

AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY
CRIMINAL JUSTICE SYSTEM

In the matter of the *Inquiries Act 1991*
Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023
Board of Inquiry into the Criminal Justice System in the Australian Capital Territory

STATEMENT OF SKYE LLEWELLYN JEROME (unredacted)

I, SKYE LLEWELLYN JEROME, of 20-21 London Circuit, Canberra City, ACT, 261, state as follows:

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

Background and Professional History

1. State your current position within the ACT Office of the Director of Public Prosecutions (ODPP).

- 2 I am employed as Crown Prosecutor, within Crown Chambers, SES 1, Office of the Director of Public Prosecutions, Australian Capital Territory (ODPP (ACT)).

2. Outline your tertiary qualifications including when and where you obtained them.

- 3 In 2009, I completed a Bachelor of Law and a Bachelor International Business from Queensland University of Technology (QUT), Brisbane, Queensland.

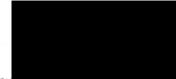
3. Outline your diploma qualifications including when and where you obtained them.

- 4 In 2009, I completed the Practical Legal Training through College of Law, Queensland.

4. What year were you admitted as a lawyer?

- 5 In 2009, I was admitted as a legal practitioner of the Supreme Court in Queensland.

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5. Have you undertaken a Bar Practice Course? If so, detail where and when you completed a Bar Practice Course.

6 In 2010, I completed the Bar Practice Course through QUT and Bar Association (Qld).

6. What year were you called to the employed/private Bar?

7 In 2009, I commenced as a legal officer in the Brisbane, Toowoomba and Cairns offices (on short contracts) for the Office of Director of Public Prosecutions Queensland (ODPP (Qld)). In 2010, after completing the Bar Practice Course I commenced as a Crown Prosecutor in the Townsville office of the ODPP (Qld).

8 As a government lawyer, I was not required to hold a solicitor's or barrister's practicing certificate, to work as a legal officer for the ODPP (Qld) or prosecute trials in Queensland.

7. Outline your current role, when you commenced this role and the job description for your current role. **Attach** a formal job description if one exists.

9 I commenced as Crown Prosecutor within Crown Chambers of ODPP (ACT) in July 2022.

10 Crown Prosecutors sitting in the Crown Chambers of ODPP (ACT) report to the Chief Crown Prosecutor. They appear in the more complex matters including conducting trials and appeals in superior courts. They also provide high-level legal and policy advice and assist the Director in formulating internal policies, guidelines, directions, and manuals. They also represent the Director on committees and in forums dealing with criminal justice issues.


11 **Attached** and marked '**Exhibit 2**' is a formal job description.

8. Outline your experience as a prosecutor both in the ODPP and elsewhere, including when you were appointed as a prosecutor at the ODPP and your roles at the ODPP.

12 I have twelve years of experience as trial counsel prosecuting complex, serious and high-profile case work. I have prosecuted hundreds of jury trials and sentences and argued many complex legal issues in the superior courts. In Queensland, I held a

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commission to instigate and discontinue prosecutions. I have prosecuted in remote communities with limited resources and have extensive experience dealing with vulnerable witnesses and families of deceased victims. I have appeared before Appellate Courts in Queensland and the Australian Capital Territory.

9. Have you sat, or do you currently sit, on any boards, committees, working groups, or taskforces? If so, provide details of the name of the board, committee, working group, or taskforce, when you started (and finished if applicable) and what role you had/have on the board, committee, working group, or taskforce.

- 13 I answer this question by addressing legally related bodies only.
- 14 I represented the ODPP on the Sexual Assault Prevention and Response (SAPR) Law Reform Working Group from July to October 2021. Representatives on the Working Group included the Victims of Crime Commissioner, AFP Superintendent, Director of Communities, Registrar of Supreme Court (ACT), CEO of Canberra Rape Crisis Centre, and the CEO Domestic Violence Crisis Service (ACT). This working group uncovered low charging rates of sexual assault within the ACT and identified several legislative deficiencies which affect admissibility of evidence, the process of giving evidence, inadequate sentencing patterns, bail and considered the proposed consent laws.
- 15 I presented to the Steering Committee on behalf of the Working Group. I addressed the importance of an independent review of previous sexual assault complaints not proceeding to charge and the potential effects of the reported lack of governance of these complaints and training provided to the Sexual Offences and Child Abuse ACT Policing unit (SACAT).
- 16 The Steering Committee accepted the Working Group's recommendations which are published in the *'Listen. Take Action to Prevent, Believe and Heal Report'* dated December 2021.
- 17 In response to recommendation 15 of the *'Listen. Take Action to Prevent, Believe and Heal Report'*, the ACT Government established and funded a cross agency taskforce to review (in the initial phase of the review) all sexual offence complaints made to

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police that did not proceed to charge, from 1 July 2020 to present.

- 18 I currently represent the Directorate (a collective description for the Director Shane Drumgold SC (DPP) and the two Deputy Directors Anthony Williamson SC and Joel Hiscox) on the Sexual Assault (Police) Review Working Group, which reports to the Sexual Assault (Police) Review Oversight Committee (**Oversight Committee**). I have served in this working group since June 2022. Representatives on this working group include AFP, Victims of Crime and Community Services Directorate.
- 19 I have represented the Directorate on the Intermediary Implementation Management Committee, ACT, since January 2020. This group has played an integral role in educating the legal profession and ensuring a smooth procedural transition in the court room. I arranged for the presentation and further training of ODPP staff regarding intermediaries and regularly liaise with the Director of Intermediaries.

10. **Attach** a current CV.

- 20 **Attached** and marked '**Exhibit 3**' is a current CV.

Duties and Responsibilities – Prosecutor Sex Offences

11. Outline your role, duties and responsibilities as a prosecutor of sexual assault offences in the Sex Offences team and the Crown Prosecutors team. Include references to the relevant legislation, agreements, policies and/or guidelines. **Attach** a copy of any relevant provisions from agreements, policies and/or guidelines.

- 21 Since June 2020, I have been a member of Crown Chambers, initially as a Crown Advocate as below; and as stated at [9], as a Crown Prosecutor since July 2022.
- 22 I commenced my employment with ODPP (ACT) in June 2019 as the Supervising Prosecutor of the Sexual Offences Unit (SOU) at the Grade 4 level.
- 23 I was promoted to Crown Advocate within Crown Chambers at the Grade 5 level in June 2020. However, I maintained supervision of the SOU until March 2021, in addition to my workload in Crown Chambers. From March 2021, [REDACTED] was the Supervisor of the SOU.
- 24 From March 2021 until present, in addition to my workload in Crown Chambers, I

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have regularly assisted the SOU Supervisor by providing advice, attending witness conferences, proofing the SOU case statements prior to the submission to the ODPP Committals Unit, attended DPP/SACAT meetings, assisted with AFP training and AFP advices. I also stood in for the SOU Supervisor and managed the SOU for a couple of months in 2022.

- 25 I have provided advice to the Directorate on extradition sexual offence matters, internal sexual harassment policy, proposed legislation relevant to sexual offences.
- 26 As a prosecutor of sexual offences, I have regard to the following legislation:
- (a) *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*
 - (b) *Evidence Act 2011 (ACT)*
 - (c) *Crimes Act 1900 (ACT)*
 - (d) *Bail Act 1992 (ACT)*
 - (e) *Juries Act 1967 (ACT)*
 - (f) *Magistrate Courts Act 1930 (ACT)*
 - (g) *Crimes (Sentencing) 2005 Act (ACT)*
 - (h) *Crimes (Sentence Administration) 2005 Act (ACT)*
 - (i) *Crimes (Child Sex Offenders) Act 2005 (ACT)*
 - (j) *Victims of Crime Act 1994 (ACT)*
 - (k) *Director of Public Prosecutions Act 1990 (ACT)*
 - (l) *Supreme Court Act 1933 (ACT)*
 - (m) *Crimes Act 1914 (Cth)*
 - (n) *Court Procedure Rules 2006 (ACT)*
 - (o) *Legal Profession (Barristers) Rules 2021 (ACT) (formerly Rules 214).*
- 27 As a prosecutor of sexual offences, I regularly have regard to the following Director's

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Guidelines and Instructions, and I **attach** and mark the following:

- (a) Director's Instruction No 13 – Guidelines for contact with complainant in Sexual Offence Matter ('**Exhibit 4**')
- (b) Director's Instruction No 14.1 – Review Decision to Discontinue Prosecution ('**Exhibit 5**')
- (c) Director's Instruction No 14.2 – Review Decision to Discontinue Prosecution-Contact with Complainant and Review Process ('**Exhibit 6**')
- (d) Director's Guideline – Decision to Discontinue – Victims Right to Review ('**Exhibit 7**')

28 As a prosecutor of sexual offences, I also have regard to the current Prosecution Policy, Prosecution Policy 2021 of the ACT, which I **attach** and mark '**Exhibit 8**'.

29 As a prosecutor of sexual offences, I also have regard to relevant internal guidelines available on the ODPP Intranet and what we refer to as 'G' Drive.

30 I **attach** and mark the following documents available on ODPP (ACT) 'G' Drive:

- (a) Guide to Conducting Meet and Greet ('**Exhibit 9**')
- (b) DPP Guide EICI – August 2021 ('**Exhibit 10**')
- (c) Ground Rules Hearings and Intermediaries ('**Exhibit 11**')

31 I **attach** and mark the following guidelines from the ODPP (ACT) Intranet:

- (a) Conducting a Sexual Assault Trial dated 6 June 2018 by [REDACTED] ('**Exhibit 12**')
- (b) Sexual Assault Training dated October 2018. ('**Exhibit 13**')
- (c) Conference Paper – Jury Directions in Sexual Assault trials – 2017 ('**Exhibit 14**')
- (d) Guide for Prosecutors – Consent, Knowledge, and Recklessness – 1 December 2013 ('**Exhibit 15**')

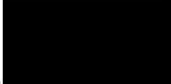
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- (e) Guide for Prosecutors – Current and Historical Sexual Assault Cases – December 2013 (**‘Exhibit 16’**)
 - (f) Guide for Prosecutors – Suggest Direction and Explanation on Consent (**‘Exhibit 17’**)
 - (g) Guide for Prosecutors – The Impact on Intoxication and Unconsciousness on Consent (**‘Exhibit 18’**)
 - (h) Guide for Prosecutors – Warnings and Directions in Sexual Offence Proceedings – 1 January 2016 (**‘Exhibit 19’**)
 - (i) Summary of Cases – Particularisation of Knowledge or Recklessness in Sexual Intercourse Without Consent and Indecent Act Matters (**‘Exhibit 20’**)
 - (j) Template of Elements and Indictments- Sexual Intercourse Without Consent and Sexual Intercourse with young person. (**‘Exhibit 21’**)
- 32 Once a charge is laid in the Magistrates Court, the matter will be allocated to a prosecutor within the SOU. The prosecutor with carriage is responsible for bail and providing instructions for the matter and liaising with defence. The prosecutor with carriage will conduct a meet and greet with the victim and/or their family within four weeks of allocation. The Witness Assistance Officer (**WAS Officer**) should arrange the meeting and confirm whether a support person, including counsellor and/or intermediary is required at the meeting. File notes should be taken. The meet and greet should be conducted in accordance with the following guidelines:
- (a) Director’s Instruction No 13 – Guidelines for contact with complainant in Sexual Offence Matter (please refer to **‘Exhibit 4’**)
 - (b) Guide to Conducting Meet and Greet – G Drive (please refer to **‘Exhibit 9’**)
- 33 Once a ‘not guilty’ plea is entered in the Magistrates Court, the brief of evidence will be disclosed by the informant through the Judicial Operations as outlined at [286(b)].
- 34 The prosecutor with carriage will check the defence copy of the brief of evidence as outlined at [286(c)] in accordance with our disclosure obligations stated at Policy 4 of

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ACT Prosecution Policy 2021 and Bar Rules 2021.

