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED]  
[REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]  
[REDACTED]). I will show them into the witness room where they will await the dial-in from ACT  
Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)





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---

**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Pitney, Sarah  
**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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-----  
This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.  
-----

**From:** [Tsacalos, Ashley](#)  
**To:** [Greig, Mitchell](#)  
**Cc:** [SVC\\_DPPCases](#); [Pitney, Sarah](#)  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Sunday, 16 October 2022 11:56:35 PM  
**Attachments:** [image001.png](#)

---

Dear Mitchell

I can confirm that Senator Reynolds can attend first thing on Tuesday to give evidence.

Can you please advise in relation to the following:

1. that she will be able to be dropped off (and picked up) at the back entrance?
2. what time this drop off should occur?
3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
4. the estimate length of her evidence.

I look forward to hearing from you as soon as possible.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted signature block]

Please consider the environment before printing this e-mail

---

**From:** Greig, Mitchell [Redacted]  
**Sent:** Friday, 14 October 2022 9:09 AM  
**To:** Tsacalos, Ashley [Redacted]; Pitney, Sarah [Redacted]  
**Cc:** SVC\_DPPCases <[Redacted]>  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

## External Email

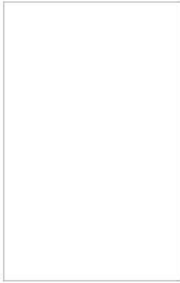
OFFICIAL

Dear Dr Tsacalos,

The Court has requested Senator Reynolds attend at the earliest possible opportunity.

Kind regards,

**Mitchell Greig**  
Prosecutor Associate  
Office of the Director of Public Prosecutions (ACT)  
[Redacted signature block]  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)



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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Friday, 14 October 2022 4:04 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

In any event, I have been instructed that Senator Reynolds would be available to give evidence on Tuesday 18 October 2022 or Wednesday 19 October 2022. Please indicate which date you prefer. I assume, based on the contents of your email below and contrary to media reports, that no date has been set for Senator Reynolds to give evidence. In light of this, can you advise how the media reached the conclusion that Senator Reynolds would be giving evidence on Tuesday 18 October 2022?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]

**Sent:** Thursday, 13 October 2022 7:46 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Good evening

The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 13 October 2022 6:35 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media

reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Tsacalos, Ashley

**Sent:** Thursday, 13 October 2022 1:33 AM

**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]

**Sent:** Wednesday, 12 October 2022 8:51 AM

**To:** Tsacalos, Ashley [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this



stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**



OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email****OFFICIAL**

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED] Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards

**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)**Please note that I do not work Thursday mornings or Fridays.**

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED] evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails attached), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]). I will show them into the witness room where they will await the dial-in from ACT Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Pitney, Sarah

**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [Pitney, Sarah](#)  
**To:** [Tsacalos, Ashley](#); [Greig, Mitchell](#)  
**Cc:** [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Monday, 17 October 2022 9:08:50 AM  
**Attachments:** [image001.png](#)

---

## External Email

OFFICIAL

Dear Dr Tsacalos

We note your email, and will pass this onto the Chief Justice this morning.

In relation to your other questions:

1. that she will be able to be dropped off (and picked up) at the back entrance?
  - The court have advised us that they will no longer allow entrance via the back entrance.
2. what time this drop off should occur?
  - Court commences at 10.00am, and Senator Reynolds should be at Court ready for a 10.00am start.
3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
  - The courtroom has been well below capacity, so we imagine there will be ample room.
4. the estimate length of her evidence.
  - It is difficult to say accurately at this stage, but it is anticipated that it will be less than 2 hours.



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[Redacted contact information]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Tsacalos, Ashley [Redacted]  
**Sent:** Sunday, 16 October 2022 11:57 PM  
**To:** Greig, Mitchell [Redacted]  
**Cc:** SVC\_DPPCases [Redacted]; Pitney, Sarah [Redacted]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Mitchell

I can confirm that Senator Reynolds can attend first thing on Tuesday to give evidence.

Can you please advise in relation to the following:

1. that she will be able to be dropped off (and picked up) at the back entrance?
2. what time this drop off should occur?
3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
4. the estimate length of her evidence.

I look forward to hearing from you as soon as possible.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

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---

**From:** Greig, Mitchell [REDACTED]  
**Sent:** Friday, 14 October 2022 9:09 AM  
**To:** Tsacalos, Ashley [REDACTED] Pitney, Sarah [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

## External Email

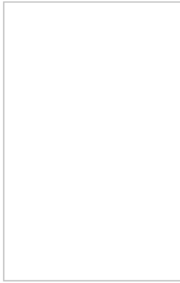
OFFICIAL

Dear Dr Tsacalos,

The Court has requested Senator Reynolds attend at the earliest possible opportunity.

Kind regards,

**Mitchell Greig**  
Prosecutor Associate  
Office of the Director of Public Prosecutions (ACT)  
[REDACTED]  
[REDACTED]  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)



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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Friday, 14 October 2022 4:04 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

In any event, I have been instructed that Senator Reynolds would be available to give evidence on Tuesday 18 October 2022 or Wednesday 19 October 2022. Please indicate which date you prefer. I assume, based on the contents of your email below and contrary to media reports, that no date has been set for Senator Reynolds to give evidence. In light of this, can you advise how the media reached the conclusion that Senator Reynolds would be giving evidence on Tuesday 18 October 2022?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**  
[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]

**Sent:** Thursday, 13 October 2022 7:46 PM

**To:** Tsacalos, Ashley [REDACTED]

**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Good evening

The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Tsacalos, Ashley [REDACTED]

**Sent:** Thursday, 13 October 2022 6:35 PM

**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media

reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Tsacalos, Ashley

**Sent:** Thursday, 13 October 2022 1:33 AM

**To:** Pitney, Sarah [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]

**Sent:** Wednesday, 12 October 2022 8:51 AM

**To:** Tsacalos, Ashley [REDACTED]

**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this

stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

**External Email**

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email**

OFFICIAL

Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED]? Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards

**Sarah Pitney**

Prosecutor

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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---

**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.



I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED] evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails attached), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]). I will show them into the witness room where they will await the dial-in from ACT Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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---

**From:** Pitney, Sarah

**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

***DPP v Lehrmann***

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [Pitney, Sarah](#)  
**To:** [Tsacalos, Ashley](#); [Greig, Mitchell](#)  
**Cc:** [SVC\\_DPPCases](#)  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]  
**Date:** Monday, 17 October 2022 11:09:52 AM  
**Attachments:** [image001.png](#)

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## External Email

OFFICIAL

Good morning

The Court has enquired whether Senator Reynolds could be available to give her evidence this morning. Could you please **urgently** confirm Senator Reynolds' availability?

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)



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---

**From:** Pitney, Sarah  
**Sent:** Monday, 17 October 2022 9:09 AM  
**To:** 'Tsacalos, Ashley' [REDACTED]; Greig, Mitchell [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

OFFICIAL

Dear Dr Tsacalos

We note your email, and will pass this onto the Chief Justice this morning.

In relation to your other questions:

1. that she will be able to be dropped off (and picked up) at the back entrance?
  - The court have advised us that they will no longer allow entrance via the back entrance.
2. what time this drop off should occur?
  - Court commences at 10.00am, and Senator Reynolds should be at Court ready for a 10.00am start.

3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
  - The courtroom has been well below capacity, so we imagine there will be ample room.
4. the estimate length of her evidence.
  - It is difficult to say accurately at this stage, but it is anticipated that it will be less than 2 hours.



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Sunday, 16 October 2022 11:57 PM  
**To:** Greig, Mitchell [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED] Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

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Dear Mitchell

I can confirm that Senator Reynolds can attend first thing on Tuesday to give evidence.

Can you please advise in relation to the following:

1. that she will be able to be dropped off (and picked up) at the back entrance?
2. what time this drop off should occur?
3. there will be a seat in the Court room for myself and any additional person accompanying Senator Reynolds?
4. the estimate length of her evidence.

I look forward to hearing from you as soon as possible.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]



Please consider the environment before printing this e-mail

---

**From:** Greig, Mitchell [REDACTED]  
**Sent:** Friday, 14 October 2022 9:09 AM  
**To:** Tscalos, Ashley [REDACTED] Pitney, Sarah [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Dear Dr Tscalos,

The Court has requested Senator Reynolds attend at the earliest possible opportunity.

Kind regards,



**Mitchell Greig**  
Prosecutor Associate  
Office of the Director of Public Prosecutions (ACT)  
[REDACTED]  
[REDACTED]  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tscalos, Ashley [REDACTED]  
**Sent:** Friday, 14 October 2022 4:04 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would

give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

In any event, I have been instructed that Senator Reynolds would be available to give evidence on Tuesday 18 October 2022 or Wednesday 19 October 2022. Please indicate which date you prefer. I assume, based on the contents of your email below and contrary to media reports, that no date has been set for Senator Reynolds to give evidence. In light of this, can you advise how the media reached the conclusion that Senator Reynolds would be giving evidence on Tuesday 18 October 2022?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 13 October 2022 7:46 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3442261]

## External Email

OFFICIAL

Good evening

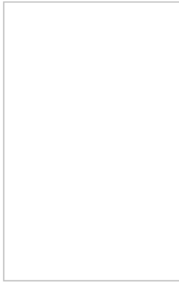
The Chief Justice has noted that Linda Reynolds has failed to answer her subpoena, and that she could have been called within the last two days, noting these days do not fall within the sitting period. Her Honour has raised concerns about this and has indicated that in light of Ms Reynolds failing to answer her subpoena during a non-sitting period, she will not allow the sitting period to delay the trial.

We encourage you to contact us on behalf of Ms Reynolds to advise when she will present at the court to give evidence, so we can pass this on to the Court.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 13 October 2022 6:35 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

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Dear Sarah

I am yet to hear from you in response to my email below yet, in the meantime, I see from media reports that it has been suggested that Senator Reynolds has been called to give evidence on Tuesday. Given I indicated in my email below that Senator Reynolds was exploring the availability of earlier flights and that I would keep you posted, I would be surprised if she has been called to give evidence on Tuesday without any further communication with me. Can you urgently clarify the position.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Tsacalos, Ashley  
**Sent:** Thursday, 13 October 2022 1:33 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3442261]

Dear Sarah

Senator Reynolds would prefer to give evidence in person and is currently exploring the prospect of returning from overseas early to assist (including the availability of any earlier flights etc). However, it is unlikely that she would be in a position to give evidence until next Tuesday or Wednesday but I will keep you posted.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 12 October 2022 8:51 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

## External Email

OFFICIAL

Good morning

That is correct.

In relation to Senator Reynolds, could I please confirm whether she could make herself available to give evidence via AVL from her office on 18 October 2022 prior to Parliament sitting? At this stage, the prosecution case is likely to be closed before 21 October 2022 and we may therefore be unable to leave her evidence to this date. We do not anticipate that her evidence will take very long.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 12 October 2022 1:50 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

I assume this means that [REDACTED] has been excused from complying with the Summons.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

Please consider the environment before printing this e-mail

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Tuesday, 11 October 2022 12:56 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehmann - 202113941 [CU-Legal.FID3550938]

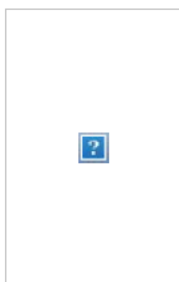
## External Email

OFFICIAL

Good afternoon

Further to the below, the parties have agreed that [REDACTED] is not required to give evidence.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**W:** [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Monday, 10 October 2022 2:15 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]

**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3550938]

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Dear Sarah

Yes please contact [REDACTED] directly on her mobile with 1 hours' notice and she can get to Court. Her mobile number is: [REDACTED]

Given the developments today, when do you expect that [REDACTED] will need to give evidence?

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Thursday, 6 October 2022 12:47 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]; SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

## External Email

OFFICIAL

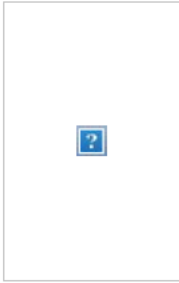
Good afternoon

In response to your questions:

1. We can provide 1 hours' notice to attend. Should we provide this notice to you and then you will communicate with [REDACTED] Noting the time difference and ACT Supreme Court sitting hours, I can indicate that [REDACTED] will only be required between 8:30am-1pm WST.
2. [REDACTED] will not be permitted to have her statement in front of her while giving evidence. If either counsel wish to take [REDACTED] to any part of her statement, it will be shown to her on the screen.
3. The Court has already received numerous requests to watch the trial by AVL and has indicated that no AVL links will be provided, so unfortunately you will be unable to watch unless you attend in person.

Kind regards

**Sarah Pitney**  
Prosecutor



Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Thursday, 6 October 2022 1:51 AM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I note the contents of your email.

I have three questions arising:

1. is it possible for [REDACTED] to be on standby and be given 1 hours' notice to attend the Supreme Court of WA on either Monday 10 October 2022 or Tuesday 11 October 2022 rather than attend from 8.30am on Monday?
2. will [REDACTED] be able to have her Police Statement in front of her in the witness box?
3. is there provision for me to watch her evidence remotely given I am in Sydney and she will be in Perth?

I look forward to hearing from you.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**  
[REDACTED]

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**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:05 PM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

**External Email**

OFFICIAL

Good afternoon

I confirm that [REDACTED] will be called to give evidence.

As outlined below, a remote room has been booked for [REDACTED] to give her evidence by AVL at the Supreme Court of Western Australia on 10 October 2022.

We have extended the booking to 11 October 2022 in the event that we do not reach or complete [REDACTED]' evidence on 10 October 2022.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Tsacalos, Ashley [REDACTED]  
**Sent:** Wednesday, 5 October 2022 3:00 PM  
**To:** Pitney, Sarah [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Dear Sarah

I refer to your email below.

As per my email to Ms Priestly (see emails **attached**), I have been asked to assist [REDACTED] from the Senator's Office in terms of her preparation to give evidence. Therefore, please direct any future correspondence for [REDACTED] in this matter to me.

When I last spoke with Ms Priestly, she indicated that consideration was being given as to whether [REDACTED] was even required to give evidence. Can you confirm that she is still required to do so? On



the face of it, her evidence seems to be of little probative value in the scheme of things (at least from an outsider's perspective).

I look forward to hearing from you.

Kind regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[REDACTED]

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---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Friday, 23 September 2022 11:39 AM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** Greig, Mitchell [REDACTED] SVC\_DPPCases [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

Thank you for your email.

I understand that the application for your evidence to be given remotely will not be opposed, so we anticipate the court will grant the application.

I have booked a remote witness room at the Supreme Court of Western Australia for **Monday 10 October 2022**. As there will be a 3 hour time difference between Perth and Sydney, could you please arrive as promptly as possible when the Court building opens at 8:30am?

The Supreme Court of Western Australia has provided the following information:

*The witnesses will need to attend [REDACTED]  
[REDACTED] and call the Courts Technology Officer number upon arrival ([REDACTED]  
[REDACTED]). I will show them into the witness room where they will await the dial-in from ACT  
Supreme Court.*

*The witness room is located within a secure area and bathrooms are available to the witness. There aren't any drink fountains in this area, however they are welcome to bring a bottle of water or other drink with them.*

If you have any questions, please let me know.

Kind regards

**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)



W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Sent:** Thursday, 22 September 2022 5:05 PM  
**To:** Pitney, Sarah [REDACTED]  
**Subject:** RE: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

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Hi Sarah

Thanks for your email.

Confirming I do prefer to give my evidence remotely from Perth due to work commitments.

Kind regards

[REDACTED]  
Office of Senator the Hon Linda Reynolds csc  
[REDACTED]  
[REDACTED]

---

**From:** Pitney, Sarah [REDACTED]  
**Sent:** Wednesday, 21 September 2022 3:13 PM  
**To:** [REDACTED] (Sen L. Reynolds) [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** FW: DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Dear [REDACTED]

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I am forwarding the below on to you directly as we need to file an application for you to give your evidence remotely by Friday.

Could I please urgently confirm:

- that you would prefer to give your evidence from Perth?
- if there are any particular reasons why it would be more convenient for you to give your evidence from Perth, what those reasons are?

Please feel free to give me a call if you would like to discuss.

Kind regards



**Sarah Pitney**  
Prosecutor  
Office of the Director of Public Prosecutions (ACT)

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Pitney, Sarah  
**Sent:** Wednesday, 21 September 2022 10:19 AM  
**To:** Tsacalos, Ashley [REDACTED]  
**Cc:** SVC\_DPPCases [REDACTED]  
**Subject:** DPP v Lehrmann - 202113941 [CU-Legal.FID3537073]

OFFICIAL

Good morning

**DPP v Lehrmann**

I refer to the above matter that is listed for trial commencing 4 October 2022.

I understand from my colleague Erin Priestly that [REDACTED] has previously requested to give her evidence remotely from Perth.

Could I please urgently confirm:

- that your client would prefer to give her evidence from Perth?
- if there are any particular reasons why it would be more convenient for [REDACTED] to give her evidence from Perth, what those reasons are?

Kind regards



**Sarah Pitney**

Prosecutor

Office of the Director of Public Prosecutions (ACT)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** [Courts, Supreme Court Criminal Registry](#)  
**To:** [REDACTED]  
**Cc:** [Courts, Supreme Court Criminal Registry](#); [REDACTED] [REDACTED] [REDACTED]  
**Subject:** RE: R v Lehmann SCC/264/2021 - Transcript Access Request [CU-Legal.FID3463295]  
**Date:** Tuesday, 6 December 2022 2:07:10 PM

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## External Email

Good afternoon,

I refer to your email below.

The Registrar has approved your request.

Please refer to the below link for the court website for information on ordering transcripts.

[Forms for ordering Court transcripts - ACT Supreme Court](#)

Kind Regards,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]

---

**From:** [REDACTED] [REDACTED] **On Behalf Of** Tsacalos, Ashley  
**Sent:** Tuesday, 6 December 2022 10:33 AM  
**To:** Courts, Supreme Court Criminal Registry [REDACTED]  
**Cc:** [REDACTED] [REDACTED]; [REDACTED]  
**Subject:** R v Lehmann SCC/264/2021 - Transcript Access Request [CU-Legal.FID3463295]

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Dear Registrar

We act for one of the witnesses called in the matter of *R v Lehmann* (Proceeding No. SCC/264/2021) (**Proceeding**), namely, Senator the Hon. Linda Reynolds.

We seek your authorisation to obtain a copy of the transcript of the Proceeding.

As outlined in recent media publications, the matters that were the subject of the Proceeding, are now also going to be the subject of a civil claim being brought against numerous parties, including our client.

As a result, the matters recorded in the transcript of the Proceeding are of material interest to our client.

Thank you for your consideration of this request.

Regards

**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted signature block]

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**From:** [Tsacalos, Ashley](#)  
**To:** [Dawes, William](#); [Forbes, Elizabeth](#)  
**Subject:** FW: Order Notification: McCallum CJ/jury - SCC265/2021 - DPP v Bruce Lehrmann - 17 October to 27 October 2022 [CU-Legal.FID3463295]  
**Date:** Thursday, 8 December 2022 6:57:51 PM  
**Attachments:** [mcca\\_SCC2642021\\_DPP v Lehrmann\\_221017.pdf](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221017.doc](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221027.pdf](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221027.doc](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221026.pdf](#)  
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[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221019.pdf](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221019.doc](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221018.pdf](#)  
[mcca\\_SCC2642021\\_DPP v Lehrmann\\_221018.doc](#)

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**Dr Ashley Tsacalos, Partner**  
**Clayton Utz**

[Redacted]

Please consider the environment before printing this e-mail

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**From:** [Redacted]  
**Sent:** Wednesday, 7 December 2022 10:16 AM  
**To:** Tsacalos, Ashley <[Redacted]>  
**Cc:** Courts, Transcripts <[Redacted]>; actcourts <[Redacted]>  
**Subject:** Order Notification: McCallum CJ/jury - SCC265/2021 - DPP v Bruce Lehrmann - 17 October to 27 October 2022

## External Email

Good morning

Please find attached transcripts for the abovementioned trial heard before McCallum CJ from 17 October 2022 to 27 October 2022.

Kind Regards

Claire

[Redacted]







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**ACT Office of the Director of Public Prosecutions**

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Our Reference: 202113941, 200928063  
Your Reference:

1 November 2022

Mr Neil Gaughan  
Chief Police Officer  
Australian Federal Police

Via email: [REDACTED]

Dear Chief Police Officer,

**R v LEHRMANN – SCC 264 OF 2021**

I write to raise serious concerns I hold with what I perceive as some quite clear investigator interference in the criminal justice process in the matter of R v Lehrmann SCC 264 of 2021. I had intended to address this at the conclusion of the trial, however the trial's recent vacation and the setting of a new trial date commencing 20 February 2023 demands that I address it now to protect the integrity of the pending trial.

I will first outline some historic context in this matter.

Investigation stage

My engagement in the matter of R v Lehrmann began on 31 March 2021, with what was first touted as a briefing in relation to a sensitive matter. I attended at Belconnen Police Station and met with [REDACTED] and most other members of the SACAT team. My immediate perception of this meeting was that it was not a briefing at all, rather a clear and overt attempt to use loaded characterisations of some very select evidence in an attempt to persuade me to agree with a position police had clearly adopted, specifically that the allegations should not proceed to charge. During the meeting I corrected a number of misconceptions about the importance or otherwise of a number of

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Phone +61 2 6207 5399 | Fax + 61 2 6207 5428 | GPO Box 595 CANBERRA CITY ACT 2601 | DX: 5725

pieces of evidence for police to take on board as part of what I understood was a continuing investigation.

Then on 12 April 2021, at the request of [REDACTED] I met with him in the conference room of the DPP offices. This meeting was again along a similar vein to the meeting of 31 March 2021, leaving me with the very clear impression that [REDACTED] was not seeking my views, rather was very clearly attempting to secure my agreement to a position he had clearly adopted that the matter should not proceed to charge.

On 1 June 2021, there was a third meeting at the DPP, this time with both [REDACTED] and [REDACTED] in similar vein to the previous two meetings, this time with some further cherry-picked elements of potential evidence advanced as constituting weaknesses in the case. This meeting concluded with me reminding the officers that there are provisions for them to seek a formal advice under the AFP/DPP collaborative agreement, however I would require the actual brief of evidence rather than selected characterisations and summaries of evidence.

I have since become aware from [REDACTED] diary notes of a meeting between [REDACTED] and [REDACTED] held on 17 June 2021, in which [REDACTED] advanced a view to [REDACTED] that there was "insufficient evidence to proceed. DCPO advised he had a meeting with DPP who stated they will conduct Prosecution...DCPO stated if it was my choice I wouldn't proceed, but it's not my choice, there is too much political interference." The notes further record [REDACTED] stating "I said, that's inappropriate given I think there is insufficient evidence."

Notwithstanding their clearly expressed views that the matter should not proceed to charge, on 21 June 2021, [REDACTED] served a brief of evidence on myself, attached to a letter purporting to request advice, however really outlining further mischaracterisations and other inaccurate select summaries of evidence that were clearly advanced as a list of reasons why I should agree with a position clearly already being taken by [REDACTED] and shared by [REDACTED], that the matter should not proceed to charge. This document contained blatant misrepresentations of evidence such as suggestions that key evidence was deliberately deleted by the complainant, a proposition not supported by the tested evidence at trial, as well as a list of evidence that is clearly inadmissible in trial. The letter concludes with a further overt attempt to apply pressure to the conclusion of my resulting advice:

*Ms Higgins creditability (sic) is the cornerstone of the prosecution case and given the above articulated issues and that there is limited corroborative evidence of sexual intercourse taking place or consent being withdrawn or not provided, investigators have **serious** concerns in relation to the strength and reliability of her evidence, but also more importantly her mental health and how any further prosecution may affect her wellbeing.*



On 28 June 2021, I provided a minute to [REDACTED] advising that I was of the view that there were reasonable prospects of conviction, and the matter should proceed to charge.

It transpired that on the day the summons was sworn, being 6 August 2021, [REDACTED] directed that a full brief of evidence be served directly on the first defence team rather than through the DPP, which was extremely unfortunate as it unlawfully included both protected counselling notes and evidence in chief interview videos.

It further transpired that Mr Lehrmann's summons was at first mention on 16 September 2021 and the matter was committed for a trial that eventually commenced on 4 October 2022, with the jury being discharged due to misconduct by one juror on 27 October 2022.

Collateral to this, the complainant has long expressed concerns that during the investigation stage, she also felt bullied by police who she felt were pressuring her into discontinuing the complaint. This is an observation corroborated by at least two of her support people. Although this is a matter for her to raise directly with the AFP, it is relevant for our purposes as it impacted the trial process, as she presented as highly anxious in dealing with either the police or by extension, the DPP. This resulted in her requesting all engagement be conducted through the Victims of Crime Commissioner, to insulate her from direct contact and further pressure by police either directly or vicariously through the DPP. Then on 22 September 2021, investigators purported to make the Victim of Crime Commissioner a witness by conducting a record of interview, in which they asked her two highly unusual lines of questions. The first was how she became involved with the complainant, and the second was her recollection of a conversation between the complainant, [REDACTED] and [REDACTED] that she was present at. On 2 October 2021, I received a letter from yourself, stating that because she was now a witness, the AFP could no longer communicate through her. This was a highly unusual step as the complainant was also a witness, yet police still had extensive contact with her until she requested all contact be made through the Victim of Crime Commissioner.

#### Concerns relating to trial process

During the conduct of the trial, a number of disturbing events have occurred, including prosecution witness [REDACTED] firstly giving evidence directly contradictory to her Chief of Staff, then directly soliciting transcripts of other evidence to tailor her evidence direct from the defence Barrister Steven Whybrow. She further engaged in direct coaching of the defence cross-examination of the complainant by directing them to evidence she should not have access to. This was all done through direct contact with defence barrister Steven Whybrow. [REDACTED] further organised for her partner to attend the court for the entire trial, with him regularly seen conferencing with the defence team during the course of the entire trial.

The conduct of investigators has been equally as concerning. [REDACTED] and a number of other current and former SACAT members have been attending key parts of the latter stages of the trial, and I have noted they have also been regularly conferencing with the defence team during the breaks. The defence team have further been directing further investigations directly through investigators, in one case relating to the evidence of a member of SACAT, [REDACTED], after her evidence was concluded. We discovered this when we received an unsolicited email from [REDACTED] on 13 October 2022 outlining some additional points to her evidence. This was followed by an email from [REDACTED] dated 14 October 2022 at 2.54pm stating *"I have also attached the email Em sent yesterday regarding the Phillip Medical Centre enquiries. The bosses just want to confirm it has been seen and passed onto defence."* Then 16 minutes later at 3.10pm [REDACTED] attempted to recall this email and replace it with another one stating *"I have attached the email [REDACTED] sent yesterday regarding Phillip Medical Centre. I'm just checking that it was received and passed onto defence"*. It appears that he wanted to replace *"The bosses just want to confirm"* with *"I'm just checking"*.