- 35 The prosecutor with carriage and the WAS Officer are responsible for keeping the victim and the informant updated with the progress of the matter.
- 36 The prosecutor with carriage will then analyse the evidence and determine the correct charge/s. If there is insufficient evidence and/or not in the public interest to proceed, a recommendation to discontinue or downgrade the charge should be submitted to the SOU Supervisor. If the recommendation is reviewable, (i.e. if the recommendation is to discontinue the sexual offence matter) the SOU Supervisor conducts a review of the recommendation and submits the form to a Deputy Director and it will be automatically reviewed by DPP.
- 37 Once the matter is committed to the Supreme Court, the prosecutor with carriage will analyse the evidence and prepare a case statement, complete the witness questionnaire, send out the appropriate notices to defence, note the anticipated legal arguments and provide instructions for the Supreme Court. This process is conducted in accordance with the Prosecution Policy 2021 and it is completed usually within 4 – 6 weeks from committal to Supreme Court.
- 38 Once the matter has been given dates for pre-trial legal arguments, ground rules hearing, pre-trial evidence, trial/sentence date, the Supreme Court Allocations Team at ODPP (ACT) will then allocate the matter to a senior prosecutor who is responsible for the prosecution of the matter in Supreme Court. This process includes preparing the matter for legal argument/trial, conducting another meet and greet with the victim, preparing the victim for their evidence, conferences with witnesses, written outlines for arguments, prosecuting the arguments, disclosure and keeping the victim and informant updated, appearing at bail applications and ground rules hearings if appropriate, prosecuting the trial and/or preparing and appearing at sentence if appropriate.

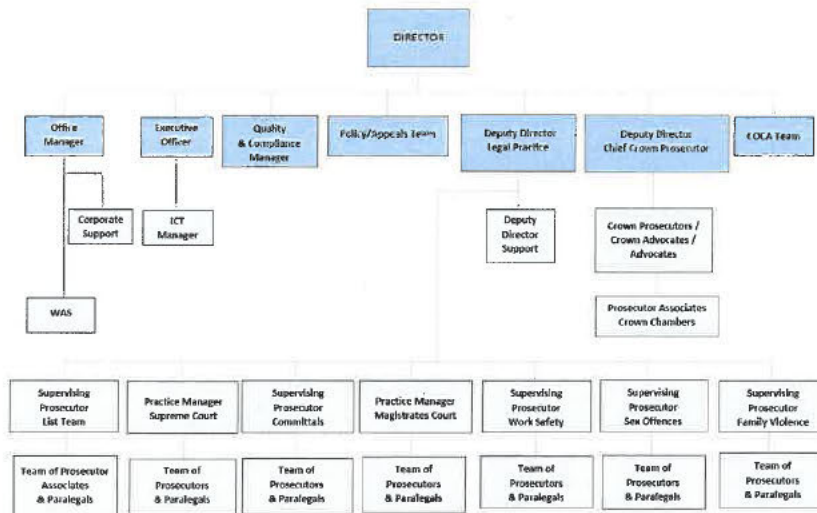
12. **Attach** a diagram/chart of the organisational structure of the ODPP as it was when you were a Sex Offences Prosecutor. Explain who reported to you, what each of those people's roles were and who you reported to by reference to the organisational chart.

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- 39 I attach and mark at 'Exhibit 22' and reproduce below for reference [The Structure of the Office - DPP \(act.gov.au\)](#)



- 40 As stated at [22], from June 2019 to June 2020, I was employed as the Supervising Prosecutor for the SOU within ODPP (ACT). The SOU is made up of a specialist team of prosecutors experienced in the preparation and prosecution of sexual offence matters within the ACT. I was responsible for a small team of three prosecutors and worked closely with the WAS Officers. I was responsible for allocation of work, management of the team and training. The SOU prosecutors regularly engage with the special provisions available in the *Evidence (Miscellaneous Provisions) Act 1991* which are designed to reduce the trauma associated with giving evidence and enhance the witness's ability to give their best evidence. As described from [32-38], within the first four weeks of receiving a file, the SOU prosecutor will arrange a meeting with the complainant to explain the process, identify possible special measures and make timely applications to the courts. The SOU prosecutors were responsible for the preparation and management of the matter up until it was allocated to a senior/crown prosecutor for legal argument, sentence or trial in the Supreme Court.

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13. **Attach** a diagram/chart of the organisational structure of the ODPP as it is now. Explain who reports to you, what each of those people's roles are and who you report to by reference to the organisational chart.

41 I understand that there has not been any change in the structure of the ODPP from the period of time that I was employed as a Supervisor of the SOU until the present time.

42 As a member of Crown Chambers, no one reports to me. As I stated at [24], I have been assisting the current Supervisor of the SOU by always being on call to anyone in the SOU, assisting with case statements, police advices, police training and ODPP/SACAT monthly meetings.

Sex Offences Prosecutions

14. State the number (an estimate) of prosecutions related to sex offences you have personally prosecuted within the ACT jurisdiction to date and the years in which those prosecutions occurred (roughly).

43 From June 2019 to March 2023 within the ACT jurisdiction, I have personally prosecuted nine Supreme Court jury trials related to sex offences and one sex offence hearing in the Magistrates Court, on average, approximately 2-3 sex trials per year. I have personally prosecuted to sentence, legal argument and/or prepared the case statement for over 20 other sexual offence matters. I have analysed and recommended to the Directorate that four sexual offence matters be discontinued. I have analysed and supported that several sexual offence matters be discontinued in this time. I have supervised and/or provided advice on numerous other sexual offence matters since June 2019.

15. Outline any specialist training you have undertaken in relation to the prosecution of sex offences.

44 I do not recall any specialist training that I have undertaken in relation to the prosecution of sex offences.

16. State the number (an estimate) of prosecutions related to sex offences you have personally prosecuted within other jurisdictions. Identify the relevant jurisdictions and the years in which those prosecutions occurred (roughly).

45 I estimate (roughly) that I have prosecuted over 150 sexual offence trials in

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Queensland from 2010 to 2018, on average 20-25 a year. I estimate that I have signed over a hundred sexual offence indictments, prepared Observations (case analysis), regularly provided advice for sexual offence prosecutions and discontinuances over this period. I estimate that I prosecuted hundreds of sexual offence sentences, pre-trial evidence hearings and legal arguments over this period.

Sexual Assault Prevention and Response Steering Committee

17. Describe the tasks/work undertaken by the Law Reform Working Group.

46 Please see Answer to Question 9 from [14] – [18].

18. When were you appointed a Member of the Law Reform Working Group?

47 Please see Answer to Question 9 at [14].

19. Outline the extent of your involvement in the Law Reform Working Group.

48 Please see Answer to Question 9 from [14] – [18].

20. Describe your involvement (if any) in the compilation of the Sexual Assault Prevention and Response Steering Committee's report titled "Listen. Take Action to Prevent, Believe and Heal" published in December 2021 (**Steering Committee's Report**).

49 Please see Answer to Question 9 from [14] – [16]. The Law Reform Working Group confirmed a report which was submitted for consideration of the Steering Committee. I do not recall having any further involvement with the Steering Committee's Report.

21. Outline whether you have observed a cultural shift within the ODPP in the prosecution of sexual assault offences since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.

50 I have not been involved in ODPP Seminar or meeting with the Directorate, where the Report was discussed. However, my observations of my ODPP Colleagues is that the ODPP are now more cognisant of the issues experienced by SACAT and are more willing to assist SACAT, and that ODPP is proactively looking at ways to improve service to victims of sexual offences.

22. Outline whether you have observed a cultural shift within the AFP/ACT Policing in their investigation and charging of sexual assault offences since the release of the Steering

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Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.

- 51 I have observed a positive cultural shift within the AFP/ACT Policing in their investigation and charging of sexual assault offences since the release of the Steering Committee's Report. I base my observation on the following:
- (a) SACAT have increased their requests for advice on briefs of evidence from SOU, ODPP.
 - (b) SACAT team leaders are proactively arranging specialist training for their members. SACAT team leaders have sought training from ODPP and as I understand, also from other external sources.
 - (c) SACAT more enthusiastically and positively interact and work with ODPP during the regular SACAT/DPP Meetings about issues such as consent, bail, EICIs, Celebrite reports etc.
 - (d) I understand that there has been proactive recruiting and vetting of police officers as future team members of SACAT.


Australian Federal Policing (AFP)/ACT Policing

23. From your perspective as a Prosecutor, outline the roles, responsibilities, and duties of the AFP/ACT Policing officers, in relation to the investigation of, and commencement of proceedings with respect to, a sex offence matter. Attach a copy of any relevant agreements, policies and/or guidelines.

- 52 From my perspective as a prosecutor, AFP/ACT Police officers are responsible for receiving and investigating a complaint of sexual assault. The decision to investigate a sexual offence rests with the AFP.
- 53 The AFP/ACT Police officers have a duty to treat all persons involved in the complaint with respect and with an open mind. The AFP/ACT Police officers are bound by the *Victims of Crime Act 1994*.
- 54 The AFP/ACT Police officers have a duty to have a sound understanding of the use of certain evidence in sexual offence matters. For example, elements of sexual offences,

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complaint evidence, forensic evidence, medical evidence, post offence conduct. The AFP/ACT Police have a duty to identify and consider all relevant evidence (including inculpatory and exculpatory evidence) in the investigation. The AFP/ACT Police officers have a duty to competently interview witnesses, particularly vulnerable witnesses. In addition, the AFP/ACT Police officers have a duty to have a sound understanding of the court process and special measures available to the vulnerable witness.

- 55 The AFP/ACT Police officers have a duty to understand their test to charge. The AFP/ACT Police may request advice from the ODPP in the investigation stage as per the Collaborative Agreement 2019.
- 56 **Attached** and marked '**Exhibit 23**' is the Collaborative Agreement 2019.
- 57 The AFP/ACT Police officers have a duty to understand their arrest/summons powers and matters relevant to police bail.
- 58 Once AFP/ACT Police officers have charged a person with a sexual offence, they have a duty to inform the complainant and assist the ODPP to manage the witness relationship/s.
- 59 AFP have a duty to assist the ODPP when requested during the prosecution of the matter.
- 60 AFP are responsible for the accuracy of the Disclosure Certificate (which I discuss further at [320] below) and may seek advice about this from ODPP.

24. Describe, from your perspective, the working relationship, between the ODPP and AFP/ACT Policing prior to the matter of *R v Lehrmann*. Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns.

- 61 From my perspective, the working relationship between the ODPP and AFP/ACT Policing prior to the matter of *DPP v Lehrmann*,¹ was a collegiate and positive one. I did not have any concerns about the relationship itself.

¹ After the death of Her Majesty Queen Elizabeth, ACT prosecutions were averred *DPP v [Defendant]*.

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25. As at 2021, did the ODPP and AFP/ACT Policing hold regular meetings in relation to sex offence matters? If so, outline your involvement (if any) in those meetings. Include details about the general nature of those meetings, including who was required to attend, the purpose, how often the meetings occurred, whether any file notes are kept and by whom.

62 As at 2021, the ODPP and AFP/ACT Policing did hold regular meetings in relation to sex offence matters. Team leaders of SACAT and myself and/or supervisor of SOU would attend these meetings. Covid restrictions and work demands interfered with regular meetings. I recall that on average, meetings would occur about once every 4 to 6 weeks, depending on COVID-19 and work demands.

63 The meetings were informal, and the participants would introduce their own topics for group discussion. Topics of discussion were generally about current issues experienced in current matters. The purpose of the meetings was primarily to ensure an open channel of communication between the leaders of the two stakeholders and that we could better understand the requirements we each had.

64 I sometimes took notes and I understand that the Supervisors of SOU also sometimes took notes. As at March 2021, [REDACTED] was the Supervisor of the SOU. I attended the ODPP/SACAT meetings to assist [REDACTED] as he was new to the ACT jurisdiction.

26. For the period between your commencing at the ODPP and your first involvement in the matter of *R v Lehrmann*, describe your views in relation to the conduct of the AFP/ACT Policing officers' investigations of sexual assault offences. Include information about the quality of the investigations, whether your views changed over this period, and the reasons for your views. Include examples where possible.

65 For the period between commencing at the ODPP and my first involvement in the matter of *DPP v Lehrmann* in March 2021, I did have concerns about the number of sex offence matters that were proceeding to charge within the ACT and the quality of briefs that did come through the SOU. My previous experience in ODPP in the Townsville office involved a very high number of sexual offence files in the office over an eight-year period, including files for child complainants of sexual assaults. During that period, I worked with what I perceived as experienced and very well-trained Queensland Police officers, particularly, the police officers from the Child


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Protection and Investigation Unit, Townsville, Qld.