Finally, on the discharge of the jury on 27 October 2022, defence barrister Steven Whybrow spoke to my junior [REDACTED] and stated that he had a meeting with the investigators, and that they had suggested that he contact me and firstly suggest I was not impartial, and consequently request that I should outsource the decision as to whether or not to re-run the trial to someone outside of the office. Further, during discussion with defence regarding the potential application for a bail condition that the accused surrender his passport, Mr Whybrow stated on the transcript *"we have spoken with the Australian Federal Police. They have no concerns at all about Mr Lehrmann being a flight risk."* This is emblematic of the constant exclusive direct engagement police have had with the defence rather than the prosecution in the lead up and during the trial.

Later that day I phoned Mr Whybrow and sought clarification on his comment relating to his request to outsource the decision of whether to re-run the trial. Firstly, he acknowledged the comment was made, but then stated that his *"ongoing discussions with investigators"* were none of the prosecutions business.

From first engagement it has been clear that from [REDACTED] down, key AFP members have had a strong desire for this matter not to proceed to charge. Then when charges resulted, the investigator's interests have clearly aligned with the successful defence of this matter rather than its prosecution, the motive for both of which remains concerning. As a corollary however, there has now been over one and a half years of consistent and inappropriate interference by investigators, firstly directed towards my independence with a very clear campaign to pressure me to agree with the investigators desire not to charge, then during the conduct of this trial itself, and finally attempting to influence any decision on a retrial.

I am of the view that at the conclusion of the trial, there should be a public inquiry into both political and police conduct in this matter, however it appears clear that this is continuing to be a significant factor during the ongoing conduct of this trial.

I accordingly request that a direction be issued to all police to remove themselves from any engagement in this matter beyond being called as a witness for the prosecution. This includes no further contact with defence or other prosecution witnesses, no contact with the complainant, and prohibiting attendance at court beyond formal evidence if required.

I further seek your support for an inquiry to be conducted at the conclusion of the trial process into the conduct of police investigators in the lead up to charge and beyond, during the trial process itself.

Yours faithfully,



Shane Drumgold SC  
**Director - ACT Director of Public Prosecutions**

**From:** Linda Reynolds [REDACTED]  
**Date:** 11 December 2022 at 10:24:37 AWST  
**To:** Christopher Knaus [REDACTED]  
**Subject:** Re: Media query: Lehrmann matter

I have replied

On 11 Dec 2022, at 10:16, Christopher Knaus [REDACTED] wrote:

Hi Linda - just checking to make sure you received this?

Many thanks,

Christopher Knaus  
[REDACTED]  
[REDACTED]

On Sat, 10 Dec 2022, 10:02 pm Christopher Knaus, [REDACTED] wrote:  
Hi Linda,

Sorry to bother you on the weekend.

I'm just hoping to give you and your husband a chance to respond to a piece I'm preparing on the Lehrmann matter.

Last week, the DPP released through FOI a letter he had written to police chief Neil Gaughan on 1 November, expressing a series of concerns about police conduct.

In that letter, the DPP also raises concerns about your conduct during the trial.

He describes the conduct as "disturbing" and then raises a number of your actions during the trial, most of which have already been ventilated in open court during your evidence in chief.

The letter includes these points:

- During the trial, senator Reynolds had texted defence barrister Steven Whybrow while Higgins was in the witness box, seeking transcripts of her evidence in the trial. The request was made two hours into Higgins' cross-examination on 6 October.
- senator Reynolds also suggested to Whybrow that texts between Higgins and another former staffer, [REDACTED], may be "revealing" to the defence. Drumgold suggested this amounted to "coaching the cross-examination". Senator Reynolds denied this.
- Senator Reynolds' husband was also in the back of the court, in the public gallery, while other witnesses were giving evidence. Senator Reynolds told the court her husband had been instructed not to speak with her about the case.

Drumgold's letter adds two additional points, over and above what was canvassed in the court. He says that you should not have had access to the texts between Higgins and [REDACTED]. He also says that your husband was seen regularly conferencing with the defence team during breaks.

The letter says:



"During the conduct of the trial, a number of disturbing events have occurred, including prosecution witness [redacted] firstly giving evidence directly contradictory to her chief of staff, then directly soliciting transcripts of other evidence to tailor her evidence direct from the defence barrister Steven Whybrow."

"She further engaged in direct coaching of the defence cross-examination of the complainant by directing them to evidence she should not have access to."

My questions are:

- how do you respond to the suggestions in the letter that her conduct was "disturbing"?
- how did you have access to the texts between Higgins and [redacted]
- was your husband conferencing with the defence team during breaks in proceedings? was this appropriate?
- do you concede you should not have texted Whybrow tips during the cross-examination? Do you concede you should not have sought transcripts from him?

My deadline is 4pm tomorrow (Sunday).

Thanks again.

Christopher Knaus

[redacted]

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[redacted]

Australian Capital Territory

# Legal Profession (Barristers) Rules 2021

Subordinate Law SL2021–5

made under the

*Legal Profession Act 2006, s579(1) (Rules for barristers)*

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## 1 Name of instrument

This instrument is the *Legal Profession (Barristers) Rules 2021*.

## 2 Commencement

This instrument commences on the day after it is notified.

## 3 Making of rules

The council of the Australian Capital Territory Bar Association makes the attached Legal Profession (Barristers) Rules 2021.

## 4 Revocation

The *Legal Profession (Barristers) Rules 2014* are repealed.



**Andrew Muller, President**

Australian Capital Territory Bar Association

12 February 2021





## **Legal Profession (Barristers) Rules**

# Legal Profession (Barristers) Rules

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## PREAMBLE

These Rules are made in the belief that:

1. The administration of justice is best served by reserving the practice of law to officers of the Supreme Court who owe their paramount duty to the administration of justice.
2. As legal practitioners, barristers must maintain high standards of professional conduct.
3. The role of barristers as specialist advocates in the administration of justice requires them to act honestly, fairly, skilfully, diligently and fearlessly.
4. Barristers owe duties to the courts, to other bodies and persons before whom they appear, to their clients, and to their barrister and solicitor colleagues.
5. Barristers should exercise their forensic judgements and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.
6. The provision of advocates for those who need legal representation is better secured if there is a Bar whose members:
  - (a) must accept briefs to appear regardless of their personal prejudices;
  - (b) must not refuse briefs to appear except on proper professional grounds; and
  - (c) compete as specialist advocates with each other and with other legal practitioners as widely and as often as practicable.
7. Barristers should be free to choose how they lawfully practise as barristers except only in those cases where the unchecked exercise of that freedom would threaten harm to the greater public interest that barristers' conduct be honourable, diligent, especially skilled, disinterested and competitive and that access to barristers' services be enhanced.

## INTRODUCTION & INTERPRETATION

8. These Rules are made by the Bar Council. They may be cited as the ACT Barristers' Rules.
9. These Rules are not, and should not be read as if they were, a complete or detailed code of conduct for barristers. Other standards for, requirements of and sanctions on the conduct of barristers are found in the inherent disciplinary jurisdiction of the Supreme Court and in the general law (including the law relating to contempt of court).
10. These Rules should be read and applied so as most effectively to attain the objects and uphold the values expressed in their Preamble.
11. General provisions of these Rules should not be read or applied in a limited way by reason of any particular or illustrative provisions.
12. Headings in these Rules shall be read as part of these Rules, but shall not be used so as to read or apply any of the Rules in a more limited way than would have been so if the headings were not part of the Rules.
13. These Rules are not to be read by reference to any former rules made by the Bar Association, whether or not the substance of any such rule is reflected in any of these Rules.
14. Barristers who are employed by a government or by an office or body created by statute, and who have been accepted by the Bar Council as members of the Bar Association, while acting pursuant to that employment, are not bound by Rules 74-92, Rule 115, or Rule 121.
15. Unless the context requires otherwise, the following expressions are defined as follows when used in these Rules:

<b>“allege”</b>	includes conduct constituted by settling, or opening on pleadings or affidavits, or witness statements, and reading or tendering affidavits or witness statements filed or prepared for the client (whether or not they were drawn or settled by the barrister).
<b>“alternative dispute resolution”</b>	includes, but is not limited to mediation, arbitration, and collaborative lawyering.
<b>“Bar Association”</b>	means the Australian Capital Territory Bar Association.
<b>“Bar Council”</b>	means the Council of the Bar Association.
<b>“barrister”</b>	means a member of the Bar Association whose name is on the Roll of Legal Practitioners of the Supreme Court of the ACT and who practises in the ACT as a barrister only.
<b>“barristers' work”</b>	means work permitted by Rule 74.
<b>“case”</b>	means the litigation or proceedings in which the barrister in question is briefed to appear, or the dispute in which the barrister is advising, as the case may be.
<b>“client”</b>	means the client of the barrister in question, and includes a professional acting as such, and in Rules 32, 34 and 46 includes those officers, servants or agents of a client which is not a natural person who are responsible for or involved in giving instructions on behalf of the client.
<b>“compromise”</b>	includes any form of settlement of the case, whether pursuant to a formal offer under the rules or procedure of a court, or otherwise.

<b>“court”</b>	means any body described as such and all other judicial tribunals, and, except in Rule 4, all statutory tribunals, and, except in Rules 4 and 87(j), all investigations and inquiries established by statute or by the Legislative Assembly, Royal Commissions, arbitrations and mediations.
<b>“criminal proceedings”</b>	includes disciplinary proceedings, in which context other expressions appropriate to criminal proceedings include corresponding meanings appropriate to disciplinary proceedings and in particular "a serious criminal offence" includes a disciplinary shortcoming which, if proved, involves the serious possibility of suspension or deregistration (or the equivalent).
<b>“current proceedings”</b>	means proceedings which have not been determined, including proceedings in which there is still the real possibility of an appeal or other challenge to a decision being filed, heard or decided.
<b>“fee”</b>	includes any payment for the reimbursement of expenses.
<b>“forensic judgments”</b>	do not include decisions as to the commencement of proceedings, the joinder of parties, admissions or concessions of fact, amendments of pleadings or undertakings to a court, or in criminal proceedings as to a plea, but do include advice given to assist the client or the instructing solicitor to make such decisions.
<b>“instructing solicitor”</b>	means the solicitor from whom the barrister in question has accepted a brief or who is instructing that barrister in that brief, as the case may be, but does not include a solicitor appearing with the barrister as a joint advocate.
<b>“insurance company”</b>	in Rule 55 includes any entity, whether statutory or otherwise, which performs the function of indemnifying in any way civil defendants.
<b>“legal advice”</b>	includes assistance at or presiding over meetings.
<b>“member”</b>	of a court, in Rule 87(j), does not include the holder of an acting commission or appointment.
<b>“opponent”</b>	means the legal practitioner appearing for the party opposed to the client, or the party opposed to the client if that party is unrepresented.
<b>“order”</b>	includes a judgment, decision or determination.
<b>“professional”</b>	when used as a noun means a person actively engaged in an occupation generally recognised as being a profession, and includes accountants, architects, doctors, engineers, surveyors, town planners and valuers.
<b>“prosecutor”</b>	means a barrister who appears for the complainant or Crown in criminal proceedings.
<b>“reader”</b>	means a person who has applied to be a barrister and who:- (a) is admitted as a legal practitioner; and (b) has passed, within a 10 month period of applying to be a barrister, each of the Bar Exams; and

	(c) has not, during any part of the 36 month period prior to applying, held an unrestricted barrister's certificate.
"reading period"	means the period commencing on the day the reader's practising certificate is issued and continuing for 12 months from that day or for a longer time as determined by the Bar Council.
"reading program"	means a program of instruction for a reader approved by the Bar Council.
"representative"	means the barrister or, if no barrister, the solicitor who is retained by the party in question.
"Senior Counsel"	means and includes senior counsel appointed as such in accordance with Rule 114, senior counsel appointed as such in other states and territories pursuant to a similar procedure, and Her Majesty's Counsel for the ACT and for other states and territories of the Commonwealth.
"tutor"	has the meaning in Rule 112.1.

## ADVOCACY RULES

### *Duty to client*

16. A barrister must seek to advance and protect the client's interests to the best of the barrister's skill and diligence, uninfluenced by the barrister's personal view of the client or the client's activities, and notwithstanding any threatened unpopularity or criticism of the barrister or any other person, and always in accordance with the law including these Rules.
17. A barrister must seek to assist the client to understand the issues in the case and the client's possible rights and obligations, if the barrister is instructed to give advice on any such matter, sufficiently to permit the client to give proper instructions, particularly in connection with any compromise of the case.
- 17A. A barrister must inform the client or the instructing solicitor about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the barrister believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation.
- 17B. A barrister must (unless circumstances warrant otherwise in the barrister's considered opinion) advise a client who is charged with a criminal offence about any law, procedure or practice which in substance holds out the prospect of some advantage (including diminution of penalty), if the client pleads guilty or authorises other steps towards reducing the issues, time, cost or distress involved in the proceedings.<sup>8</sup>

### *Disinterestedness*

18. A barrister must not act as the mere mouthpiece of the client or of the instructing solicitor and must exercise the forensic judgements called for during the case independently, after appropriate consideration of the client's and the instructing solicitor's desires where practicable.
19. A barrister will not have breached the barrister's duty to the client, and will not have failed to give reasonable consideration to the client's or the instructing solicitor's desires, simply by choosing, contrary to those desires, to exercise the forensic judgements called for during the case so as to:
  - (a) confine any hearing to those issues which the barrister believes to be the real issues;
  - (b) present the client's case as quickly and simply as may be consistent with its robust advancement; or
  - (c) inform the court of any persuasive authority against the client's case.
20. A barrister must not make submissions or express views to a court on any material evidence or material issue in the case in terms which convey or appear to convey the barrister's personal opinion on the merits of that evidence or issue.