- 66 I knew that Townsville's population was about half of the population within the ACT. The number of crown prosecutors in the Townsville Office of ODPP (Qld) and Crown Chambers in ACT were similar. I recall asking SACAT leaders their explanation for the notable low number of sexual offence files. I was told by one of the team leaders in late 2019/early 2020 that it couldn't be explained and that the number of sexual assault complaints made to AFP/ACT Police were not recorded.
- 67 Up until March 2021, I was hearing more and more from SACAT officers that their understanding of their test to charge was a much higher threshold than stated in s26 *Magistrate Courts Act 1930* or in s212 *Crimes Act 1900*. I was learning of inadequacies of SACAT interviewing techniques from ODPP colleagues and from the files I worked on. I was learning from SACAT team leaders that SACAT members did not receive regular specialist training for interviewing children/vulnerable witnesses. I was learning from SACAT officers and my colleagues that a number of SACAT officers required corroboration in sexual offence matters before charging and that a number of officers thought that if there was an inconsistency in the complaint evidence that there were no reasonable prospects of conviction. From files I worked on and from colleagues, I had some concerns generally about the competency levels of some SACAT officers in interviewing vulnerable witnesses, executing warrants, seizing exhibits, investigating alibis. There appeared to be a high turnover of staff within a short period of time (2 years).
- 68 I provide the following examples of issues that arose in matters, I do not refer to them by name to protect the complainants:
- (a) Matter A – EICI of six witnesses insufficient, incorrect charges, defence brief contained sensitive evidence, execution of search warrant – search area not well controlled, moved/seized items incorrectly recorded by multiple officers, moved items examined out of time and not disclosed but relied on as main exhibit.

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- (b) Matter B – 10-month delay between complaint and investigation; disclosure issue.
- (c) Matter C – Incorrect charges, insufficient EICI, decision by informant to not take forensic samples from crime scene of stranger multiple person rape, disclosure issue, witness used as support person in complainant’s EICI.
- (d) Matter D – Informant decided not to include a possible tendency witness in the brief of evidence.
- (e) Matter E – No statements taken investigating the alibi for trial.
- (f) Matter F – Informant asked for pre-charge advice whether the allegation of withdrawing consent during sexual intercourse and the other party ignoring the withdrawal of consent and continuing with sexual intercourse amounted to an offence.

27. Describe your relationship, generally, and the extent of your prior dealings and/or knowledge (if any) with the AFP/ACT Policing officers involved in the investigation of Ms Brittany Higgins’ allegation of sexual assault against Mr Bruce Lehrmann (Investigation) prior to the commencement of *R v Lehrmann*, including but not limited to:

(a) Detective Superintendent Scott Moller;


69 Prior to the commencement of *DPP v Lehrmann*, I had positive dealings with Detective Superintendent Scott Moller. My ODPP (ACT) colleagues had told me that he was a very effective and experienced police officer who was leading the serious crime units within ACT with excellence. I recall being impressed by Detective Superintendent Moller when I was first communicating with him regarding another (non-sex offence) matter. I understood that I had a positive working relationship with Detective Superintendent Moller.

(b) Detective Inspector Marcus Boorman;

70 Prior to meeting Detective Inspector Marcus Boorman on 31 March 2021, I had been advised by my ODPP (ACT) colleagues that Detective Inspector Boorman had a wealth of experience as a traffic police officer and had recently commenced

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supervision of SACAT.

(c) Detective Sergeant Gareth Saunders;

- 71 Prior to the commencement of *DPP v Lehrmann*, I understood that I had a very healthy working relationship with Detective Sergeant Gareth Saunders. I trusted and respected his ability as an experienced investigator and understood that he had experience with investigating sexual offences. I observed Detective Sergeant Saunders to be a dedicated SACAT Team Leader.

(d) Detective Sergeant Jason McDevitt;

- 72 Prior to the commencement of *DPP v Lehrmann*, I understood that I had a very healthy working relationship with Detective Sergeant Jason McDevitt. I trusted and respected his ability as an experienced investigator and understood that he had experience with investigating sexual offences. I observed Detective Sergeant McDevitt to be a dedicated SACAT Team Leader.

(e) Detective Sergeant Robert Rose;

- 73 Prior to the commencement of *DPP v Lehrmann*, I had some infrequent written communications with Detective Sergeant Robert Rose in regards to other sexual offence matters. I understood from my ODPP (ACT) colleagues that Detective Sergeant Rose was a very experienced police officer and had been associated with SACAT for a significant period of time.

(f) Detective Sergeant David Fleming;

- 74 Prior to the commencement of *DPP v Lehrmann*, I did not know Detective Sergeant David Fleming. I recall I first met Detective Sergeant Fleming when he was tasked by AFP to conduct an internal review of SACAT in approximately July 2021. I understood that Detective Sergeant Fleming had a wealth of experience in investigating drug offences and other serious crime. I observed Detective Sergeant Fleming to always be courteous and respectful in his dealings with myself and others. I observed Detective Sergeant Fleming to be very helpful in the lead up to the trial. I make this conclusion based on my dealings with Detective Sergeant Fleming in the

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Working Group in the SAPR, in DPP/SACAT meetings and in the matter of *DPP v Lehrmann*.

(g) Detective Inspector Callum [REDACTED]

- 75 Prior to the commencement of *DPP v Lehrmann*, I did not know Detective Inspector Callum [REDACTED]. I recall first meeting Detective Inspector [REDACTED] sometime prior to November 2021. I have observed Detective Inspector [REDACTED] to be a dedicated and well-respected police officer. I make this conclusion based on my dealings with Detective Inspector [REDACTED] in DPP/SACAT meetings and in the matter of *DPP v Lehrmann*.

(h) Commander Joanne Cameron;

- 76 Prior to the commencement of *DPP v Lehrmann*, I did not know Commander Joanne Cameron. I first met Commander Cameron just prior or just after the commencement of the Sexual Assault (Police) Review in May 2022. I have observed Commander Cameron to be a very experienced, dedicated and well-respected police officer. I make this conclusion based on my dealings with Commander Cameron in the SA(P)R.

(i) Acting Commander Hall O’Meagher;

- 77 I don’t recall having any direct contact with Acting Commander Hall O’Meagher prior to the commencement of *DPP v Lehrmann*. I have only heard positive professional comments about Acting Commander O’Meagher.

(j) Acting Sergeant James [REDACTED]

- 78 Prior to the commencement of *DPP v Lehrmann*, I had worked on a couple of other sexual offence matters with Acting Sergeant James [REDACTED]. My professional opinion now of Acting Sergeant [REDACTED] is that he is a dedicated, intelligent and hardworking police officer. This is due to working with Acting Sergeant [REDACTED] as the informant on a different, very large and serious sexual offence matter and other sexual offence matters. I understand that I have a positive working relationship with Acting Sergeant [REDACTED].

[REDACTED]
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[REDACTED]
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(k) Detective Leading Senior Constable Trent Madders; and

79 Prior to the commencement of *DPP v Lehrmann*, I had worked on a few other sexual offence matters with Detective Leading Senior Constable Trent Madders. I understood that Detective Madders had been attached to SACAT for a significant period of time. After working with Detective Madders on matters such as *Madders v Tiffen and Tiffen*, which I discuss at [104] – [105], I formed the view that a cautionary approach was appropriate. I have observed Detective Madders to be approachable.

(l) Senior Constable Emma Frizzell

80 Prior to the commencement of *DPP v Lehrmann*, I had not worked with Senior Constable Emma Frizzell. During the *DPP v Lehrmann* trial, I observed Senior Constable Frizzell to be pro-active, hardworking, and courteous.

In answering this question outline your professional views (if any) about those officers and the basis of those views.

28. Prior to your knowledge of the Investigation, describe your relationship and the extent of your prior dealings (if any) with senior AFP/ACT Policing officers, including but not limited to:

(a) Commissioner Reece Kershaw;

81 Nil.

(b) Chief Police Officer of ACT Policing Neil Gaughan; and

82 Nil.

(c) Deputy Chief Police Officer of ACT Policing Michael Chew.

83 Nil.

Office of the Director of Public Prosecutions (ODPP)

29. Outline the roles, responsibilities, and duties of the ODPP with respect to the prosecution of a sexual offence. **Attach** any relevant agreements, policies and/or guidelines or, if already attached, identify the relevant provisions of any such agreements, policies and/or guidelines.

84 Please see Answer to Question 11 from [21].

30. Outline your understanding of the ‘reasonable prospects of conviction’ and ‘public interest’ criteria with respect to prosecution of a sex offence. **Attach** any relevant

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agreements, policies and/or guidelines or, if already, attached, identify the relevant provisions of any such agreements, policies and/or guidelines.

85 Once a charge is laid, the ODPP has discretion to discontinue the charge if satisfied that there are either no reasonable prospects of conviction, or it is not in the public interest to proceed. The tests for both limbs are stated at section 2 Prosecution Policy, ACT (refer to 'Exhibit 8') and there is a mandatory three tier, internal review process before a sexual assault matter is discontinued.

86 ODPP is also guided by the Summary prepared by Anthony Williamson SC when deciding on reasonable prospects:

Reasonable prospects test for prosecutors

In applying the 'reasonable prospect of conviction' test at paragraphs 2.4 – 2.7 of the ACT DPP Prosecution Policy, which is a test applied throughout the common law world, we are mindful that the test does not require a probability of conviction, nor does it require a conclusion that a conviction is more likely than not.[1] It has been said that it only requires that Crown needs sufficient evidence to believe that a conviction could be obtained: *Proulx v Quebec* [201] 3 SCR 9 at [31].

We are also mindful that care must be taken to ensure that the exercise of the discretion declining to proceed on the basis of there being no reasonable prospect of conviction does not become, in effect, a de facto trial or acquittal chamber by a Crown Prosecutor. It is vitally important that the Crown does not usurp the function of the tribunal of fact of the trial Court. In *Miazaga v Kvello Estate* [1986] 1 SCR 802 the Canadian Supreme Court cautioned at [66] that:

... the Crown prosecutor who harbours personal doubt about the guilt of the accused cannot substitute his or her own views for those of the judge or jury in making the threshold decision to go forward with a prosecution. The Martin Report explains as follows, at pp 71-72:

Crown counsel need not and ought not to be substituting his or her own views for those of the trial judge or jury, who are the community's decision makers. It cannot be forgotten that much of the public's confidence in the administration of justice is attributable to the trial court process that ensures that justice is not only done, but is seen to be done...

Once the relatively modest reasonable prospect threshold is met it becomes the function of a judicial officer or jury, and not a prosecutor [or police officer], to



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make a final determination as to what the facts in the matter are. Care must be taken to ensure that prosecutors do not usurp the functions of the judiciary and transgress the separation of powers doctrine proved for in the Australia Constitution.

Victims of Crime Commissioner

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

- 87 Prior to the matter of *DPP v Lehrmann*, I recall that I had the following professional dealings with the Heidi Yates, Victims of Crime Commissioner:
- (a) Intermediary Implementation Monitoring Group (ACT) – involved monthly or bimonthly meetings with the stakeholders between 2019 to 2021.
 - (b) Training delivered by the Intermediary Implementation Monitoring Group (ACT) to ODPP.
 - (c) *R v QX* (No 2) [2021] ACTSC 244 which was the first pre-trial application opposing the appointment for an intermediary for a prescribed witness. Victims of Crime Office was independently represented during the legal argument. I recall that the Victim of Crime Commissioner was present during the proceedings.

88 I recall that Ms Yates during this period was always courteous, collegiate and professional towards myself and my colleagues.

32. Describe, based on your experience as at 31 March 2021, the role performed by the Victims of Crime Commissioner (or her staff) exercising statutory functions under the Victims of Crime Act 1994 (ACT) in relation to a victim of a sexual offence. Provide examples and details where appropriate.

89 As at 31 March 2021, I understood that the role performed by the Victims of Crime Commissioner (or her staff) was governed by the Charter of Rights for Victims of Crime and *Victims of Crime Act 1994* (ACT). I understood that the Victims of Crime Commissioner (or her staff) were responsible for protecting and promoting victims' rights in the criminal justice system. For example, if a victim felt mistreated by a justice agency, then the Victim of Crime Commissioner (or her staff) would advocate



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on behalf of the aggrieved victim.

- 90 I also understood that the Victims of Crime Commissioner (or her staff) were responsible for providing assistance and/or compensation to the victim of crime pursuant to the *Victims of Crime (Financial Assistance) Act 2016*.
33. Prior to the matter of *R v Lehrmann* had you prosecuted any sexual offence matters where the Victims of Crime Commissioner (or her staff) had supported a complainant at court or acted as an intermediary between the police and the complainant or between the ODPP and the complainant? If so, provide details as to the involvement of the Victims of Crime Commissioner (or her staff) in those matters and provide matter citations, if applicable.
- 91 Prior to the matter of *DPP v Lehrmann*, I do not recall any sexual offence matter where Ms Yates (or her staff) had supported a complainant at court or acted as an intermediary between the police and the complainant or between the ODPP and the complainant.
- 92 In the matter of *R v QX*, Ms Yates assisted my office by identifying relevant psychiatrists to assess a vulnerable young victim of sexual assault. Ms Yates also considered financing the psychiatric assessment and report.
- 93 In a different prosecution, Ms Yates (and/or her staff) considered whether to release documents under a defence subpoena. Ms Yates was legally represented at court.