*Frankness in court*

21. A barrister must not knowingly make a misleading statement to a court on any matter.
22. A barrister must take all necessary steps to correct any misleading statement made by the barrister to a court as soon as possible after the barrister becomes aware that the statement was misleading.
23. A barrister must take all necessary steps to correct any express concession made to the court, in civil proceedings by the opponent in relation to any material fact, case-law or legislation:
  - (a) only if the barrister knows or believes on reasonable grounds that it was contrary to what should be regarded as the true facts or the correct state of the law;
  - (b) only if the barrister believes the concession was an error; and
  - (c) not (in the case of a concession of fact) if the client's instructions to the barrister support the concession.
24. A barrister seeking any interlocutory relief in an ex parte application must disclose to the court all matters which:
  - (a) are within the barrister's knowledge;
  - (b) are not protected by legal professional privilege; and
  - (c) the barrister has reasonable grounds to believe would support an argument against granting the relief or limiting its terms adversely to the client.
- 24A. A barrister who has knowledge of matters which are within Rule 24(c):
  - (a) must seek instructions for the waiver of legal professional privilege if the matters are protected by that privilege, so as to permit the barrister to disclose those matters under Rule 24; and
  - (b) if the client does not waive the privilege as sought by the barrister:
    - (i) must inform the client of the client's responsibility to authorise such disclosure and the possible consequences of not doing so; and
    - (ii) must inform the court that the barrister cannot assure the court that all matters which should be disclosed have been disclosed to the court.
25. A barrister must, at the appropriate time in the hearing of the case and if the court has not yet been informed of that matter, inform the court of:
  - (a) any binding authority;
  - (b) any authority decided by the Full Court of the Federal Court of Australia, a Court of Appeal of a Supreme Court or a Full Court of a Supreme Court;
  - (c) any authority on the same or materially similar legislation as that in question in the case, including any authority decided at first instance in the Federal Court or a Supreme Court, which has not been disapproved; or
  - (d) any applicable legislation;

which the barrister has reasonable grounds to believe to be directly in point, against the client's case.
26. A barrister need not inform the court of matters within Rule 25 at a time when the opponent tells the court that the opponent's whole case will be withdrawn or the opponent will consent to final judgment in favour of the client, unless the appropriate time for the barrister to have informed the court of such matters in the ordinary course has already arrived or passed.

27. A barrister who becomes aware of a matter within Rule 25 after judgment or decision has been reserved and while it remains pending, whether the authority or legislation came into existence before or after argument, must inform the court of that matter by:
  - (a) a letter to the court, copied to the opponent, and limited to the relevant reference unless the opponent has consented beforehand to further material in the letter; or
  - (b) requesting the court to re-list the case for further argument on a convenient date, after first notifying the opponent of the intended request and consulting the opponent as to the convenient date for further argument.
28. A barrister need not inform the court of any matter otherwise within Rule 25 which would have rendered admissible any evidence tendered by the prosecution which the court has ruled inadmissible without calling on the prosecution or the defence.
29. A barrister will not have made a misleading statement to a court simply by failing to disclose facts known to the barrister concerning the client's character or past, when the barrister makes other statements concerning those matters to the court, and those statements are not themselves misleading.
30. A barrister who knows or suspects that the prosecution is unaware of the client's previous conviction must not ask a prosecution witness whether there are previous convictions, in the hope of a negative answer.
31. A barrister must inform the court in civil proceedings of any misapprehension by the court as to the effect of an order which the court is making, as soon as the barrister becomes aware of the misapprehension.

***Delinquent or guilty clients***

32. A barrister whose client informs the barrister, during a hearing or after judgment or decision is reserved and while it remains pending, that the client has lied to the court or procured another person to lie to the court or has falsified or procured another person to falsify in any way a document which has been tendered:
  - (a) must refuse to take any further part in the case unless the client authorises the barrister to inform the court of the lie or falsification;
  - (b) must promptly inform the court of the lie or falsification upon the client authorising the barrister to do so; but
  - (c) must not otherwise inform the court of the lie or falsification.
33. A barrister briefed to appear in criminal proceedings whose client confesses guilt to the barrister but maintains a plea of not guilty:
  - (a) may return the brief, if there is enough time for another legal practitioner to take over the case properly before the hearing, and the client does not insist on the barrister continuing to appear for the client;
  - (b) in cases where the barrister keeps the brief for the client:
    - (i) must not falsely suggest that some other person committed the offence charged;
    - (ii) must not set up an affirmative case inconsistent with the confession; but
    - (iii) may argue that the evidence as a whole does not prove that the client is guilty of the offence charged; and

- (iv) may argue that for some reason of law the client is not guilty of the offence charged.
  - (v) may argue that for any other reason not prohibited by (i) and (ii) the client should not be convicted of the offence charged.
34. A barrister whose client informs the barrister that the client intends to disobey a court's order must:
- (a) advise the client against that course and warn the client of its dangers;
  - (b) not advise the client how to carry out or conceal that course; but
  - (c) not inform the court or the opponent of the client's intention unless:
    - (i) the client has authorised the barrister to do so beforehand; or
    - (ii) the barrister believes on reasonable grounds that the client's conduct constitutes a threat to any person's safety.

***Responsible use of court process and privilege***

35. A barrister must, when exercising the forensic judgements called for throughout a case, take care to ensure that decisions by the barrister or on the barrister's advice to invoke the coercive powers of a court or to make allegations or suggestions under privilege against any person:
- (a) are reasonably justified by the material then available to the barrister;
  - (b) are appropriate for the robust advancement of the client's case on its merits;
  - (c) are not made principally in order to harass or embarrass the person; and
  - (d) are not made principally in order to gain some collateral advantage for the client or the barrister or the instructing solicitor out of court.
36. A barrister must not allege any matter of fact in:
- (a) any court document settled by the barrister;
  - (b) any submission during any hearing;
  - (c) the course of an opening address; or
  - (d) the course of a closing address or submission on the evidence;
- unless the barrister believes on reasonable grounds that the factual material already available provides a proper basis to do so.
37. A barrister must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the barrister believes on reasonable grounds that:
- (a) available material by which the allegation could be supported provides a proper basis for it; and
  - (b) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.
38. A barrister must not make a suggestion in cross-examination on credit unless the barrister believes on reasonable grounds that acceptance of the suggestion would diminish the witness's credibility.

39. A barrister may regard the opinion of the instructing solicitor that material which is available to the solicitor is credible, being material which appears to the barrister from its nature to support an allegation to which Rules 36, 37 and 38 apply, as a reasonable ground for holding the belief required by those rules (except in the case of a closing address or submission on the evidence).
40. A barrister must make reasonable enquiries to the extent which is practicable before the barrister can have reasonable grounds for holding the belief required by Rule 38(a), unless the barrister has received and accepted an opinion from the instructing solicitor within Rule 39.

***Efficient administration of justice***

41. A barrister must seek to ensure that:
  - (a) the barrister does work which the barrister is briefed to do, whether expressly or impliedly, specifically or generally, in relation to steps to be taken by or on behalf of the client, in sufficient time to enable compliance with orders, directions, rules or practice notes of the court; and
  - (b) warning is given to the instructing solicitor or the client, and to the opponent, as soon as the barrister has reasonable grounds to believe that the barrister may not complete any such work on time.<sup>13</sup>
42. A barrister must seek to ensure that work which the barrister is briefed to do in relation to a case is done so as to:
  - (a) confine the case to identified issues which are genuinely in dispute;
  - (b) have the case ready to be heard as soon as practicable;
  - (c) present the identified issues in dispute clearly and succinctly;
  - (d) limit evidence, including cross-examination, to that which is reasonably necessary to advance and protect the client's interest which are at stake in the case; and
  - (e) occupy as short a time in court as is reasonably necessary to advance and protect the client's interests which are at stake in the case.
- 42A. A barrister must take steps to inform the opponent as soon as possible after the barrister has reasonable grounds to believe that there will be an application on behalf of the client to adjourn any hearing, of that fact and the grounds of the application, and must try, with the opponent's consent, to inform the court of that application promptly.

***Integrity of evidence***

43. A barrister must not suggest or condone another person suggesting in any way to any prospective witness (including a party or the client) the content of any particular evidence which the witness should give at any stage in the proceedings.
44. A barrister will not have breached Rule 43 by expressing a general admonition to tell the truth, or by questioning and testing in conference the version of evidence to be given by a prospective witness, including drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not coach or encourage the witness to give evidence different from the evidence which the witness believes to be true.
45. Deleted.

46. A barrister must not confer with, or condone another legal practitioner conferring with, more than one lay witness (including a party or client) at the same time, about any issue:
- (a) as to which there are reasonable grounds for the barrister to believe it may be contentious at a hearing; and
  - (b) which could be affected by, or could affect, evidence to be given by any of those witnesses;
- unless the barrister believes on reasonable grounds that special circumstances require such a conference.
47. A barrister will not have breached Rule 46 by conferring with, or condoning another legal practitioner conferring with, more than one client about undertakings to a court, admissions or concessions of fact, amendments of pleadings or compromise.
48. A barrister must not confer with any witness (including a party or client) called by the barrister on any matter related to the proceedings while that witness remains under cross-examination, unless:
- (a) the cross-examiner has consented beforehand to the barrister doing so; or
  - (b) the barrister:
    - (i) believes on reasonable grounds that special circumstances (including the need for instructions on a proposed compromise) require such a conference;
    - (ii) has, if possible, informed the cross-examiner beforehand of the barrister's intention to do so; and
    - (iii) otherwise does inform the cross-examiner as soon as possible of the barrister having done so.
49. A barrister must not take any step to prevent or discourage prospective witnesses or witnesses from conferring with the opponent or being interviewed by or on behalf of any other person involved in the proceedings.
50. A barrister will not have breached Rule 49 simply by telling a prospective witness or a witness that witness need not agree to confer or to be interviewed.

***Duty to opponent***

51. A barrister must not knowingly make a false statement to the opponent in relation to the case (including its compromise).
52. A barrister must take all necessary steps to correct any false statement unknowingly made by the barrister to the opponent as soon as possible after the barrister becomes aware that the statement was false.
53. A barrister will not have made a false statement to the opponent simply by failing to correct an error on any matter stated to the barrister by the opponent.
54. A barrister must not deal directly with the opponent's client unless:
- (a) the opponent has previously consented;
  - (b) the barrister believes on reasonable grounds that:
    - (i) the circumstances are so urgent as to require the barrister to do so; and
    - (ii) the dealing would not be unfair to the opponent's client; or

- (c) the substance of the dealing is solely to enquire whether the person is represented and, if so, by whom.
55. A barrister must not confer with or deal directly with the party opposed to the client unless:
- (a) the party, not being indemnified by an insurance company which is actively engaged in contesting the proceedings, is unrepresented and has signified willingness to that course; or
  - (b) the party, being indemnified by an insurance company which is actively engaged in contesting the proceedings, is otherwise unrepresented and the barrister:
    - (i) has no reasonable grounds to believe that any statements made by the party to the barrister may harm the party's interests under the insurance policy; or
    - (ii) has reasonable grounds for the belief referred to in (i) but has clearly informed the party beforehand of that possibility; or
  - (c) the party, being indemnified by an insurance company which is actively engaged in contesting the proceedings, is personally represented but not in the case and the barrister:
    - (i) has notified the party's representative of the barrister's intention to do so; and
    - (ii) has allowed enough time for the party to be advised by the party's representative.
56. A barrister must not, outside an ex parte application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:
- (a) the court has first communicated with the barrister in such a way as to require the barrister to respond to the court; or
  - (b) the opponent has consented beforehand to the barrister dealing with the court in a specific manner notified to the opponent by the barrister.
57. A barrister must promptly tell the opponent what passes between the barrister and a court in a communication referred to in Rule 56.
58. A barrister must not raise any matter with a court in connection with current proceedings on any occasion to which the opponent has consented under Rule 56(b), other than the matters specifically notified by the barrister to the opponent when seeking the opponent's consent.

### *Integrity of hearings*

59. (a) Subject to sub rule (b), a barrister must not publish or take any steps towards the publication of any material concerning any current or potential proceedings which:-
- (i) is inaccurate;
  - (ii) discloses any confidential information;
  - (iii) appears to or does express the opinion of the barrister on the merits of the current or potential proceeding or on any issue arising in the proceeding other than in the course of genuine educational or academic discussion on matters of law.
- (b) may publish or assist the publishing of material concerning a current proceeding, by supplying only:-

- (i) copies of pleadings or court documents in their current form, which have been filed and which have been served in accordance with the court's requirements;
- (ii) copies of affidavits or witness statements, which have been read, tendered or verified in open court, clearly marked so as to show any parts which have not been read, tendered or verified or which have been disallowed on objection;
- (iii) copies of transcript of evidence given in open court, if permitted by copyright and clearly marked so as to show any corrections agreed by other parties or directed by the court;
- (iv) copies of exhibits admitted in open court and without restriction on access;
- (v) answers to unsolicited questions concerning the current proceedings and the answers are limited to information as to the identity of the parties or of any witness already called, the nature of the issues in the case, the nature of the orders made or judgment given including any reasons given by the court and the client's intentions as to any further steps in the case.

provided that where the barrister is engaged in the current proceeding the barrister does so only with the consent of the client first obtained.