Involvement in the Matter of *R v Lehrmann*

34. When did you first become aware of Ms Higgins' allegation of sexual assault against Mr Lehrmann? Include details about how you became aware and what you were aware of. **Attach** a copy of relevant communications with staff of the ODPP, AFP/ACT Policing and/or the Victims of Crime Commissioner (or her staff), including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.

- 94 I recall that I first became aware of Ms Higgins' allegation of sexual assault against Mr Lehrmann when I read an article online, on my iPhone, prior to the Project Interview airing on television.
- 95 During a monthly SACAT/DPP meeting in March 2021, Detective Sergeant McDevitt and Detective Sergeant Saunders referred to the 'Parliament Rape Case' and made



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references to feeling pressure from the bosses, the high-profile nature and there being witness engagement issues with the complainant, Ms Brittany Higgins. There was also a concern with the lack of corroborating evidence regarding the complainant's intoxication and this adversely affecting her credibility.

- 96 I understood the comments made during the meeting were not the commencement of a formal briefing but rather just a sharing of workload pressures and issues amongst colleagues. In my experience, workload pressures are often commented upon by both DPP and SACAT in such meetings.
- 97 We were also advised that Detective Madders had conducted the first evidence in chief interview with the complainant.
- 98 I expressed my surprise at this decision as I had a recent experience with Detective Madders in the matter of *Madders v Tiffen and Tiffen* in the Magistrates Court over the following dates 3 to 7 August 2020; 21 October 2020, 8 to 12 February 2021. A voir dire in that matter exposed the inadequacies of the execution of the search warrant at the offenders' house, the unlawful examination of one of the main exhibits and the omission of the breach from the brief. I recall that I had previously raised the issue of the execution of the search warrant with Detective Sergeants McDevitt and Saunders in late 2020 at a SACAT Meeting.
- 99 The officers also stated that they were considering obtaining an expert opinion to speak to the level of intoxication of the complainant depicted on the APH CCTV footage. I recall commenting along the lines that in my experience, the expert would not likely be able to speak to the intoxication level experienced by the complainant but instead give evidence that intoxication levels will effect and be exhibited differently by people.
- 100 **Attached** and marked '**Exhibit 24**' is the file note.

35. When were you allocated as Prosecutor in the matter of *R v Lehrmann*? Provide information about who allocated you to the matter and what you were informed of. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. To the


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extent communications were verbal outline the parties to the communications and the effect of the words spoken (the usual particulars).

101 On or before 6 August 2021, I recollect DPP verbally informed me that I would be his junior counsel in the matter of *DPP v Lehrmann*.

102 Prior to this date, DPP had a couple of conversations with me regarding who would be lead counsel if the matter proceeded. At one stage, I understood that potentially I would be lead counsel with [REDACTED] as junior. At another stage, I understood that DPP would be lead counsel with either [REDACTED] or myself as junior counsel if the matter proceeded.

36. At the time of your allocation as Prosecutor in the matter of *R v Lehrmann*, list the AFP/ACT Policing officers whom, to your knowledge, were involved in the Investigation.

103 As at August 2021, I understood the following officers were involved:

- (a) Superintendent Moller
- (b) Inspector Boorman
- (c) Detective Sergeant Saunders
- (d) Detective Sergeant McDevitt
- (e) Detective Madders
- (f) Senior Constable Frizzell

37. State whether, at the time of your allocation as Prosecutor in *R v Lehrmann* (or up until you received this subpoena), you held any professional concerns in relation to the AFP/ACT Policing officers involved in the Investigation. If so, provide details of those concerns, the reasons for those concerns and whether you communicated those concerns to the ACT Director of Public Prosecutions, Mr Neville Shane Drumgold SC (DPP) or any other persons. **Attach** a copy of relevant court decisions supporting the basis for your concerns and a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

104 I refer to the Answer to Question 34 at [98]. On 6 April 2021, Magistrate Theakston published a decision in the matter of *Madders v Tiffen and Tiffen (No 1) [2021] ACTMC 4*. One of the issues in the voir dire was the admissibility of electronic

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devices which had been examined out of time pursuant to s3K *Crimes Act 1914* (Cth). Magistrate Theakston found at paragraph 78, that the informant, Detective Madders, had deliberately attempted to cover up the breach (late examination of moved electronic items). Magistrate Theakston ultimately held that some of the electronic items were admissible pursuant to s 138 *Evidence Act 2011* (ACT). This matter is pending appeal in the Supreme Court.

- 105 Prior to the published decision of *Madders v Tiffen and Tiffen*, I had concern regarding Detective Madders' competency in executing warrants, handling exhibits and redacting police notes. This concern was based on my observations in the Tiffen brief of evidence and the evidence I had heard in the Tiffen matter. I had kept DPP informed of the Tiffen matter as it progressed (verbally) and expressed to DPP my concerns.
- 106 Once I was informed that Detective Madders had conducted the first EICI in the Lehrmann matter, I informed DPP and again expressed my concern.
- 107 On 7 April 2021, DPP and myself telephoned Detective Sergeant McDevitt and advised him of the Tiffen decision. It was also raised with Superintendent Moller.
- 108 Prior to the trial of *DPP v Lehrmann*, I became concerned by the totality of the information I learnt about the informant, Superintendent Moller. For example, I had been advised by DPP, that Superintendent Moller voluntarily contacted defence counsel, Mr Korn in August 2021 and then Mr Whybrow in September 2022 and gave them tips on the weakness/es of the prosecution case. DPP also advised me that Commander Cameron had reported that Superintendent Moller denied communicating that detail Mr Whybrow. However, as I understood it, Mr Whybrow was the person who had told DPP that Superintendent Moller had rung Mr Whybrow and tipped him off about the 'Investigative Review Documents'.
- 109 DPP and Ms Yates, also informed me that Superintendent Moller was one of the officers who made Ms Higgins feel intimidated and pressured not to proceed after her second EICI in May 2021. Ms Yates also informed me that Superintendent Moller

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^{abused}
 [REDACTED] her over the phone when he cancelled an appointment with Ms Higgins. I understood from DPP that Superintendent Moller did not agree with DPP's advice as at 28 June 2021.

- 110 Superintendent Moller did not assist in the preparation for trial. I found this unusual because he was the informant. Superintendent Moller did not engage with the prosecution during the trial. I did see Superintendent Moller, during the trial itself, engage with defence counsel during the breaks, at outlined at [448]. I was concerned that Superintendent Moller was the informant of the matter and was demonstratively not supportive of the prosecution or the complainant in this matter.
- 111 In my experience, what I understood about Superintendent Moller's conduct and views as I have described above were highly unusual behaviour by an informant and senior police officer.
- 112 I understood that Superintendent Moller was the leader of all of the SACAT Units. I was also concerned that Superintendent Moller held negative views of myself and/or DPP and/or Ms Yates, because of the findings made in the Steering Committee's Report about SACAT. During discussions in the Working Group, we (myself, DPP and Ms Yates) had each been strong advocates for a review into the sexual offence complaints that had not proceeded to charge over the last decade in the ACT. There was nothing specifically said in this regard between Superintendent Moller and myself but I did notice a change in Superintendent Moller's behaviour towards myself. It seemed to me that my working relationship with Superintendent Moller changed from being open and friendly to guarded, to the extent that there was no engagement with myself during the *DPP v Lehrmann* trial.
- 113 I shared my observations and views about Superintendent Moller as just outlined with DPP several times during this period. I understand from these conversations that DPP shared the same concerns.
- 114 I recall that I also shared those observations and views about Superintendent Moller with Mr Grieg several times during this period, and also with the Deputy Directors,

[REDACTED]


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[REDACTED]

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- Anthony Williamson SC and Joel Hiscox. I can't recall what I said verbatim other than a memory of sharing my general views and concerns about the above with them during the course of the matter.
- 115 In my preparation for trial, I made a list of investigative concerns that I noted in the matter *DPP v Lehrmann*. On 25 May 2022, I shared the list with DPP because I was surprised at the high level of error within the brief, reportedly prepared by very senior police officers. Ordinarily, I would have given constructive feedback to the police and/SACAT leader. However, given the level of police seniority involved in this matter, I didn't know who to take it to within AFP/ACT Policing. It is commonplace that a brief requires the ODPP to value add to the investigation by identifying a couple of mistakes, but this brief had a significant number of substantial errors. I also spoke about this list with Mr Grieg. The list was sent to DPP again on 30 October 2022 (please refer to 'Exhibit 140'). Attached and marked 'Exhibit 25' is this list and the email.
- 116 Around September/October 2021, I recall that DPP verbally advised me that he had recently received a telephone call from Chief of Police (CPO) Neil Gaughan, who stated (words to the effect) that because Ms Yates had been interviewed by police that she could no longer be used as the support person for Ms Higgins. To my mind, it was highly unusual for a CPO to be involved in sexual offence matter at such a micro level as I had never encountered this before in my career. When I read the Commissioner for Victim of Crime's transcript dated 22 September 2021, I could not understand the forensic reason for the interview. In my view, there was no evidentiary value in the prosecution of Mr Lehrmann for Ms Yates to have been interviewed about her recollection of what she heard said in a meeting between Detective Superintendent Moller, Detective Inspector Boorman and the complainant, at Brisbane, on 12 July 2021. Ms Yates confirmed in the interview that the complainant had not disclosed to Ms Yates any details about the alleged offending. I questioned whether the police were trying to make it harder for Ms Higgins to give evidence at trial by removing her support person. I raised my concern with DPP and

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he had the same concerns/ question.

- 117 As at the time of the trial of *DPP v Lehrmann*, I was concerned that if Superintendent Moller was called as a witness in the trial proper, he would offer his inadmissible opinion that Mr Lehrmann should not have been charged. I was concerned about this aspect because of the information I had learnt about Superintendent Moller advising Mr Whybrow about the 21 June 2021 Supporting Documents and the documents being disclosed by AFP to defence. I raised these concerns verbally with DPP and I recall that he said, words to the effect, that he shared the same concerns.
- 118 As previously outlined at [67], I held concerns that the AFP/ACT police officers involved in *DPP v Lehrmann* and their colleagues at SACAT, had not been made aware of the correct legal test to charge a suspect with a criminal offence in the ACT. I believe that this difference in understanding between SACAT and ODPP, was the genesis of tension between DPP and Superintendent Moller in the matter of *DPP v Lehrmann*.
- 119 As I understand, the AFP Brief Adjudication sheet (at least as at August 2021) stated that there be a 'reasonable prospect of conviction'. Also at this time, as I understand it, Superintendent Moller believed he had to satisfy himself of a 'reasonable prospect of conviction'. To my mind, this is not the correct legal test to charge in the ACT. **Attached** and marked '**Exhibit 26**' are a copy of Superintendent Moller's notes.
- 120 In November 2021, when I delivered training to SACAT, in which Inspector [REDACTED] Detective Fleming, Senior Constable Frizzell attended, the group's view expressed to me was that s212 *Crimes Act* and s26 *Magistrates Court Act* was not their test. Comments made that day included that the slides quoting the High Court of Australia, in *Latoudis v Casey* (1990) 170 CLR 534, were 'hypocritical', that children alleging sexual abuse were typically 'not believed', that where an accused person's version is preferred in the officer's mind that a charge will not follow and that 'corroboration is required before a charge could be laid.' The senior police officers in the room did not intervene or challenge these views expressed by the SACAT officers.

[REDACTED]
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[REDACTED]
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121 As at February 2023, when I was delivering training to SACAT and new police officers, I was informed that AFP are still formulating their own charge test which will likely involve ‘a reasonable belief that a suspect is guilty of the offence charged.’

38. What arrangements did the DPP put in place for the conduct of the prosecution in the matter of *R v Lehrmann*? For instance, job/task allocations, decision-making in relation to disclosure and whether regular meetings were initiated within the ODPP and/or with any other persons involved, including the AFP/ACT Policing and the Victims of Crime Commissioner. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.

122 DPP allocated the following team members to the *DPP v Lehrmann* matter:

- (a) Senior Counsel – DPP
- (b) Junior Counsel – Myself
- (c) Instructing Solicitor – Erin Priestly, later replaced by Sarah Pitney
- (d) Instructing Clerk (Prosecutor Associate) – Mitch Grieg.