- 60. A barrister will not have breached Rule 59 simply by advising the client about whom there has been published a misleading or coloured report relating to the case, and who has sought the barrister's advice in relation to that report, and who has sought the barrister's advice in relation to that report, that the client may take appropriate steps to present the client's own position for publication.
- 61. A barrister must not in the presence of any of the parties or solicitors deal with a court, or deal with any legal practitioner appearing before the barrister when the barrister is a referee, arbitrator or mediator, on terms of informal personal familiarity which may reasonably give the appearance that the barrister has special favour with the court or towards the legal practitioner.

#### ***Prosecutor's Duties***

- 62. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- 63. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 64. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 65. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 66. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:
  - (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and

- (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.
- 66A. A prosecutor who has decided not to disclose material to the opponent under Rule 66 must consider whether:
- (a) the defence of the accused could suffer by reason of such non-disclosure;
  - (b) the charge against the accused to which such material is relevant should be withdrawn; and
  - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 66B. A prosecutor must call as part of the prosecution's case all witnesses:
- (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
  - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
  - (c) whose testimony or statements were used in the course of any committal proceedings; and
  - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case unless the opponent consents to the prosecutor not calling a particular witness;
- and except where:-
- (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;
  - (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
  - (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;
- provided that:-
- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.
67. A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- (a) inform the opponent if the prosecutor intends to use the material; and
  - (b) make available to the opponent a copy of the material if it is in documentary form.
68. A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
69. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.



70. A prosecutor who has informed the court of matters within Rule 69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
71. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
  - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
  - (c) must assist the court to avoid appealable error on the issue of sentence;
  - (d) may submit that a custodial or non-custodial sentence is appropriate; and
  - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.
72. A barrister who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 62, 64 and 65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 64.

## **OPINIONS**

73. A barrister must give the barrister's truthful opinion on any matter submitted to the barrister for advice or opinion.

## **BARRISTERS' WORK**

74. A barrister must confine the barrister's professional work to:
- (a) appearing as an advocate;
  - (b) preparing to appear as an advocate;
  - (c) negotiating for the client with the opponent to compromise the case;
  - (d) representing the client in a case appraisal, mediation, arbitration, collaborative law practice and procedures, and any other form of alternative dispute resolution;
  - (e) giving legal advice;
  - (f) preparing or advising on documents to be used by the client or by others in the client's affairs;
  - (g) acting as a referee, arbitrator or mediator; and
  - (h) carrying out work properly incidental to the kinds of work referred to in (a)-(g).

75. A barrister must not:
- (a) act as a person's general agent or attorney in that person's business or dealings with others;
  - (b) conduct contentious correspondence in the barrister's name on behalf of any person with others (including public authorities) with whom that person is dealing, otherwise than the opponent;
  - (c) place herself or himself at risk of becoming a witness, by investigating facts for the purposes of appearing as an advocate or giving legal advice, otherwise than by:-
    - (i) conferring with the client, the instructing solicitor, prospective witnesses or experts;
    - (ii) examining documents provided by the instructing solicitor or the client as the case may be, or produced to the court;
    - (iii) viewing a place or things by arrangement with the instructing solicitor or the client, as the case may be; or
    - (iv) library research;
  - (d) act as a person's only representative in dealings with any court, otherwise than when actually appearing as an advocate;
  - (e) serve any process of any court;
  - (f) conduct the conveyance of any property for any other person;
  - (g) administer any trust estate or fund for any other person;
  - (h) obtain probate or letters of administration for any other person;
  - (i) incorporate companies or provide shelf companies for any other person;
  - (j) prepare or lodge returns for any other person, unless the barrister is registered or accredited to do so under the applicable taxation legislation; or
  - (k) hold, invest or disburse any fund for any other person.
76. A barrister will not have breached Rule 75 by:-
- (a) doing any of the matters referred to in that Rule on the barrister's own behalf;
  - (b) doing any of the matters referred to in that Rule without fee and as a private person on behalf of a member of the barrister's family;
  - (c) doing any of the matters referred to in Rule 75 (d) to (k) by way of assistance to a friend, without fee and as a private person.
77. A barrister will not have breached Rule 75 (a), (g) or (k) if the barrister becomes such an agent, is appointed so to act or becomes responsible for such funds as a private person and not as a barrister or a legal practitioner.

***Referral to Solicitor***

78. A barrister who is asked by any person to do work or engage in conduct which is not barristers' work, or which appears likely to require work to be done which is not barristers' work, must promptly inform that person:
- (a) of the effect of Rules 74 and 75 as they relevantly apply in the circumstances; and
  - (b) that, if it be the case, solicitors are capable of providing those services to that person.
79. A barrister who provides information under Rule 78 to a person must not inform the person that the barrister will perform barristers' work for that person on condition that a particular solicitor briefs the barrister to do so.
80. ***Disclosure to direct access client*** - Deleted see Rule 115.2

**RULES**

81. A barrister must be a sole practitioner, and must not practise:
- (a) in partnership with any person;
  - (b) as the employer of any legal practitioner who acts as a legal practitioner in the course of that employment; or
  - (c) as the employee of any person.
82. A barrister must not make or have any arrangement with any person in connection with any aspect of the barrister's practice which imposes any obligation on the barrister of such a kind as may prevent the barrister from:
- (a) accepting any brief to appear for reasons other than those provided by the exceptions to the cab-rank principle in Rules 87, 89 and 91; or
  - (b) competing with any other legal practitioner for the work offered by any brief for reasons other than those referred to in Rules 87, 89 and 91.
83. A barrister will not have breached Rules 81 and 82 by carrying out a specific task of research or chamber work given to the barrister by another barrister, or by giving such a task to another barrister, so long as:
- (a) the barrister who was briefed to do the chamber work takes full personal responsibility for the work;
  - (b) the work is delivered under the name of the barrister who was briefed;
  - (c) the arrangement between the barristers does not go beyond an ordinary devilling or reading arrangement and in particular does not involve any standing retainer or employment terms; and
  - (d) the arrangement between the barristers does not provide and is not intended to enable the barrister giving the task to make a profit from the other barrister's work, over and above reasonable remuneration for supervision of and responsibility for the other barrister's work.

*Third-line forcing*

84. A barrister must not require that any other particular legal practitioner be instructed or briefed, as the case may be, so as in any way to impose that requirement as a condition of the barrister accepting any brief or instructions.

**CAB-RANK RULES & BRIEFS***Cab-rank principle*

85. A barrister must accept a brief from a solicitor to appear before a court in a field in which the barrister practises or professes to practise if:
- (a) the brief is within the barrister's capacity, skill and experience;
  - (b) the barrister would be available to work as a barrister when the brief would require the barrister to appear or to prepare, and the barrister is not already committed to other professional or personal engagements which may, as a real possibility, prevent the barrister from being able to advance a client's interests to the best of the barrister's skill and diligence;
  - (c) the fee offered on the brief is acceptable to the barrister; and
  - (d) the barrister is not obliged or permitted to refuse the brief under Rules 87, 90 or 91.
86. A barrister must not set the level of an acceptable fee, for the purposes of Rule 85(c), higher than the barrister would otherwise set if the barrister were willing to accept the brief, with the intent that the solicitor may be deterred from continuing to offer the brief to the barrister.

*Briefs which must be refused*

87. A barrister must refuse *to accept or retain* a brief or instructions to appear before a court if:
- (a) the barrister has information which is confidential to any other person *in the case* other than the prospective client, and:
    - (i) the information may, as a real possibility, be helpful to the prospective client's case; and
    - (ii) the person entitled to the confidentiality has not consented to the barrister using the information as the barrister thinks fit in the case;
  - (b) the barrister has a general or special retainer which gives, and gives only, a right of first refusal of the barrister's services to another party in the case and the barrister is offered a brief to appear in the case for the other party within the terms of the retainer;
  - (c) the barrister has reasonable grounds to believe that the barrister may, as a real possibility, be a witness in the case;
  - (d) the brief is to appear on an appeal and the barrister was a witness in the case at first instance;
  - (e) the barrister has reasonable grounds to believe that the barrister's own personal or professional conduct may be attacked in the case;
  - (f) the barrister has a material financial or property interest in the outcome of the case, apart from the prospect of a fee in the case of a brief under a speculative costs agreement;

- (g) the brief is on the assessment of costs which include a dispute as to the propriety of the fee paid or payable to the barrister, or is for the recovery from a former client of costs in relation to a case in which the barrister appeared for the client;
- (h) the brief is for a party to an arbitration in connection with the arbitration and the barrister has previously advised or appeared for the arbitrator in connection with the arbitration;
- (i) the brief is to appear in a contested hearing before the barrister's parent, sibling, spouse or child or a member of the barrister's household, or before a bench of which such a person is a member (unless the hearing is before the High Court of Australia sitting all available judges);
- (j) there are reasonable grounds for the barrister to believe that the failure of the client to retain an instructing solicitor would, as a real possibility, seriously prejudice the barrister's ability to advance and protect the client's interests in accordance with the law including these Rules.

87A. Without limiting the generality of Rule 87, a barrister must refuse to accept or retain a brief of instructions to appear before a court (excluding a statutory or other tribunal) if the brief is to appear before a court of which the barrister was formerly a member or judicial registrar (other than in an acting capacity), or before a court from which appeals lay to a court of which the barrister was formerly a member (except the Federal Court of Australia in case of appeals from the Supreme Court of any State or Territory) and the appearance would occur:

- (a) within 2 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for less than 2 years;
- (b) within a period after the barrister ceased to be a member of the court in question equivalent to the period for which the barrister was a member of the court, if the barrister was a member of the court for 2 years or more but less than 5 years; or
- (c) within 5 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for 5 years or more.

87B. Without limiting the generality of Rule 87 a barrister must refuse to accept or retain a brief or instructions to appear before a statutory or other tribunal if:-

- (a) the brief is to appear before such a tribunal which does not sit in divisions or lists to which its members are assigned and the barrister is a member of the tribunal;
- (b) the brief is to appear before such a tribunal which sits in divisions or lists to which its members are assigned and:-
  - (i) the barrister is a member of the tribunal assigned to a division or list; and
  - (ii) the brief is to appear in a proceeding in that division or list;
- (c) the brief is to appear before such a tribunal:-
  - (i) which does not sit in divisions or lists to which its members are assigned and the barrister was formerly a member of the tribunal – where the appearance would occur within two years after the barrister ceased to be a member of the tribunal;
  - (ii) which does sit in divisions or lists to which its members are assigned and the barrister was assigned as a member to a division or list – where the brief is to appear in a proceeding in a division or list to which the barrister was

assigned and the appearance would occur within two years after the barrister ceased to be assigned to that division or list.

88. A barrister need not refuse a brief notwithstanding the application of Rules 87(c) or (e) if:
- (a) the barrister believes on reasonable grounds that:
    - (i) allegations involving the barrister in such a way as to apply one of those Rules have been raised in order to prevent the barrister from accepting the brief; and
    - (ii) those allegations can be met without materially diminishing the barrister's disinterestedness; and
  - (b) the President of the Bar Association or a member of the Bar Council who is Senior Counsel approves of the barrister accepting the brief after the barrister has informed that Senior Counsel of the circumstances.
89. A barrister must refuse a brief if the barrister has information which is confidential to any person with different interests from those of the prospective client if:
- (a) the information may, as a real possibility, be helpful to the advancement of the prospective client's interests in the matter on which advice is sought; and
  - (b) the person entitled to the confidentiality has not consented beforehand to the barrister using the information as the barrister thinks fit in giving advice.
90. A barrister must not accept a brief to appear on a day when the barrister is already committed to appear or is reasonably likely to be required to appear on another brief unless:
- (a) the person offering the later brief has expressly permitted the barrister to do so; and
  - (b) the instructing solicitor in the earlier brief has been informed beforehand of the barrister's intention to accept the later brief.

***Briefs which may be refused***

91. A barrister may refuse a brief if:
- (a) the brief is not offered by a solicitor;
  - (b) the barrister considers on reasonable grounds that the time or effort required for the brief threatens seriously to prejudice the barrister's practice or other professional or personal engagements;
  - (c) the barrister has reasonable grounds to doubt that the fee will be paid reasonably promptly or in accordance with the costs agreement;
  - (d) the brief may, as a real possibility, require the barrister to cross-examine or criticise a friend or relation;
  - (e) the solicitor does not agree to a request by the barrister that appropriate attendances by the instructing solicitor, solicitor's clerk or client representative will be arranged from time to time for the purposes of:

- (i) ensuring that the barrister is provided with adequate instructions to permit the barrister properly to carry out the work or appearance required by the brief;
  - (ii) ensuring that the client adequately understands the barrister's advice;
  - (iii) avoiding any delay in the conduct of any hearing or compromise negotiations; and
  - (iv) protecting the client or the barrister from any disadvantage or inconvenience which may, as a real possibility, otherwise be caused;
- (f) the prospective client is also the prospective instructing solicitor, or a partner, employer or employee of the prospective instructing solicitor, and has refused the barrister's request to be instructed by a solicitor independent of the prospective client and the prospective client's firm; or
- (g) the barrister, being Senior Counsel, considers on reasonable grounds that the case does not require the services of Senior Counsel.
92. A barrister may regard the current listing of a solicitor by the Bar Association as one who has failed to pay another barrister's fee without reasonable excuse as a reasonable ground for the doubt referred to in Rule 91(c).