123 On 16 September 2021, DPP sent an email to Ms Priestly, myself and Ms Yates stating that Ms Priestly would be the main point of contact for any queries going forward.

124 **Attached** and marked ‘**Exhibit 27**’ is the email.

125 Also on 16 September 2021, DPP sent an email to Ms Priestly and myself attaching the case statement, court document, opening and witness list. DPP asked for Ms Priestly to check any missing items.

126 **Attached** and marked ‘**Exhibit 28**’ is the email and attachments.


127 On 27 September 2021, DPP made myself and Ms Priestly the primary contact for the Disclosure Certificate.

128 **Attached** and marked ‘**Exhibit 29**’ is the email.

129 On 29 September 2021, DPP requested Ms Priestly to disclose the corrected version to defence.

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- 130 **Attached** and marked '**Exhibit 30**' is the email.
- 131 On 1 October 2021, DPP requested an update on disclosure and legal views on tendency and consent issues.
- 132 On 19 October 2021, DPP requested a meeting with Erin Priestly and myself to discuss potential tendency, consent and other issues. DPP was the main speaker during this meeting. DPP agreed that negated consent was not open on the facts and decided that there was no forensic value in the proposed tendency application. We also discussed how to use the 'attempted kiss' as evidence potentially relevant to the element of 'recklessness'. I did not take file notes.
- 133 DPP prepared the case statement and on 8 November 2021, DPP sent to Erin Priestly and myself the case statement, indictment and questionnaire. I proofread the document, made grammatical suggestions and enquired about Mr Lehrmann's lies.
- 134 **Attached** and marked '**Exhibit 31**' chain.
- 135 DPP allocated the task of written submissions for the legal argument regarding the first stay application to legal officer, [REDACTED]
- 136 DPP appeared at the mentions for the matter in the Magistrates Court and Supreme Court.
- 137 In the meeting regarding the second stay application, DPP decided that we would oppose the second stay application. DPP argued the second stay argument.
- 138 DPP allocated to myself certain witnesses for trial, to prepare and take their evidence at trial. DPP decided that the instructing solicitor would assist him in the preparation for trial and the prosecutor associate would assist myself.
- 139 During the trial, DPP decided he would take the evidence of a few of the witnesses previously allocated to myself (Lisa Wilkinson, Michaelia Cash and [REDACTED]).
- 140 As I understood the allocation of responsibility, as lead counsel, DPP was the team leader and had the final say with respect to the matter of *DPP v Lehrmann*. This was the first trial that I had worked on with DPP. As I understood the allocation of

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responsibility, as junior counsel, I was responsible for providing legal advice to DPP, assisting in the prosecution of the matter, conferring with the witnesses allocated to me by DPP, taking evidence from those witnesses, providing support to DPP and our other team members.

- 141 As I understood the allocation of responsibility, as the instructing solicitors, Ms Priestly and Ms Pitney, were responsible for providing legal advice, the receipt and disclosure of the brief, communicating with defence, witness liaison, taking file notes and disclosing file notes.
- 142 As I understood the allocation of responsibility, as the prosecutor associate, Mr Grieg, was also responsible for the receipt and disclosure of the brief, communicating with defence, witness liaison, taking file notes, disclosing file notes, filing court documents.
- 143 Either on 25 November 2022 or during the week commencing 28 November 2022, DPP verbally advised me that he had received two medical reports which opined that [REDACTED] DPP did not disclose to myself the medical reports which DPP relied upon to discontinue the matter. I agreed with DPP, on the basis of what was described to me as the content of the medical reports, that it would not be in the public interest to proceed with the matter, [REDACTED]
[REDACTED]

39. State whether you are aware of any discussions between the ODPP and the Commonwealth DPP regarding carriage of any prosecution of the allegations made by Ms Higgins with respect to Mr Lehrmann. If so, outline your knowledge and involvement (if any) in those discussions. Include details of the relevant dates, what was discussed, with whom the discussions took place and your impressions of those discussions. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 144 I recall that DPP told me he had a conversation with the Commonwealth DPP about the issue of appropriate jurisdiction. There was an issue about whether the alleged

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offence was a Commonwealth offence (as opposed to a territory offence) because it was alleged to have been committed within Parliament House. DPP stated to me that his view was that the territory DPP had jurisdiction and that he had advised the Commonwealth DPP of such. I recall that this brief conversation occurred sometime in 2021 in DPP's office.

40. State whether you are aware of any discussions with, or comments made by, the DPP in relation to him using powers under the Director of Public Prosecutions Act 1990 (ACT) to charge Mr Lehrmann if the AFP/ACT Policing did not charge him. If so, outline your knowledge and involvement (if any) in those discussions. Include details of the relevant dates, what was discussed, with whom the discussions were with and your impressions of those discussions. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

145 Around the time prior to receiving the partial brief for advice, DPP briefly commented to me (words to the effect) that if upon receiving the partial brief that he formed the view that there were reasonable prospects of conviction and it was in the public interest to proceed, and the AFP did not charge, then he had a power to indict ex-officio in the Supreme Court of ACT. I do not recall commenting in reply.

Dealings with AFP/ACT Policing between 31 March 2021 and 28 June 2021

41. In chronological order, outline the meetings and/or discussions you were involved in with AFP/ACT Policing officers in relation to the Investigation up to, and until, 28 June 2021. Include information about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to, during or after the meeting/discussion;



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(g) the nature of the discussions (if any) in relation to the:

- i. Investigation and the evidence obtained and yet to be obtained;
- ii. decision-making in relation to laying charges against Mr Lehrmann;
- iii. your views as to the reasonable prospects of conviction and public interest considerations regarding any potential prosecution of the matter and the reasons for your views; and
- iv. views you held in relation to the conduct of the Investigation to date, including the reasons for your views;

(h) whether you were involved in any discussions with the DPP/ODPP staff following the meeting/discussion with the AFP/ACT Policing. If so, provide the usual particulars of this discussion and your impressions of these discussions.

The following dates must be included:

- (a) 31 March 2021;
- (b) 12 April 2021; and
- (c) 1 June 2021.

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

146 On 19 March 2021, Detective Sergeant Gareth Saunders, asked via email to formally brief the DPP on the matter alleging sexual intercourse without consent at Parliament House.

147 **Attached** and marked '**Exhibit 32**' is the 19 March 2021 email.

148 On **31 March 2021**, DPP, myself and [REDACTED] attended the Belconnen Police Station and received a briefing from Inspector Boorman, Detective Sergeants McDevitt and Saunders, Detective Madders and Senior Constable Frizzell. Prior to the briefing, no evidence had been provided to the DPP. Prior to the briefing, [REDACTED] and myself had relayed to DPP, the concerns/issues communicated to us by Detective Sergeant McDevitt and Detective Sergeant Saunders as outlined in [95].

149 I recall that DPP opened the meeting by stating that intoxication will affect individuals differently and referred to the successful prosecution of another sexual

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assault matter, which involved a highly intoxicated complainant with limited recall on what occurred during the hours prior to the gang rape. DPP also shared his experience with the ways in which a prosecution can still proceed involving highly intoxicated sexual assault victims, if they are not otherwise significantly discredited by other evidence. This is consistent with my view and experience. Inspector Boorman replied that the police did hold concerns regarding the complainant's credibility and wanted to outline to us what Police had investigated thus far. I recall that Inspector Boorman and DPP were the main speakers during this meeting. I don't recall myself, [REDACTED] or Senior Constable Frizzell talking during the meeting.

- 150 I recall that Detective Sergeant McDevitt and Detective Sergeant Saunders presented some of the APH footage. Police focused their observations of a sober woman entering Parliament House. The distinction was made to the complainant's evidence describing herself as being heavily intoxicated.
- 151 Detective Madders then summarised the evidence in chief interview focusing on his perceived weaknesses of the case. I recall that he read from his notebook at times.
- 152 AFP expressed some concern with Ms Higgins' credibility. However, DPP stated that putting aside the strong media interest and Ms Higgins' participation with the media, overall, this case (based on how it had been described in the briefing) was unremarkable in regards to the strength of the evidence overall. DPP also advised that an expert could not speak to the complainant's intoxication level observed on the CCTV footage. DPP stated that the ODPP did not hold the view that Ms Higgins had been so discredited that she could not be believed beyond a reasonable doubt. AFP indicated that there were still outstanding lines of inquiries and were yet to interview the suspect.
- 153 On the return to the office, in DPP's car, I recall that the ODPP members agreed that there was sufficient evidence to charge the suspect with one count of sexual intercourse without consent pursuant to s54 *Crimes Act* 1900 (ACT). I recall that this conclusion was made on the basis that there was no other evidence which

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Witness

significantly discredited the complainant.

- 154 On 7 April 2021, DPP and myself telephoned Detective Sergeant McDevitt about the Tiffen Decision and the findings at [79]. DPP stated that it was entirely a matter for the AFP whether Detective Madders remained involved in the Higgins investigation. Detective Sergeant McDevitt stated that he would bring the Tiffen decision, as outlined at [104], to the attention of Superintendent Moller.
- 155 On 12 April 2021, Superintendent Moller and possibly another police officer attended ODP office. I recall that the meeting was originally with myself to discuss another matter. I recall that either Superintendent Moller or myself suggested that I see if DPP was available to speak with Superintendent Moller about Ms Higgins allegation. I recall that I confirmed with DPP and we all meet in the conference room on level 2. DPP and Superintendent Moller were the dominant speakers in this meeting. I recall that DPP stated that it was entirely a matter for the AFP whether Detective Madders remained involved in the Higgins investigation, after the published Tiffen decision. I recall Superintendent Moller sharing his general understanding of the evidence and his concerns regarding the complainant's credibility. DPP reiterated that his understanding of the brief so far was that there was sufficient evidence to charge the suspect and that he didn't have a problem so far, with the credibility concerns held by police regarding Ms Higgins.
- 156 On 20 May 2021, DPP and SACAT held the monthly meeting. I cannot independently recall this meeting.
- 157 Please refer to 'Exhibit 24' for the file note of this meeting.
- 158 On 1 June 2021, Detective Superintendent Moller and Detective Inspector Boorman attended the DPP office for a further briefing of the investigation. DPP and myself attended and neither of us took a file note during this meeting. DPP may have had his laptop. At this time, AFP had not disclosed any part of the brief. Detective Superintendent Moller and Detective Inspector Boorman spoke generally about the concerns they had regarding the credibility of the complainant and their perceived


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weaknesses of the case. I recall that both officers spoke generally and sometimes referred to their police notebook. The officers referred to the CCTV footage which in their view, did not depict the intoxicated complainant or that the accused had purchased all of her drinks or that she couldn't walk unassisted at APH. I recall that they referred to the complainant's text messages (including the sex scandal text to [REDACTED] complaint to [REDACTED], lack of complaint to her father); lie to [REDACTED] about doctor's attendance; lack of medical evidence to prove attendance approximate to the alleged offence.

- 159 DPP and Detective Superintendent Moller were the main speakers in the meeting. I recall DPP stating that if they required advice that a full brief was required, as per the Collaborative Agreement 2019, and that he could only advise in regard to our threshold to prosecute. I recall that Detective Superintendent Moller asked what specific paragraph of the Collaborative Agreement, DPP was referring to. DPP stated that notwithstanding our advice, the decision to charge remained with the AFP, and that they were required to have a reasonable suspicion that a crime had been committed in the ACT, pursuant to s26 *Magistrates Act* 1930. I recall that one of the officers appeared to be writing the exact words down and asked DPP to repeat it. I recall being surprised that the senior police officer did not appear to know the test to charge.
- 160 I recall that I walked both officers to the lift on level 2. I do not recall what was said specifically during this walk. It is possible that in the brief conversation on the way to the lift, there was reference to Ms Higgin's phone.
- 161 During the ODP/AF Meetings in our office on either 12 April 2021 or 1 June 2021, I recall that DPP commented that it didn't matter what Mr Lehrmann said in his police interview about the allegation. I took this to mean that, in one sense, it didn't matter if Mr Lehrmann denied or admitted the alleged offence at this point, as there was sufficient evidence to charge.

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Record of file notes of meetings with the AFP/ACT Policing

42. State whether it is your ordinary practice to take file notes at meetings/discussions between the ODPP and the AFP/ACT Policing. Provide details as to why or why not it is ordinary practice. If you normally have a note-taker present identify the note-taker at each meeting you attended that related to the Investigation for the matter of *R v Lehrmann*.

162 It had not been my practice before the *DPP v Lehrmann* matter to take file notes at meetings/discussions between ODPP and AFP/ACT Policing when the meeting was about general issues. Specific issues were usually followed up with an email covering what was decided during the meeting or to remind the participants of specific action items.

163 It is my ordinary practice when conferring with a witness, including a police witness, in preparation for trial, that I meet with the witness/police witness with a prosecutor associate (instructing clerk), and I ensure a file note is taken about the conference. It is my ordinary practice that if I receive a telephone call and I do not have a witness to the conversation, that I make a note as soon as I can.

43. State whether you took file notes in relation to the Investigation and/or the matter of *R v Lehrmann*? If so, outline why you did so, who contributed to the file note(s) at what point in time (provide exact dates where possible) and where reflections are recorded, the basis of your reflections and the date you recorded those reflections. **Attach** a copy of the relevant file note retained by the ODPP in relation to the matter of *R v Lehrmann* and any communications attaching different versions of the file note including but not limited to correspondence, emails, text messages, file notes and diary notes.

164 Having regard to my usual practice as described at [162] above, I had not taken file notes of the discussions with police regarding Ms Higgins' allegations, during or soon after the meetings.

165 On or about 26 May 2021, DPP asked myself and [REDACTED] to write a file note regarding our recollection on what occurred in the meetings with the police involved in *DPP v Lehrmann*. I recall that DPP wanted a record of what was said in the meetings as he was concerned that the police were not listening to his advice and were acting unusual in the investigation. I titled the document 'BH Timeline Meetings'. I sent to DPP via email my file note and DPP reminded me of a further occasion. I

[REDACTED]
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[REDACTED]
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amended the file note and emailed to DPP.

166 Please refer to '**Exhibit 24**' for the file note and **attached** and marked '**Exhibit 33**' is the email chain.

167 In the days/weeks after the 1 June 2021 meeting with Superintendent Moller and Inspector Boorman, I recall speaking with DPP about the meeting and file note. I recall that I contributed verbally to the file note and DPP read it out to me.

168 On 17 May 2022, Ms Higgins, Mr Sharaz (Ms Higgins' fiancé) and Heidi Yates attended ODPP office for a conference. I took notes during this day for my own trial preparation. I recall that the conference commenced all together in the conference room with DPP, myself, Mr Mitch Grieg, Ms Erin Priestly, Ms Higgins, Mr Sharaz a counsellor for Mr Sharaz, and Heidi Yates. DPP was the main speaker in the beginning and he only spoke about trial and court procedure generally. Mr Sharaz requested to speak to myself privately about procedure so Mr Sharaz, [REDACTED] Mr Grieg and myself met in my office. I answered Mr Sharaz's questions about procedure, he left the building, and I made a file note after the meeting. I recall that Mr Grieg also made a file note during the meeting. Mr Grieg and I then re-joined the conference with DPP, Ms Priestly, Ms Higgins, and Heidi Yates. I continued to make notes for my own preparation for trial. This included observations that I made during the playing of the CCTV. Throughout the conference, I recall that Ms Priestly and Mr Grieg both took notes on their laptops.

169 [REDACTED]

170 On 18 May 2022, DPP, myself and Ms Priestly conferred with Ms Fiona Brown and her lawyer via AVL. I took notes during this conference for my own trial preparation. Ms Priestly took notes on her laptop throughout the time that I was in the conference. After a period of time, I had to leave the conference because one of DPP's witnesses had arrived early so I conducted the conference with that witness.

171 **Attached** and marked '**Exhibit 35**' is the file note I created on 18 May 2022 with Ms

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Brown.

- 172 On 15 June 2022 I created a file note from a meeting with DPP, myself, Mr Grieg, Lisa Wilkinson and her lawyer. DPP asked all the questions of Ms Wilkinson. I took notes for my own trial preparation. Mr Grieg took a file note. At the point where Ms Wilkinson started reading out her anticipated Logies speech, I stopped typing and was listening to what she said and what DPP said in reply.
- 173 **Attached** and marked '**Exhibit 36**' is my file note created during the conference with Lisa Wilkinson. **Attached** and marked '**Exhibit 37**' is Mr Grieg's file note.
- 174 On 14 June 2022, Inspector Hughes requested a meeting with Ms Priestly and myself to discuss the 'investigative review documents'. I recall that Ms Priestly and myself informed DPP about the request for a meeting. DPP agreed to attend the meeting which was conducted via AVL.
- 175 On or about 16 June 2022, I attended an AVL meeting with DPP, Ms Priestly, with Inspector [REDACTED] Senior Constable Frizzell and several AFP Legal officers. DPP and AFP Legal were the dominant speakers. I recall that Inspector Hughes opened the meeting by stating the purpose of the meeting was to clarify what documents were subject to legal professional privilege (LPP) and how AFP were going to comply with the defence disclosure request overall. I recall that AFP Legal listed the investigative review documents and commented whether in their preliminary view it was subject to LPP. I recall that DPP commented also regarding the LPP. I recall that AFP Legal or DPP stated that their view was that it was all subject to privilege and DPP or AFP Legal agreed. I took a file note. I recall that Ms Priestly also took notes.
- 176 **Attached** and marked '**Exhibit 38**' is Ms Priestly's file note. **Attached** and marked '**Exhibit 39**' is my file note.
- 177 On 8 September 2022, I attended court with DPP. I recall that I took notes from what was said on the record. I have recorded that the 'Investigative Documents' were to be reviewed for LPP.
- 178 **Attached** and marked '**Exhibit 40**' is the note I saved on 8 September 2022.

[REDACTED] SKYE LLEWELLYN JEROME

[REDACTED] Witness

179



180 On 5 October 2022, I rang Ms Yates to advise Ms Higgins of the potential consequences if she gave evidence inside the courtroom that her evidence would not be recorded. Ms Yates rang me back and stated that Ms Higgins understood the consequence if she gave evidence in the court room.

181 **Attached** and marked '**Exhibit 41**' is the file note.

182 On 12 October 2022 at 4:35pm, Ms Yates rang me and asked about the reason why the trial was expected to conclude at a particular point in time. I said it could be seen as inappropriate to tell her the reason why so I wouldn't comment. I then wrote a file note and advised DPP. I recall that DPP agreed.

183 **Attached** and marked '**Exhibit 42**' is the handwritten file note dated 12 October 2022 at 4:35pm.

44. To the extent not addressed in response to question 43 above, provide details of the creation and use of the document entitled "Timeline of Meeting with AFP where HIGGINS investigation was discussed" including but not limited to when the document was created, who created the document, who contributed to the document and an explanation of the basis of the matters raised in this document. **Attach** a copy of the document titled "Timeline of Meeting with AFP where HIGGINS investigation was discussed".

184 Please see Answer to Question 43 at [164] – [166].

21 June 2021 – Brief of Evidence

45. State whether you reviewed the brief of evidence provided by the AFP/ACT Policing to the ODPP on or about 21 June 2021 (**21 June 2021 Brief of Evidence**). Provide details about when you reviewed the brief and why you reviewed the brief at this point in time. **Attach** a copy of the index to the 21 June 2021 Brief of Evidence.

185 I am aware that a partial brief of evidence had been disclosed to DPP on 21 June 2021. I did not review the partial brief or contribute to DPP's advice sent to police on 28 June 2021, as I was prosecuting a historical sexual offence trial in the Supreme Court from 7 June to 25 June 2021. I was absent from work on 28 and 30 June 2021. **Attached** and marked '**Exhibit 43**' are the various emails I was copied into, sent and



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received by DPP. **Attached** and marked '**Exhibit 43A**' is the attachment.

186 One of the DPP's emails acknowledging receipt of the partial brief, copied to me, outlined matters not included in the partial brief. On 21 June 2021, I sent a text message to DPP asking how he could provide advice with so much material outstanding.

187 **Attached** and marked '**Exhibit 44**' the text message

188 On or about 12 August 2021, I compared the index list of 21 June 2021 Brief of Evidence to the index to the brief of 6 August 2021. I recall I read the EICI transcripts and made a note of complaint witnesses who were not on the witness list. I made a list of the items missing and emailed it to DPP.

189 **Attached** and marked '**Exhibit 45**' is the email.

190 I have not been able to locate a copy of the index to the 21 June 2021 Brief of Evidence to attach here.

46. State whether you reviewed the Executive Briefing by Detective Superintendent Scott Moller dated 7 June 2021 and/or the Minute prepared by Detective Inspector Marcus Boorman dated 4 June 2021 (**21 June 2021 Supporting Documents**) provided by the AFP/ACT Policing to the ODPP with the 21 June 2021 Brief of Evidence. Provide details about when you reviewed the documents and why you reviewed the documents at this point in time. **Attach** a copy of the 21 June 2021 Supporting Documents and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes.

191 I do not recall reviewing the 21 June 2021 Supporting Documents during 2021. At the time they were delivered to the DPP by a USB device and hard drive (as I understand it), I was involved in two sex offence trials in the Supreme Court. I prosecuted the matter of *R v Garay* from 7 June to 25 June 2021 and then *R v Atai* from 12 July to 14 July 2021.

192 I don't recall reading the June 2021 Supporting documents until about 20 June 2022. They were attached to an email sent by AFP Legal to Ms Priestly.

193 **Attached** and marked '**Exhibit 47**' is the email and attachments.


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47. Outline your impressions (if any) of the quality of the 21 June 2021 Brief of Evidence. Provide details as to whether the evidence obtained was sufficient to enable the DPP to reach a view with respect to whether or not to discontinue the matter in accordance with ODPP prosecution policies and the basis for your views (if any).

194 The 21 June 2021 Brief of Evidence was a partial brief. The police were still deciding whether to lay a charge. Importantly, because there was no charge laid at that point in time, there was nothing for the DPP to discontinue.

195 Although I didn't review the 21 June 2021 Brief of Evidence before the advice was provided as above (refer to Answer to Question 45), when I read DPP's advice, I observed to myself that the AFP should have identified all relevant data from the Cellebrite reports for the purpose of obtaining advice from DPP.

48. Outline your view (if any) as at 28 June 2021, of the relevance of obtaining Ms Higgins' primary mobile phone to the decision of whether to commence the prosecution in *R v Lehrmann*. Include details about the relevance of a complainant's primary mobile phone evidence in a sex offence prosecution generally (provide examples where possible) and whether you expressed your views (if any) in relation to this to the DPP and/or the AFP/ACT Policing officers on any occasion (include when you expressed your views and to whom). **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

196 As at 28 June 2021, police in meetings prior to that time had referred to specific text messages involving Ms Higgins that they thought discredited Ms Higgins. I also understood that there was evidence to suggest that Ms Higgins had used her 'primary mobile phone device' to take some photographs during the night and subsequently photograph her leg injury. For these reasons, it was my view that police should take reasonable steps to obtain the data from the complainant's primary mobile phone device (this can be done by a Cellebrite download from the current mobile phone device and/or primary mobile phone device) prior to deciding whether to charge a person.

197 I understood police had obtained a Cellebrite report from Ms Higgins current mobile phone. I later became aware that the report had been obtained on 26 May 2021. The Cellebrite report contained a very large amount of data (over 55,000 pages of data)


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dating pre-offence and including data from the primary mobile phone device. I understand that the Cellebrite report contained data that was created whilst using the 'primary mobile phone device'. It is my understanding that the 'primary mobile phone device' may or may not, have more data capable of being extracted, depending on how the user saved the settings and whether the data had been deleted from the phone. It is my opinion, that whilst it would have been ideal for police to obtain the 'primary mobile phone device' to confirm whether any additional data, such as additional messages or photos that could have been recovered, the fact they didn't/couldn't was not fatal to the prosecution of the matter.

- 198 The relevance of a complainant's primary mobile phone device will vary in every sexual offence case as every case turns on its own set of facts. For example, if a complainant is raped by a stranger whilst running without a mobile phone and seeks immediate medical attention post rape and makes an immediate police complaint, then the complainant's mobile phone will likely not feature at all. However, the complainant's mobile phone will likely be relevant in sexual offence matters where the parties are known to each other, and share written electronic messages or if the complainant had access to their mobile phone pre/during/post the alleged incident or if the complainant has discussed the incident with others via electronic communication. Sometimes, the mobile phone will contain other data which substantially affects the assessment of the complainant's credibility.
- 199 As I understand current Cellebrite reports, the data from the primary mobile phone device, can be retrieved by downloading from another mobile phone device with the same sim card/phone number, as long as it has been stored in the cloud data for that particular Simard/phone number.
- 200 In my opinion, in the matter of *DPP v Lehrmann*, Ms Higgins' phone data from around the time period of the alleged offence up until the 2021 police complaint, was relevant to the decision to commence a prosecution. I do not recall specifically stating the views I have expressed above to DPP and/or police as at 28 June 2021 but I accept that this would likely be something I would say.