### ***Return of briefs***

93. A barrister must not return a brief to defend a charge of a serious criminal offence unless:
- (a) the barrister believes on reasonable grounds that:
    - (i) the circumstances are exceptional and compelling; and
    - (ii) there is enough time for another legal practitioner to take over the case properly before the hearing; or
  - (b) the client has consented after the barrister has clearly informed the client of the circumstances in which the barrister wishes to return the brief and of the terms of this Rule and Rule 94.
94. A barrister who holds a brief to defend a charge of a serious criminal offence and also any other brief, both of which would require the barrister to appear on a particular day, must return the other brief as soon as possible, unless the barrister became aware of the appearance being required on that day in the first brief after the barrister was committed to appear on that day in the other brief.
95. A barrister must not return a brief to appear in order to accept another brief to appear unless the instructing solicitor or the client, as the case may be, in the first brief has permitted the barrister to do so beforehand, after the barrister has clearly informed the instructing solicitor or the client, as the case may be, of the circumstances in which the barrister wishes to return the brief and of the terms of this Rule and Rule 97.
96. A barrister must not return a brief to appear on a particular date in order to attend a social occasion unless the instructing solicitor or the client, as the case may be, has expressly permitted the barrister to do so.
97. A barrister who wishes to return a brief which the barrister is permitted to return must do so in enough time to give another legal practitioner a proper opportunity to take over the case.
98. A barrister must promptly inform the instructing solicitor or the client, as the case may be, as soon as the barrister has reasonable grounds to believe that there is a real possibility that

the barrister will be unable to appear or to do the work required by the brief in the time stipulated by the brief or within a reasonable time if no time has been stipulated.

99. A barrister may return a brief if, after acceptance of the brief:
- (a) the instructing solicitor or client, as the case may be, has refused the barrister's request that appropriate attendances by the instructing solicitor, solicitor's clerk or client representative will be arranged from time to time for the purposes of:
    - (i) ensuring that the barrister is provided with adequate instructions to permit the barrister properly to carry out the work or appearance required by the brief;
    - (ii) ensuring that the client adequately understands the barrister's advice;
    - (iii) avoiding any delay in the conduct of any hearing or compromise negotiations; or
    - (iv) protecting the client or the barrister from any disadvantage or inconvenience which may, as a real possibility, otherwise be caused;
  - (b) subject to paragraph (d) the barrister's advice as to the preparation or conduct of the case, not including its compromise, has been rejected or ignored by the instructing solicitor or the client, as the case may be; or
  - (c) fees have not been paid reasonably promptly or in accordance with the costs agreement, and have remained unpaid after reasonable notice by the barrister to the instructing solicitor or client, as the case may be, of the barrister's intention to return the brief for that reason.
  - (d) the provisions of rule 99A relating to Speculative Fee Agreement applies.
- 99A. A barrister may return a brief accepted under a Speculative Fee Agreement if:-
- (a) the barrister, and the instructing solicitor if any, consider on reasonable grounds that the client has unreasonably rejected a reasonable offer of compromise contrary to the barrister's advice;
  - (b) the client has refused to pay the barrister a reasonable fee for all work done or to be done after the client's rejection of the offer;
  - (c) the client was informed before the barrister accepted the brief of the effect of this Rule; and
  - (d) the barrister has the firm view that the client has no reasonable prospects of success or of achieving a result better than the offer.
- 99B. Nothing in this Part entitles the barrister to enter into a Speculative Fee Agreement in criminal proceedings or proceedings relating to parenting of children under the *Family Law Act 1975*.
100. A barrister may return a brief accepted under a Speculative Fee if:
- (a) the barrister, and the instructing solicitor if any, consider on reasonable grounds that the client has unreasonably rejected a reasonable offer of compromise contrary to the barrister's advice;
  - (b) the client has refused to pay the barrister a reasonable fee for all work done or to be done after the client's rejection of the offer;



- (c) the client was informed before the barrister accepted the brief of the effect of this Rule; and
  - (d) the barrister has the firm view that the client has no reasonable prospects of success or of achieving a result better than the offer.
101. A barrister who has reasonable grounds to believe that there is a real possibility that the barrister may cease to be solely a disinterested advocate by becoming also a witness in the case or a defender of the barrister's own personal or professional conduct against criticism must return the brief as soon as it is possible to do so without unduly endangering the client's interests, unless:
- (a) the barrister believes on reasonable grounds that:
    - (i) allegations which involve the barrister in that way have been raised in order to remove the barrister from the case; and
    - (ii) those allegations can be met without materially diminishing the barrister's disinterestedness; and
  - (b) the President of the Bar Association or a member of the Bar Council who is Senior Counsel approves of the barrister keeping the brief after the barrister has informed that Senior Counsel of the circumstances.
102. A barrister must return a brief to appear in a contested hearing before a court constituted by a person whose relationship with the barrister is such as to make such appearance undesirable unless:
- (a) the barrister learns of the identity of the person or persons constituting the court so close to the hearing date that return of the brief would not give another legal practitioner enough time to take over the case properly before the hearing; and
  - (b) the barrister has sought to draw the circumstances to the court's attention so as to permit the constitution of the court to be changed.

## CONFIDENTIALITY & CONFLICTS

103. A barrister must not disclose (except as compelled by law) or use in any way in the course of practice confidential information obtained by the barrister concerning any person *to* whom the barrister owes some duty or obligation to keep such information confidential unless or until:
- (a) the information has been published;
  - (b) the information is later obtained by the barrister from another person who is not bound by the confidentiality owed by the barrister to the first person and who does not give the information confidentially to the barrister; or
  - (c) the person has consented to the barrister disclosing or using the information generally or on specific terms.
104. A barrister must not disclose (except as compelled by law) or use confidential information under Rule 103(c) in any way other than as permitted by the specific terms of the person's consent.

105. A barrister will not have breached Rules 103 and 104 simply by showing briefs to or disclosing information contained in a brief to the barrister's instructing solicitor in the matter, to a member of the barrister's staff for purposes of that person undertaking clerical or administrative work in relation to the matter or to a reader or to another barrister doing work as permitted by Rule 83 so long as the barrister has reminded the reader of barrister's duties of confidentiality including Rules 103 and 104.
106. A barrister who is shown a brief as a reader or under an arrangement covered by Rule 83 is bound by the same duties of confidentiality which bind the barrister whose brief it is, including the duties imposed by Rules 103 and 104.
107. A barrister who has accepted a brief must return the brief as soon as possible after the barrister becomes aware that the barrister has information confidential to a person other than the client which may, as a real possibility, be helpful to the client's case or to the advancement of the client's interests, being information which the barrister is prohibited from disclosing or using by Rules 103, 104 or 106, unless the person entitled to the confidentiality consents to the barrister disclosing or using the information as the barrister thinks fit.
108. A barrister who is briefed to appear for two or more parties in any case must determine as soon as possible whether the interests of the clients may, as a real possibility, conflict and, if so, the barrister must then return the brief for:
  - (a) all the clients in the case of confidentiality to which Rule 103 would apply; or
  - (b) in other cases, one or more of the clients:
    - (i) giving preference to the earliest brief if the barrister was briefed at different times; and
    - (ii) so as to remove that possibility of conflict.
109. A barrister who, during the hearing of the case, becomes aware that the interests of the clients or some of them do or may, as a real possibility, conflict, must return the brief for:
  - (a) all the clients in the case of confidentiality to which Rule 103 would apply; or
  - (b) in other cases, one or more of the clients:
    - (i) giving preference to the earliest brief if the barrister was briefed at different times; and
    - (ii) so as to remove that possibility of conflict.
110. A barrister need not return any briefs to appear under Rules 108 or 109, if the barrister has informed the instructing solicitor or the clients, as the case may be, of the barrister's view as to the clients' conflicting interests, and the instructing solicitor or the clients, as the case may be, inform the barrister that all the clients nonetheless wish the barrister to continue to appear for them.
111. A barrister who believes on reasonable grounds that the interests of the client may conflict with the interests of the instructing solicitor, or that the client may have a claim against the instructing solicitor, must:
  - (a) advise the instructing solicitor of the barrister's belief; and
  - (b) if the instructing solicitor does not agree to advise the client of the barrister's belief, seek to advise the client in the presence of the instructing solicitor of the barrister's belief.

## READING

- 112.1 A reader must, unless exempted by the Bar Council, complete the reading program within the reading period.
- 112.2 At any time during the reading period, the reader or the reader's tutor may seek guidance from the Bar Council as to:-
- (a) any step necessary required of the reader to complete the reading program; and
  - (b) any matter relating to the relationship between the reader and a tutor of the reader.
- 112.3 Each tutor and reader must, in relation to the Reader's reading program, comply with any direction or decision made by the Bar Council.

## CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

113. A member of the association who is a local practising barrister must undertake each year the requirements of any continuing professional development programme established by the bar council from time to time.
- 114 – Deleted

## DISCLOSURE OBLIGATIONS

### *Disclosure Requirements*

115. In this Rule, a "disclosable event" in relation to a barrister means any of the following:-
- (a) the making of a sequestration order against, or the filing of a debtor's petition by the barrister pursuant to the Bankruptcy Act 1966 (Cth);
  - (b) the entry by the barrister into a debt agreement pursuant to Part IX of the Bankruptcy Act 1966 (Cth) or an agreement, composition or arrangement to Part X of that Act;
  - (c) the disqualification of the barrister from managing or being involved in the management of any body corporate under any law in force in any jurisdiction within Australia, including disqualification from managing corporations under Part 2D.6 of the Corporations Act 2001; or
  - (d) the conviction of the barrister of an offence under any law in force in Australia or in any overseas country or a finding that such an offence is proved against the barrister where the maximum penalty for the offence is a term of imprisonment of 12 months or more or where fraud or dishonesty is an element of the offence.
- 115A. Where a disclosable event occurs in relation to a barrister, the barrister must within 28 days after the disclosable event occurs:-
- (a) inform the Secretary of the Bar Association in writing of the occurrence of the disclosable event; and
  - (b) provide the Secretary of the Bar Association with written details of the circumstances giving rise to the disclosable event sufficient to enable the Secretary of the Bar Association to determine whether the occurrence of the disclosable event in relation to the barrister or any circumstances giving rise to it, may affect the barrister's suitability to engage in legal practice as a barrister for the purposes of the relevant legislation in force in each jurisdiction.

- (c) A barrister in relation to whom a disclosable event occurs must, within 14 days after receiving a written request from the Secretary of the Bar Association to do so, provide such further information concerning the disclosable event or any of the circumstances giving rise to it, as the Secretary of the Bar Association may require.

## **DIRECT CLIENT ACCESS**

- 115.1 A barrister may do barristers' work for a client without the intervention of an instructing solicitor.
- 115.2 A barrister who proposes to accept instructions directly from a person who is not a solicitor or a professional acting as such must inform the prospective client in writing of:
  - (a) the effect of Rules 74 and 75;
  - (b) the fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the case;
  - (c) any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor; and
  - (d) the relative capacity of the barrister in performing barristers' work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them.

## **ADVERTISING**

- 116.1 A barrister may advertise.
- 116.2 An advertisement must not be of a kind that is or might reasonably be regarded as:
  - (a) false, misleading, or deceptive;
  - (b) in contravention of any legislation;
  - (c) vulgar, sensational, or otherwise such as would bring or be likely to bring the barrister or the legal profession into disrepute.

## **SPECIALISATION**

- 117. A barrister may advertise or hold himself or herself out as being a specialist or as offering specialist services, but only if:
  - (a) the barrister is not a reader and has had at least two years extensive experience in the relevant field,
  - (b) the barrister has given at least 2 months' notice to the Bar Council of the intention to do so, and
  - (c) the Bar Council does not disapprove.
- 118. Deleted
- 119. Deleted
- 120. Deleted
- 120.1 – 121.3 Deleted
- 121. Deleted

## DISCRIMINATION, SEXUAL HARASSMENT AND BULLYING

### *Discrimination*

- 122.1 A barrister shall not in any professional context discriminate against a client, solicitor, or another barrister on the basis of the person's religion, age, race, impairment, political belief or activity, trade union activity, sex, marital status, pregnancy, parental status, lawful sexual activity or association with, or relation to, a person identified on the basis of any of the above.

### *Sexual Harassment*

- 122.2 (a) A barrister shall not, in any professional context, engage in sexual harassment.
- (b) For the purposes of sub-rule (a) a barrister sexually harasses another person if:
- (i) the barrister makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that person; or
  - (ii) engages in other unwelcome conduct of a sexual nature in relation to that person;
- in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that person would be offended, humiliated or intimidated.
- “Conduct of a Sexual Nature” includes making a statement of a sexual nature to the person allegedly harassed or in the presence of that person, whether the statement is made orally or in writing.

### *Bullying*

- 122.3
- (a) A barrister shall not, in any professional context, engage in conduct which is bullying.
- (b) For the purposes of sub-rule (a), bullying means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace.

### *Procedure*

- 122.4 (a) The person allegedly discriminated against, harassed or bullied may lodge a report or complaint about the barrister in accordance with the complaint and report processes approved by the Bar Council from time to time. Such complaint and report processes as approved by the Bar Council will be published in the appropriate ACT Bar Association policies against discrimination, sexual harassment and bullying.

123. Deleted



**ACT DPP**  
DIRECTOR OF PUBLIC  
PROSECUTIONS

**THE PROSECUTION  
POLICY OF THE  
AUSTRALIAN  
CAPITAL  
TERRITORY**





### Director's Foreword

The Prosecution Policy of the Australian Capital Territory was first published by the first Director of Public Prosecutions, Ken Crispin QC, in December 1991. In the foreword to this first issue of the Prosecution Policy, the then Attorney-General, Mr Terry Connolly wrote that the published policy:

*“ensures that consistency of decisions made in similar circumstances, and by the same token, assists officers in reaching a sound decision on the basis of any informed exercise in judgment. The public availability of the document serves the dual purpose of making the decision-making process open and accountable, as well as ensuring that the public is informed of the principles which guide the Director of Public Prosecutions in his Office in the performance of their function”*

It is important that the Prosecution Policy remains a living document, evolving and adapting to the everchanging demands of the jurisdiction. Thus, a revised version of the Prosecution Policy was published in April 2015. The changes noted in the foreword to the 2015 issue included the introduction of the *Human Rights Act 2004* and the *Victims of Crime Act 1994*.

In this April 2021 issue of the Prosecution Policy, the updates incorporated in the 2015 issue have been maintained. However, there have been a number of further developments to our legal environment since 2015. Thus, the additional revisions made in this issue of the Prosecution Policy include the following:

- Changes to the *Victims of Crime Act 1994* (ACT) (coming into effect in 2021), and a raft of new victim's rights policies issued by this office in September 2019 to comply with recommendations 40-43 (Criminal Justice Report, Parts III to VI, 2017) of the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

- A formal recognition of the overrepresentation of indigenous offenders in custody and the evolving sentencing jurisprudence in cases such as *R v Fernando* (1992) 76 A Crim R 58, *The Queen v Fuller-Cust* [2002] VSCA 168, *Bugmy v The Queen* (2013) 249 CLR 571, and *Kentwell v R (No 2)* [2015] NSWCCA 96.
- The unification of the profession through both prosecutors' engagement in the Bar Association, and the issue of practising certificates to prosecutors, supporting the incorporation of the relevant ACT Bar Rules into our prosecution policy.
- Recommendation 63 in Volume IV of the Victorian *Royal Commission into the Management of Police Informants*, recommending that police certify disclosure of all relevant material.

We have also taken the opportunity to use gender neutral language through the Prosecution Policy. The two-fold principles of consistency and transparency continue to echo in this April 2021 issue of the Prosecution Policy.



Shane Drumgold SC  
Director of Public Prosecutions  
1 April 2021





# PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

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## PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

### 1. INTRODUCTION

1. On 1 July 1991 the *Director of Public Prosecutions Act 1990* ('the *DPP Act*') came into effect. It established an Office of the Director of Public Prosecutions ('DPP') controlled by the Director of Public Prosecutions ('the Director') for the Australian Capital Territory ('the ACT').
  - 1.1 The *DPP Act* ensures the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. While under section 20 of the *DPP Act* the Attorney-General may give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of their functions or powers, such a direction or guideline must be of a general nature and must not refer to a particular case. Further, the Attorney-General must not give a direction or furnish a guideline unless they have consulted with the Director. Any such direction or guideline is a notifiable instrument and must be presented to the Legislative Assembly.
  - 1.2 The *DPP Act* also ensures that the prosecutor's role will be independent of police and other investigative agencies. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once an investigation has culminated in a prosecution, any decision as to whether or not it should proceed will be made independently by the DPP. In the ACT that independence extends to summary prosecutions as well.
  - 1.3 The Director's functions are also carried out independently of the courts: as the High Court has said, "*our courts do not purport to exercise control over the institution or continuation of criminal proceedings, save where it is necessary to do so to prevent an abuse of process or to ensure a fair trial*".

- 1.4 The purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime. Accordingly, prosecutors have strikingly been called “ministers of justice”. A prosecutor represents the community: as Deane J has observed, they must “*act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one*”.
- 1.5 Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution’s case firmly, fearlessly and vigorously, with, it has been said “*an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings*”.
- 1.6 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the ACT, the *Human Rights Act 2004*, provides that everyone - the accused, members of the community and victims of crime - has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- 1.7 The ACT is a human rights compliant jurisdiction, and all staff of the DPP must be mindful of the principles underlying the *Human Rights Act* and its purpose, as they conduct the business of the DPP. In particular, they are responsible for respecting, protecting and promoting the human rights that are set out in that Act.
- 1.8 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Where law or policy ends, discretion begins. Prosecutors must seek to resolve a wide range of issues with judgement, sensitivity and common sense. It is neither practicable nor desirable to fetter the prosecutor’s discretion too much because the demands of justice and fairness will vary from case to case.
- 1.9 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the *DPP Act*. This policy supersedes the previous policy and guidelines and directions, save for the Director’s disclosure guideline which came into effect on 3 August 2020 and remains in effect.

## 2. THE DECISION TO PROSECUTE

### *General criteria*

- 2.1 It is not the case that every allegation of criminal conduct must culminate in a prosecution. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, they have merely committed an inadvertent or minor breach of the law. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.
- 2.2 Further, the resources available for prosecution are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue, with appropriate vigour, those cases worthy of prosecution.
- 2.3 Whilst a number of general principles may be articulated, it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations, but the interests of the victim, the accused and the general public must all be taken into account. (In this context the term "the accused" includes an alleged offender, a defendant and an accused.)
- 2.4 The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?

- 2.5 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a *prima facie* case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.6 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.
- 2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:
- (a) Are the witnesses available and competent to give evidence?
  - (b) Do they appear to be honest and reliable?
  - (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?
  - (d) Do any have a motive for being less than candid?
  - (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
  - (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?

- (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?
- (i) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- (j) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?
- (k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
- (l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

2.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, they must then consider whether it is in the interest of the public that the prosecution should proceed. In many cases the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will usually be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.

2.9 Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. Many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include the following:

- (a) the seriousness or, conversely, the triviality of the alleged offence;

- (b) whether it is of a "technical" nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
- (e) the antecedents and background of the accused;
- (f) the staleness of the alleged offence;
- (g) the degree of culpability of the accused in relation to the offence;
- (h) the effect on public order and morale;
- (i) the obsolescence or obscurity of the law;
- (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- (k) the availability and efficacy of any alternatives to prosecution;
- (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
- (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (n) whether the alleged offence is of considerable public concern;
- (o) any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (p) the actual or potential harm occasioned to any person as a result of the alleged offence,
- (q) the attitude of the victim of the alleged offence to a prosecution;
- (r) the need to give effect to regulatory priorities;



- (s) the likely length and expense of a trial;
- (t) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which they have already done so;
- (u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (v) whether the alleged offence is triable only on indictment; and
- (w) the need to maintain public confidence in such basic institutions as parliament and the courts.

2.10 Plainly the decision to prosecute must **not** be influenced by:

- (a) the race, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the accused or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused – see for example subparagraphs 3.26-3.27);
- (b) any personal feelings concerning the alleged offender or victim;
- (c) any political advantage, disadvantage or embarrassment to the government or any political group or association; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

*Prosecution of juveniles*

- 2.11 Special considerations apply to the prosecution of juveniles. In this context a juvenile is a child (a person who is under 12 years old) or a young person (a person who is 12 years old or older, but not yet an adult). The best interests of the juvenile must always be considered. Juveniles should be encouraged to accept responsibility for their behaviour and should be dealt with so as to provide them with the opportunity to develop in socially responsible ways. Prosecution of a juvenile must always be regarded as a severe step. Generally, a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.
- 2.12 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.
- 2.13 In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in subparagraph 2.9 as appear to be relevant and to the following matters:
- (a) the seriousness of the alleged offence;
  - (b) the age, apparent maturity and mental capacity of the juvenile;
  - (c) the available alternatives to prosecution and their likely efficacy;
  - (d) the sentencing options available to the court if the matter were to be prosecuted; the family circumstances of the juvenile particularly whether those with parental responsibility appear willing and able to exercise effective discipline and control over the juvenile;
  - (e) the juvenile's antecedents including the circumstances of any previous cautions that they may have been given; and

- (f) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or otherwise be inappropriate, having regard to such matters as the vulnerability of the juvenile and their family circumstances.

- 2.14 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

### *Prosecution of Corporations*

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.
- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.
- 2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.
- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.

- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at subparagraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
  - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
  - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
  - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
  - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
  - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
  - (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
  - (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;

- (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
- (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
- (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
- (l) whether the corporation is in administration, liquidation or receivership.

#### *Discontinuing a prosecution*

- 2.21 Generally, the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the Director. However, wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision. Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution. It will be for the Director to decide on the sufficiency of evidence. On the other hand, if discontinuance on public interest grounds is contemplated, the views of the police or other referring agency, and the views of the victim will have greater relevance.

### 3. OTHER DECISIONS IN THE PROSECUTION PROCESS

#### *Choice of Charges*

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.
- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the *Crimes Act 1900* or *Criminal Code 2002* unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

*Mode of trial*

- 3.6 Summary disposition usually provides the speediest and most efficient disposition of justice. In relation to some indictable offences, the prosecution has the power to elect whether those matters are dealt with summarily. In other cases, the consent of the prosecution may be required before an indictable matter can be dealt with summarily.
- 3.7 In making the election or giving or withholding consent for summary disposal, each case is to be considered on its merits. The over-riding consideration is to achieve justice. The principal matter to be considered will be whether in the circumstances the Magistrates Court can adequately deal with the matter should it proceed to sentence. In turn, that will depend on:
- the nature and circumstances of the alleged offending;
  - any other matters that a court would have to consider in sentencing the alleged offender, were the offence to be proved; and
  - the criminal history if any of the alleged offender.
- 3.8 Other factors to be considered are:
- whether the alleged offence is part of a series of related alleged offences, and if so whether it is appropriate to deal with those alleged offences summarily;
  - whether there are any co-offenders of the alleged offender, and if so whether it is appropriate for the alleged offender to be dealt with together with the co- offenders; and
  - any delay, increased costs or adverse effects upon witnesses likely to be occasioned by proceeding on indictment.
- 3.9 Under no circumstances will the election be made, or consent given or withheld, for tactical reasons.

*Consent to prosecution*

- 3.10 The Director has been authorised to give consent to the prosecution of a number of offences. This is to ensure that prosecutions are not brought in inappropriate circumstances. The reason for the requirement for consent is a factor which should be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account, or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. Other cases may involve a use of the criminal law in sensitive or controversial areas, such as conspiracy, or may involve important considerations of public policy, such as administration of justice offences.

*Charge negotiation*

- 3.11 Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to a fewer number of charges, or to a less serious charge or charges, with the remaining charges either being not being proceeded with or being taken into account on a schedule. It may also result in agreement for matters to be dealt with summarily. In some cases it may involve agreement about the content of the statement of facts to be put before the court.
- 3.12 There are obvious benefits to the criminal justice system from a plea of guilty. The earlier it is achieved, the greater will be the benefits accruing to the accused, the victim, witnesses and the community. Accordingly, negotiations between the defence and the prosecution are to be encouraged. They may occur at any stage and may be initiated by the prosecution or the defence. Charge negotiations must be based on principle and reason, and not on expediency. A clear record of the negotiations must be kept in the interests of transparency and probity.
- 3.13 A plea of guilty may be accepted following appropriately authorised plea negotiations if the public interest is satisfied on consideration of the following matters:
- (a) whether the plea reasonably reflects the essential criminality of the conduct and provides an adequate basis for sentencing;



- (b) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
- (c) the desirability of prompt and certain dispatch of the case;
- (d) the need to avoid delay in the dispatch of other pending cases;
- (e) the time and expense involved in a trial and any appeal proceedings;
- (f) any deficiencies in the available evidence;
- (g) in cases where there has been a financial loss to any person, whether the defendant has made restitution or arrangements for restitution;
- (h) the views of the police or other referring agency; and
- (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.

3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that they are not guilty of an offence to which they are offering to plead guilty.

3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

#### *Jury selection*

3.16 In exercising the right to challenge or stand aside prospective jurors the prosecution must not attempt to select a jury which is not representative of the community including as to age, sex, ethnic origin, marital status or economic or social background.

*Retrials*

- 3.17 Where a trial has ended without a verdict, prompt consideration should be given to whether or not a retrial is required. Factors to be considered include:
- (a) the reason the trial ended, that is, whether the jury was unable to agree or other reason;
  - (b) whether or not another jury would be in any better or worse position to reach a verdict;
  - (c) the seriousness of the alleged offence;
  - (d) the cost to the community;
  - (e) the cost to the accused;
  - (f) whether the accused has spent time in custody;
  - (g) the views of the victim.
- 3.18 Where two juries have been unable to agree upon a verdict, a third or additional trial will be directed only in exceptional circumstances.

*Sentence*

- 3.19 The prosecution has an active role to play in the sentencing process.
- 3.20 As the High Court has said, a prosecutor should draw to the attention of the court what are submitted to be the facts that should be found, the relevant principles that should be applied and what has been done in other (more or less) comparable cases. It is not the role of the prosecutor to proffer some statement of the specific result they consider should be reached, or a statement of the bounds within which that result should fall.

- 3.21 If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, the prosecutor may make submissions on that issue. This will be particularly so if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty, or where a conviction is appropriate, the court is contemplating a non-conviction order.
- 3.22 Where facts are asserted on behalf of an accused which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues, if the resolution of such disputed facts is in the interests of justice or is material to sentence.
- 3.23 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. On no occasion will it be appropriate for material such as police testimony as to an accused's assistance to authorities, to be handed directly to the court. Such material should be given to the prosecutor and tendered to the court by the prosecutor at the prosecutor's discretion.
- 3.24 Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
- 3.25 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate).