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28 June 2021 – Advice from the DPP

49. Outline your involvement (if any) in the preparation of the advice provided by the DPP to Detective Superintendent Scott Moller on 28 June 2021 (DPP Advice). Include information about whether the DPP sought your views in relation to the contents of the advice, whether any discussions were had in relation to the advice and your impressions in relation to the DPP's views. **Attach** a copy of the DPP advice and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

201 Please refer to Answer to Question 45.

50. State whether you have read the DPP Advice. Provide details as to the date when you first read the DPP Advice and the extent to which you agreed/disagreed with the DPP Advice.

202 I recall that I read the DPP Advice some time (within days) after I received DPP's email dated 28 June 2021. I was absent from work on 28 and 30 June 2021. I recall that I agreed with DPP's recommendation as I understood it in the Advice at the time.

51. State whether, as at 28 June 2021, you were aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information, including, but not limited to any discussions you had at that time with the DPP and/or the AFP/ACT Policing regarding Ms Higgins' mental health. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

203 Prior to 28 June 2021, I recall being told either by DPP or AFP that Ms Higgins had researched on her mobile phone [REDACTED]

204 I have a vague recollection of discussing this information privately with DPP and agreeing that, as with any vulnerable witness, the ODPP would have to be mindful of potential ongoing mental health issues for Ms Higgins and she may be eligible for additional special measures such as an intermediary. I recall being advised by DPP that Ms Higgins was receiving counselling and had been informed of the services available to her. I understood that Ms Yates was also providing support and advocating on her behalf.

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205 I do not recall taking any further action regarding this conversation as I was heavily involved in several other matters.

Dealings with the AFP/ACT Policing after 28 June 2021

52. In chronological order, outline the meetings and/or discussions you were involved in with ACT Policing officers in relation to the matter of *R v Lehrmann* after 28 June 2021. Include information about:

- (a) the person who initiated the meetings/discussions;
- (b) the purpose of the meetings/discussions;
- (c) where the meetings/discussions took place;
- (d) the people in attendance;
- (e) the briefing material (if any) you were provided, including whether you reviewed the material prior to or following the meetings/discussions;
- (f) if there were dominant speakers, who they were, the basis of that view and what they said;
- (g) the nature of the discussions in relation to the:
 - i. Investigation and the evidence obtained and to be obtained;
 - ii. decision-making in relation to laying charges/commencing criminal proceedings against Mr Lehrmann;
 - iii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to the reasonable prospects of a conviction and whether a prosecution was in the public interest); and
 - iv. views you held in relation to the conduct of the investigation to date, including the reasons for your views.

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

206 To the best of my recollection with reference to my electronic diary, emails and file notes, I met with ACT Police officers in relation to *DPP v Lehrmann* after 28 June 2021, on the following occasions:

207 8 October 2021 meeting –

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- (a) On 27 September 2021, DPP advised Superintendent Moller via email that myself and Ms Priestly would discuss the brief and the Disclosure Certificate. **Attached** and marked '**Exhibit 48.1**' is an email chain between AFP Senior Constable Frizzell, myself and others on 7 and 8 September 2021. **Attached** and marked '**Exhibit 48.2**' is a further email chain, commencing with an email dated 17 September 2021 from DPP to Superintendent Moller.
- (b) On 8 October 2021, I participated in a telephone meeting with Ms Priestly, Superintendent Moller, Senior Constable Frizzell and Detective Sergeant Fleming. Superintendent Moller and myself were the dominant speakers. I recall that Superintendent Moller asking me to give specific advice on legal professional privilege (LPP) on DPP's advice and other documents unknown to me. I recall thinking how strange it was to ask me for specific advice about documents unknown to me. I recall telling Superintendent Moller that I couldn't give advice about documents unknown to me but that I thought LPP attached to DPP's advice. I recall stating that I would have to check with DPP and report back.
- (c) After the telephone meeting, I briefed DPP and asked for his advice which was that the DPP Advice was subject to LPP and that the question of LPP regarding 'briefing documents' were a matter for AFP Legal.
- (d) I then sent an email to the participants in the meeting.
- (e) Superintendent Moller replied by asking a further question about LPP. I then sought further clarification from DPP and responded via email.
- (f) **Attached** and marked '**Exhibit 49**' is the email chain. [AFP PRIVILEGE]
- 208 On 18 November 2021, I emailed Superintendent Moller, Inspector Boorman and Detective Madders asking to speak with Inspector Boorman and Detective Madders to better understand aspects of their written statements.
- 209 **Attached** and marked '**Exhibit 50**' is the email chain.

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- 210 On or about 25 November 2021, I recall that Ms Priestly and myself conferred with Detective Madders and Senior Constable Frizzell over the telephone. I recall that we spoke with Detective Madders first and then Senior Constable Frizzell joined the teleconference. I recall that this meeting was about clarifying aspects of the investigation itself and understanding where evidence was saved on the E-brief. I do not recall any further information independent to the file note. Ms Priestly took a file note.
- 211 **Attached** and marked '**Exhibit 51**' is the file note. **Attached** and marked '**Exhibit 52**' is the email chain.
- 212 On 3 February 2022, Detective Fleming emailed myself requesting a meeting about the brief of evidence. A meeting was held on 10 February 2022 at ODPP, Level 2 conference room. Detective Fleming, Senior Constable Frizzell, Ms Priestly and myself attended that meeting. I recall that the police officers were the dominant speakers in this meeting. I recall that early in the meeting, the officers and myself agreed that despite what was going on between our superior officers, we would continue to work together in preparation for trial. I noted that we were all just trying our best in difficult circumstances. There was discussion regarding the electronic brief of evidence, material outstanding and the disclosure certificate. I can't recall any more details regarding this meeting independent of the file note.
- 213 **Attached** and marked '**Exhibit 53**' is the file note. **Attached** and marked '**Exhibit 54**' and '**Exhibit 55**' are the email chains and attachment at '**Exhibit 55A**'.
- 214 On 22 February 2022, Senior Constable Frizzell requested to meet with Ms Priestly and myself. On 28 February 2022, Senior Constable Frizzell, Detective Inspector Hughes, myself and Ms Priestly met at ODPP office. The main points discussed at this meeting were the outstanding materials, and better understanding the investigation. I don't recall any other information independent from the file note.
- 215 **Attached** and marked '**Exhibit 56**' is the email. **Attached** and marked '**Exhibit 57**' is the file note.


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- 216 On 20 April 2022, Senior Constable Frizzell requested via email to meet with Ms Priestly and myself. On 27 April 2022, Senior Constable Frizzell, Detective Madders, Detective Fleming, Ms Priestly and myself all met in the ODPP Conference room, level 2. The main speakers were the police officers updating ODPP on outstanding materials and raised disclosure certificate issue. I recall stating that in regards to disclosure certificate issue, we would need to confer with DPP. I do not recall any other information independent from the file note.
- 217 **Attached** and marked 'Exhibit 58' email chain. **Attached** and marked 'Exhibit 59' is the file note.
- 218 On 3 May 2022, I conferred with Peter [REDACTED] from AFP Digital Forensics in preparation for taking his evidence at trial. I recall that Mr Grieg attended and took a file note. I recall that I confirmed and/clarified different aspects of his statement. I recall clarifying what mobile phone devices had been analysed and whether deleted information was able to be recalled. I also clarified whether the metadata existed for the leg injury photograph. I recall that I confirmed his availability for trial. I don't recall any further detail about this conference independent of the file note.
- 219 **Attached** and marked 'Exhibit 60' is the file note.
- 220 On 9 May 2022, in preparation for trial, I conferred with AFP officer Heath Langland. I recall that Mr Grieg attended and took a file note. I recall that I confirmed and/clarified different aspects of his statement. I recall that I confirmed his availability for trial and that it was a short conference. I don't recall any further detail about this conference independent of the file note
- 221 **Attached** and marked 'Exhibit 61' is the file note.
- 222 On 10 May 2022, in preparation for trial, I conferred with Federal Officer Katie [REDACTED] Federal Officer Rebecca [REDACTED] and AFP Kristy [REDACTED] separately. I recall that Mitch Grieg attended and took a file note. I recall that for each of these police officers that I confirmed and/clarified different aspects of their statements. I recall in relation to Officers [REDACTED] and [REDACTED] that I asked them to translate their

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[REDACTED]
 Witness

handwritten notes. I recall that I confirmed their availability for trial. I don't recall any further detail about this conference independent of the file note.

- 223 **Attached** and marked '**Exhibit 62**' is the file note.
- 224 On 11 May 2022, I conferred with Senior Constable James [REDACTED] and Inspector Boorman, separately, in preparation for taking their evidence at trial. I recall that Mitch Grieg attended and took a file note. I recall that for each of these police officers that I confirmed and/clarified different aspects of their statements. I recall that I asked Inspector Boorman to translate his handwritten notes. I recall that I confirmed their availability for trial. I don't recall any further detail about this conference independent of the file note.
- 225 **Attached** and marked '**Exhibit 63**' is the file note.
- 226 On 12 May 2022, in preparation for trial, I conferred with Senior Constable Frizzell and Senior Constable Sarah Harman separately. I recall that Mitch Grieg attended and took a file note. I recall that for each of these police officers that I confirmed and/clarified different aspects of their statements. I recall in relation to Senior Constable Harman that I asked them to translate her handwritten notes. I recall that I confirmed their availability for trial. I don't recall any further detail about this conference independent of the file note.
- 227 **Attached** and marked '**Exhibit 64**' is the file note.
- 228 On 13 May 2022, I conferred with Detective Madders and AFP Kyle [REDACTED] separately, in preparation for trial. I recall that Mitch Grieg attended and took a file note. I recall that for each of these police officers that I confirmed and/clarified different aspects of their statements. I don't recall any further detail about this conference independent of the file note.
- 229 **Attached** and marked '**Exhibit 65**' is the file note.
- 230 On 16 May 2022, I conferred with Detective Sergeant Saunders in preparation for taking his evidence at trial. I recall stating that depending on what is in issue, we may

[REDACTED] SKYE LLEWELLYN JEROME

[REDACTED] Witness

not even have to call Detective Sergeant Saunders. Mr Grieg took the file note. I recall that I confirmed and/clarified different aspects of his statement. I recall that I confirmed his availability for trial. I don't recall any further detail about this conference independent of the file note.

- 231 **Attached** and marked '**Exhibit 66**' is the file note.
- 232 On 20 May 2022, I conferred with Detective Sergeant McDevitt. I recall stating that depending on what is in issue, we may not even have to call Detective Sergeant McDevitt. I recall that I confirmed and/clarified different aspects of his statement. I recall that I confirmed his availability for trial. The conference via AVL. I understood Mr Grieg had taken a file note of it, but I have been unable to locate a copy of this file note.
- 233 On 23 May 2022, Senior Constable Frizzell and Detective Fleming, obtained a mirror copy of the CCTV footage from APH and we viewed the disc together in the ODPP Conference room. I recall that I sought assistance from ODPP IT Officer, [REDACTED]. I recall that Mr Grieg and Ms Priestly were also in attendance. The [REDACTED] files did not appear on the disc supplied. The only files on the disc were of the files we already had. I recall that I informed the group that when I previously used the hard drive that police had provided (subsequently collected by Detective Madders in March 2022 as I describe in [249]). I had seen several sub folders within APH CCTV. I recall that I stated that when I looked at the CCTV Footage that I didn't recognise the software and that the CCTV screen was small. I recall asking [REDACTED] if he could retrieve what I had seen on my computer and he stated likely not. I recall that one of the police officers stated that the files from the Master copy had to be converted into another format. I recall asking the group whether it was possible that ODPP computers were somehow able to use the original format of the CCTV Footage and that is how I could have seen the footage and AFP couldn't. I recall that Detective Fleming suggested he obtain the master copy from APH.
- 234 **Attached** and marked '**Exhibit 67**' is the email chain.