*Sentencing indigenous offenders*

- 3.26 The DPP recognises the overrepresentation of indigenous offenders in custody in Australia, including in the ACT. The High Court has said that the “*high rate of incarceration*” of indigenous offenders must not be taken into account when sentencing an indigenous offender. However, an offender’s indigenous identity may explain or throw light on the offending and the circumstances of the offender.
- 3.27 A prosecutor should, as far as practicable, draw the court’s attention to any relevant matters associated with or related to the offender’s indigenous background. Without purporting to be exhaustive, this may include the following:
- (a) the socio-economic circumstances in which the offender has been raised, including the absence of educational and employment opportunities;
  - (b) that the offender has experienced social exclusion or discrimination;
  - (c) that the offender has been raised in a community surrounded by substance abuse and/or violence;
  - (d) that the offender has been separated from their birth parents and/or community, for example by placement in foster care;
  - (e) that the offender has suffered physical, sexual or emotional abuse;
  - (f) that a lengthy term of imprisonment may weigh more heavily on the offender by reason of culture factors.

#### 4. DISCLOSURE

4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

- to be relevant or possibly relevant to an issue in the case;
- to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
- to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.

4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

- a relevant previous conviction or finding of guilt;
- a statement made by a witness which is inconsistent with any prior statement of the witness;
- a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
- evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;
- any physical or mental condition which may affect reliability;
- any concession which has been granted to the witness in order to secure their testimony for the prosecution.

- 4.3 The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.
- 4.4 In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.
- 4.5 The prosecution's duty of disclosure does not extend to disclosing material:
- relevant only to the credibility of defence (as distinct from prosecution) witnesses;
  - relevant only to the credibility of the accused;
  - relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
  - for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.
- 4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.
- 4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.

- 4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with their previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.
- 4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.
- 4.10 Where known, in accordance with Director's disclosure guideline which has been in effect since 3 August 2020 (see Annexure 1), the prosecution is under a duty to disclose the existence of:
- (a) Relevant protected material that is subject of a claim of privilege or immunity;
  - (b) Relevant material that is subject of a statutory publication restriction;
  - (c) Relevant unprotected material that is not subject to a claim of privilege or immunity or a statutory publication restriction.

## **5. THE UNREPRESENTED ACCUSED**

- 5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.
- 5.2 So far as practicable, oral communications with an unrepresented accused should be witnessed. Communications should be promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused. Prosecutors may also, where appropriate, communicate with the accused through the court.
- 5.3 A prosecutor has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused.
- 5.4 While a prosecutor has a duty of fairness to an accused, it is not a prosecutor's function to advise an accused about legal issues, evidence, inquiries and investigations that might be made, possible defences, or the conduct of the defence.



## 6. PRIVATE PROSECUTIONS

- 6.1 Not all prosecutions are initiated by police officers or other officials acting in the course of their public duty. The right of a private individual to institute a prosecution has been described as "*a valuable constitutional safeguard against inertia or partiality on the part of authority*". Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a private prosecution, although instituted in good faith, should not proceed, or at least should not be allowed to remain in private hands. Consequently, section 8 of the *DPP Act* enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.
- 6.2 Section 13 of the *DPP Act* provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide to the Director a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence, and furnish any further information the Director requires. In addition, section 14 of the *DPP Act* enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.
- 6.3 Given the large range of circumstances which may give rise to a private prosecution it is impracticable to lay down inflexible rules as to the manner in which the discretion will be exercised. In general, however, a private prosecutor will be permitted to retain the conduct of the proceedings unless:
- (a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;
  - (b) the prosecution is not in the public interest;
  - (c) there are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or

- (d) it would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.

6.4 Where a private prosecution is instituted to circumvent an earlier decision of the Director not to proceed with a prosecution for the same offence, it will usually be appropriate to take over the prosecution with a view to bringing it to an end.

## **7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED**

- 7.1 The Director has a power under the *DPP Act* to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given, no proceedings may subsequently be instituted in respect of the offence or conduct so specified. The undertaking may be given subject to such conditions (if any) as the Director considers appropriate.
- 7.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who have participated in the commission of offences or who have guilty knowledge of their commission. It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However, it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued.
- 7.3 As a general rule an accomplice should be prosecuted irrespective of whether they are to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. If tried and convicted or acquitted with respect to the offences in issue, the person will then be a compellable witness for the prosecution, without the need for the issuing of an undertaking. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate.
- 7.4 The central issue in deciding whether to give an accomplice an undertaking under the *DPP Act* is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of their own involvement in the crime in question should be foregone in order to secure their testimony in the prosecution of another. The factors to be considered include:
- (a) the importance of the evidence which may be obtained as a result of the undertaking;

- (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;
- (c) whether the person seeking the undertaking has given a full and frank statement of their prospective evidence, including an acknowledgement of their own role in the offences in issue;
- (d) the character, credibility and previous criminal record of the person concerned;
- (e) whether any inducement has been offered to the person to give the evidence sought; and
- (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under subsection 9(1) or subsection 9(4) of the *DPP Act*.

7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.

7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.

7.7 Where an accomplice receives any concession from the Director in order to secure their evidence, for example, whether as to choice of charge, or the grant of an undertaking under the *DPP Act*, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

## **8. VICTIMS OF CRIME**

- 8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994* as well as the Director's Instruction Nos. 1, 2, 7, 13, 14.1 and 14.2 outlining victim's rights in relation to particular prosecutorial decisions.
- 8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.
- 8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.
- 8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.
- 8.5 Consideration must be given from the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of this service and where necessary referred to it.
- 8.6 Victims may make victim impact statements pursuant to Part 4.3 of the *Crimes (Sentencing) Act 2005*. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or as a statement to be given orally in court.

## **9. PUBLICATION OF REASONS**

- 9.1 Where the Director decides to exercise the power conferred by the *DPP Act* to decline to proceed further with a prosecution, reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the community through the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public.
- 9.2 However, reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.
- 9.3 Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing, because to do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified.

## **10. PROSECUTOR'S DUTIES UNDER THE ACT BAR RULES**

- 10.1 Crown Prosecutors and Senior Prosecutors will hold Practising Certificates issued by the ACT Bar Association. This policy incorporates aspects of the ACT Bar rules.
- 10.2 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- 10.3 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 10.4 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 10.5 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 10.6 A prosecutor must disclose material in accordance with paragraph 4 ('Disclosure') of this policy.
- 10.7 A prosecutor who has decided not to disclose material to the opponent, as required under subparagraph 10.6 of this policy, must consider whether:
  - (a) the defence of the accused could suffer by reason of such non-disclosure;
  - (b) the charge against the accused to which such material is relevant should be withdrawn; and
  - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

10.8 A prosecutor must call as part of the prosecution's case all witnesses:

- (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
- (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
- (c) whose testimony or statements were used in the course of any committal proceedings; and
- (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case unless the opponent consents to the prosecutor not calling a particular witness;

and except where:-

- (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;
- (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
- (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;

provided that:-

- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.



- 10.9 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- (a) inform the opponent if the prosecutor intends to use the material; and
  - (b) make available to the opponent a copy of the material if it is in documentary form.
- 10.10 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- 10.11 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 10.12 A prosecutor who has informed the court of matters within subparagraph 10.11 of this policy, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- 10.13 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
  - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
  - (c) must assist the court to avoid appealable error on the issue of sentence;
  - (d) may submit that a custodial or non-custodial sentence is appropriate; and

- (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority

10.14 A barrister who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with subparagraphs 10.2, 10.4 and 10.5 as if the body were the court referred to in this policy and any person whose conduct is in question before the body were the accused referred to in subparagraph 10.4.

**Annexure 1**  
**Guideline issued under section 12(1)(a)**  
**Director of Public Prosecutions Act 1990 (ACT)**

Matter of:

Charge No(s):

For indictable or summary offence(s) of:

## **Guideline**

This guideline is effective 3 August 2020, issued under section 12(1)(a) of the *Director of Public Prosecutions Act 1990* and applies to all prosecutions in the Australian Capital Territory.

On 13 April 2015, pursuant to section 12(3) of the *Director of Public Prosecutions Act 1990*, the Office of the Director of Public Prosecutions ('DPP') issued 'The Prosecution Policy of the Australian Capital Territory' ('Prosecution Policy').

Paragraph 4 of the Prosecution Policy outlines the DPP disclosure policy. Paragraph 4 is provided below.

### **4 DISCLOSURE**

**4.1** *The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:*

- *to be relevant or possibly relevant to an issue in the case;*
- *to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or*
- *to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.*

**4.2** *The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:*

- *a relevant previous conviction or finding of guilt;*
- *a statement made by a witness which is inconsistent with any prior statement of the witness;*

- *a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;*
  - *evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;*
  - *any physical or mental condition which may affect reliability;*
  - *any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.*
- 4.3 *The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.*
- 4.4 *In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.*
- 4.5 *The prosecution's duty of disclosure does not extend to disclosing material:*
- *relevant only to the credibility of defence (as distinct from prosecution) witnesses;*
  - *relevant only to the credibility of the accused;*
  - *relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or*
  - *for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.*
- 4.6 *The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.*
- 4.7 *Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.*

- 4.8 *Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.*
- 4.9 *The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.*

The DPP require the following acknowledgment and certification attached to the service of each brief of evidence received by the DPP.

### **Acknowledgment**

I am aware that as a law enforcement officer investigating an alleged indictable or summary offence, I have a duty to disclose to the DPP all relevant material if the DPP is involved in the prosecution of the offence.

I understand **relevant material** to be all relevant information, documents or other evidence obtained during the investigation that falls within section 4 of the Prosecution Policy.

I am aware that my duty to disclose continues until the DPP decides that the accused person will not be prosecuted for the alleged offence(s), the accused person is found guilty or acquitted, or the prosecution is terminated.

I am aware that my duty to disclose as outlined above is subject to claims of privilege, public interest immunity or statutory immunity. I am aware that such claims are to be directed as follows:

- (a) for police officers—through the Chief Police Officer, the Deputy Chief Police Officer Response or the Deputy Chief Police Officer Capability and Community Safety.
- (b) for other law enforcement officers—through the Commissioner or an Assistant Commissioner of the agency of which I am an officer.

I am aware that the duty to disclose is also subject to any statutory publication restriction.

**Certification**

I certify that the information I have given in Schedules 1, 2 and 3 below is true, to the best of my knowledge and belief.

**Schedule 1**

Schedule 1 relates to relevant protected material, being relevant material not contained in the brief of evidence that is the subject of a claim of privilege, public interest immunity or statutory immunity. I am aware that I am required to disclose to the DPP the existence and nature of all such material. I am aware that I must retain the material for as long as my duty to disclose exists and provide the material to the DPP on request. I acknowledge that if I object to the disclosure of relevant protected material to the DPP, I can request a conference with the responsible lawyer in the DPP to discuss reasons for this.

**Schedule 2**

Schedule 2 relates to relevant material not contained in the brief of evidence, that is the subject of a statutory publication restriction. I am aware that I am required to disclose to the DPP the existence of any such material, and the nature of the material, however, only to the extent not prohibited by the statutory publication restriction. I am aware that I must retain the material for as long as my duty to disclose exists.

**Schedule 3**

Schedule 3 relates to relevant unprotected material, being relevant material not contained in the brief of evidence that is not the subject of a privilege or an immunity claim or a statutory publication restriction. Unless impracticable to do so, I have attached a copy of all such material to this certificate. If a copy of any such material has not been provided, I am aware that I must retain the material for as long as my duty to disclose exists and facilitate access to the material by the DPP.

**Undertaking**

I undertake to advise the DPP in writing, as soon as practicable, if I become aware of any additional information, documents or other evidence that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Signed [*officer responsible for investigation of case*]:

Date:

Name:

Rank [*if applicable*]:

**Received and noted by superior officer\***

Signed [*superior officer*]:

Date:

Name:

Rank [*if applicable*]:

\*If the disclosing law enforcement officer is a police officer, this form must be signed by a police officer who holds a rank in the ACT Policing of Sergeant. If the disclosing law enforcement officer is an officer of another agency, this form must be signed by the Commissioner or an Assistant Commissioner of that agency.

**Schedule 1: relevant protected material that is subject of claim of privilege or immunity**

<b>Certification*</b>	<b>Yes</b>	<b>No</b>
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There is relevant protected material, not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. That material is described in the Schedule below.

<b>Description of item</b>	<b>Privilege/immunity sought**</b>
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**Schedule 2: relevant material that is subject of statutory publication restriction**

<b>Certification*</b>	<b>Yes</b>	<b>No</b>
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There is relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction and the existence of which I can disclose without contravening the statutory publication restriction. That material is described in the Schedule below. *[Describe the material only to the extent not prohibited by the statutory publication restriction]*

**Description of item**

**Schedule 3: relevant unprotected material that is not subject to claim of privilege or immunity or statutory publication restriction**

<b>Certification*</b>	<b>Yes</b>	<b>No</b>
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There is relevant unprotected material, not contained in the brief of evidence, that is not the subject of a claim of privilege or immunity or a statutory publication restriction. That material is described in the Schedule below.



**Description of item**

**Copy attached?\*\*\***

*\*Tick either yes or no in relation to the statement*

*\*\*Describe the nature of the privilege or immunity claim in relation to each item*

*\*\*\*Tick either yes or no in relation to each item*

**Request for meeting with DPP lawyer\***

**Yes No**

I object to the disclosure of relevant protected material and request a conference with the responsible solicitor in the Office of the Director of Public Prosecutions.

*\*Tick either yes or no in relation to the statement*