[REDACTED]
 SKYE LEWELLYN JEROME

[REDACTED]
 Witness

- 235 On 24 May 2022, Detective Fleming brought to ODPP Office the master copy of the APH CCTV. I recall that DPP, Mr Grieg and Ms Priestly were also in attendance. We looked at the master copy together. The omitted footage was not on the master copy either.
- 236 **Attached** and marked '**Exhibit 68**' is the email chain.
- 237 Please see Answer to Question 43 at [175] regarding my involvement with the meeting between AFP and ODPP on 16 June 2022.
- 238 On 28 July 2022, I conferred with DFT officers regarding the CCTV footage, via telephone/ audio link. I recall that the DFT officers explained that they were unable to fully recover what was on the hard drive as it had been used since I had returned it to SACAT in March 2022. They asked for further clarification as to what exactly I saw to assist them in their review of the hard drive. I told them that I recalled a [REDACTED]
[REDACTED] I recall telling them that the software was old and unfamiliar to me and that there were several sub folders. I recall being asked by the male DFT officer whether I suspected something unlawful had occurred with the footage. I replied that I simply did not know the answer to that question and that I hoped not. I recall that Mr Grieg was in attendance. I asked for further review and a supplementary statement.
- 239 On 5 September 2022, Senior Constable Frizzell emailed a request to meet in preparation for trial. A meeting was scheduled for 20 September 2022. I was in trial on another matter from 12 September 2022 to 16 September 2022 and I also had a legal argument in relation to another matter, on 23 September 2022. I have no recollection whether this meeting went ahead.
- 240 **Attached** and marked '**Exhibit 69**' is the email chain.
- 241 On 12 October 2022, I was informed that Senior Constable Frizzell wanted a further conference with myself in preparation for trial. Mr Grieg arranged the meeting for 13 October 2022 and attended the meeting.
- 242 On 13 October 2022, in that conference, we went over the topics and the exhibits that

[REDACTED]
SKYE LLEWELLYN JEROME

[REDACTED]
Witness

I intended to ask Senior Constable Frizzell about. Mr Grieg was in the conference, and I cannot recall if he took a file note. I have not been able to locate a file note of this meeting. During the conference, I think Senior Constable Frizzell mentioned that defence had asked her to check whether the various medical centres (that the complainant said she made appointments at) held records of the non-attendance or cancellations. I think I said words to the effect to wait until we had spoken to DPP as he was the lead counsel. As junior counsel, it would have been inappropriate of me to authorise or refuse such a request. Senior Constable Frizzell had earlier advised DPP that she had medical appointments herself later that day, so I agreed to call her as the first witness.

243 There were other witnesses who wished to speak with me that morning, prior to trial. I think I raised the issue with DPP but I am not sure. Either way, I do not recall that I reported back to Senior Constable Frizzell prior to receiving her email stating that she had followed up with the medical centre.

244 On 13 October 2022 at 2:38pm, I received an email from Senior Constable Frizzell about her additional investigation regarding the Phillip Medical Centre. When I read her email, I was surprised that Senior Constable Frizzell had gone ahead with the defence request to investigate further before I came back to her. At 2:39pm, I forwarded the email to DPP. I recall that I had a conversation with DPP about the email.

245 **Attached** and marked '**Exhibit 70**' is the email chain.

53. State the basis for your view that CCTV footage had been omitted in the brief of evidence provided by the AFP/ACT Policing in relation to the Investigation and/or the matter of *R v Lehrmann*. Provide details as to:

(a) how you became aware of the existence of the omitted CCTV footage;

246 On 22 November 2021, I emailed DPP asking to view the CCTV footage that he had a copy of as I only had access to the AFP compilation. I wanted to check that all relevant footage had been included in the AFP compilation for trial.

247 **Attached** and marked '**Exhibit 71**' is the email request.


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SKYH LLEWELLYN JEROME


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- 248 On or about 22 November 2021, I viewed the CCTV footage of Australian Parliament House, alone in my office. The CCTV footage was saved on a black hard drive with a password and the password was required once every few minutes. It was difficult to operate.
- 249 On 15 March 2022, Detective Madders requested the return of that hard drive. On or about 17 March 2022, the hard drive was returned to Detective Madders.
- 250 **Attached** and marked ‘**Exhibit 72**’ and ‘**Exhibit 73**’ are the email chains.
- 251 I recall that during the week commencing 9 May 2022, I verbally reported to DPP that I had noted three issues with the AFP CCTV Compilation. I informed DPP:
- (a) I had seen CCTV footage of the [REDACTED] at APH on the hard drive, but it wasn’t included in the AFP Compilation. I said that I thought this footage matched the [REDACTED]. DPP stated to me that he recalled seeing the pair [REDACTED]. I said that is exactly what I saw.
 - (b) Clip of Ms Higgins [REDACTED] waving her hands was not included in the AFP CCTV Compilation.
 - (c) The CCTV of The Dock in the AFP Compilation had a repeat action of Ms Higgins touching Mr Lehrmann on the shoulder. It was the only repeat action in the entire footage.
- 252 DPP agreed with my suggestion that we make enquiries with the AFP about the Compilation footage.
- 253 On 13 May 2022, I sent an email to Detective Madders and Senior Constable Frizzell with queries including a request that they check the CCTV footage to see whether there is footage of the complainant and defendant [REDACTED]. I was sure I had seen that footage. I asked that it be added to the compilation if it exists.

[REDACTED]
 SKYE LEWELLYN JEROME

[REDACTED]
 Witness

- 254 On 15 May 2022, Senior Constable Frizzell emailed me to advise that there is no footage of the complainant and defendant [REDACTED]. On the same date, I emailed Senior Constable Frizzell and asked her for a full copy of the CCTV footage of APH which I had previously returned on the hard drive that had been lent to ODPP.
- 255 **Attached** and marked '**Exhibit 74**' is the email chain.
- 256 On 15 May 2022, I sent an email to DPP advising him I had asked AFP to provide footage including the clip of complainant and defendant [REDACTED] and advised AFP that he would view the footage and report back if it needs to be included in the AFP CCTV Compilation. **Attached** and marked '**Exhibit 75**' is the email chain.
- 257 I recall speaking to Senior Constable Frizzell on the telephone regarding the above emails on that same day.
- 258 On 16 May 2022, I reported what I had been told about this footage to DPP. We agreed that I should try to locate the footage.
- 259 On 23 May 2022 and 24 May 2022, with Senior Constable Frizzell, Detective Fleming and others, I viewed mirror footage of the CCTV they had obtained and the master copy of the APH CCTV as I have described at [232] and [234]. As I state in those [232] and [234], it did not contain the footage.
- (b) a description of the omitted CCTV footage;
- 260 I recall that the omitted CCTV footage was viewed in a format not previously known to me. I recall that the footage was saved in a sub folder of a sub folder and that the small screen had a blue/green border. I recall the software appeared to be old.
- 261 The timer of the hard drive kept running out and requiring me to enter the password to re-open the hard drive. It was difficult to operate and I was not able to view the footage all in one go. I was required to re-open the subfolders every occasion it timed out.

[REDACTED]
 SKYE LLEWELLYN JEROME

[REDACTED]
 Witness

(c) what you saw on the omitted CCTV footage;

262 I recall that the omitted CCTV footage depicted Ms Higgins and Mr Lehmann [REDACTED] at APH. I recall that Mr Lehmann stood in front of Ms Higgins who was a little unsteady/shifted her body weight. I recall that I briefly saw the pair [REDACTED] I do not recall [REDACTED] accompanying the footage.

(d) when you viewed the omitted CCTV footage;

263 Please see [248] above.

(e) who were you with when you viewed the omitted CCTV footage; and

264 I was alone in my office at ODPP.

(f) what steps you took to obtain a copy of the omitted CCTV footage.

265 Please see [253] – [254] above in relation to my emails to AFP on 13 May 2022 and 15 May 2022.

266 On 17 May 2022, Inspector [REDACTED] emailed suggesting that I had seen the footage on television and forwarded the reply from Detective Madders that there was only nine files on the disc.

267 **Attached** and marked 'Exhibit 77' is the email and attachment.

268 On 20 May 2022, I conferred with [REDACTED] from APH via AVL. Mr Grieg was also present and took notes. I recall that I took Mr [REDACTED] to the part in his transcript of his recorded interview which referred to quarantining footage and asked Mr [REDACTED] to explain it to me. Mr [REDACTED] stated that he had quarantined footage of the woman and man [REDACTED] at APH on 23 March 2019.

269 **Attached** and marked 'Exhibit 78' is the file note. **Attached** and marked 'Exhibit 79' is Mr [REDACTED] Record of Interview transcript.

270 What Mr [REDACTED] described matched the recollection I had of viewing footage at the [REDACTED] which confirmed in my mind that the footage existed.

271 I then emailed AFP advising that the footage did exist.

[REDACTED]
.....
SKY/LEWELLYN JEROME

[REDACTED]
.....
Witness

- 272 **Attached** and marked '**Exhibit 80**' is the email.
- 273 I refer to the Answer to Question 52 and paragraphs [233] – [235].
- 274 On 25 May 2022, I emailed Detective Madders asking him to detail how he made the copy of the APH CCTV footage onto the hard drive which was originally provided with the advice brief. On same date, Detective Madders replied.
- 275 **Attached** and marked '**Exhibit 81**' is the email chain.
- 276 On same date, I received an email from Detective Fleming and I replied asking for a statement from Digital Forensic Team who examined the hard drive.
- 277 **Attached** and marked '**Exhibit 82**' is the email chain.
- 278 On 10 June 2022, I sent a follow up email to Detective Fleming regarding the DFT statement.
- 279 **Attached** and marked '**Exhibit 83**' is the email chain.
- 280 On 12 July 2022, I sent up a follow up statement to Detective Fleming and SC Frizzell regarding the DFT statement.
- 281 **Attached** and marked '**Exhibit 84**' is the email chain.
- 282 On 13 July 2022, we received a statement from Alicia [REDACTED].
- 283 On 25 July 2022, I conferred with DFT officers regarding the CCTV footage, via AVL. I recall that the DFT officers explained that they were unable to fully recover what was on the hard drive as it had been used since I had returned it to SACAT. They asked for further clarification as to what exactly I saw to assist them in their review of the hard drive. I told them that I recalled a woman and a man standing at a gate with a buzzer and walked through the gate, away from the camera. I recall telling them that the software was really old and unfamiliar to me. I asked for further review and if needed a supplementary statement with a copy of their notes. I recall that Mr Grieg was in attendance. The usual practice would have been for him to take a file note however I have been unable to locate one.

[REDACTED]
SKYE LEWELLYN JEROME

[REDACTED]
Witness

284 On 15 September 2022, I received an email from DFT Alicia [REDACTED] stating that she could not recover any additional footage. I forwarded the email to DPP.

285 **Attached and marked 'Exhibit 85'** is the email chain.

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

Disclosure (Pre-Trial)

54. Outline the respective responsibilities/roles of the ODPP and AFP/ACT Policing in relation to disclosure of material on the legal representatives for a defendant in a sex offence matter. Provide details of the usual process for the provision of the brief of evidence to the ODPP and the legal representative for a defendant. Include information about the relevant roles/responsibilities of the ODPP and AFP/ACT Policing in this process, the basis for the allocation and whether you perceive there to be any issues, generally, in this allocation. Identify any relevant legislative provisions, **attach** any relevant agreements, policies and/or guidelines or, if already provided, identify the relevant provisions of any such agreements, policies and/or guidelines.

286 In my experience, the correct brief disclosure procedure consists of the following steps:

- (a) Following a 'not guilty' plea entered formally in the Magistrates Court, the ODPP will advise the Informant via email of the 'not guilty' plea and the date for the brief of evidence to be disclosed and next court date.
- (b) The informant usually has between 6 to 10 weeks (time frame set by court) to submit to Judicial Operations, a brief of evidence (a ODPP copy and a Defence copy) for validation.
- (c) Once validated, Judicial Operations then forwards the brief to ODPP (uploading the brief to the iCloud) for the following actions:
 - (i) Check for sensitive/prohibited evidence incorrectly saved to the Defence electronic copy of the brief;
 - (ii) Disclosure to defence;
 - (iii) Record items disclosed and the format of each item disclosed. If

[REDACTED]
SKYE LEWELLYN JEROME

[REDACTED]
Witness

prohibited items are identified on the defence copy, the informant is notified and the AFP remove it from the defence copy of the brief. ODPP do not have the technological resources to make the necessary corrections to the electronic brief.

- 287 In my experience as head of the SOU, the identification of prohibited items being incorrectly labelled and/or left on the defence copy, was not unusual. Checking the electronic briefs is a time-consuming task for ODPP staff, but it is necessary with electronic briefs.
- 288 As at August 2021, ODPP and SACAT had recently discussed this very issue and it was confirmed that ODPP continue to check the briefs prior to disclosure to defence.
- 289 I understand that the informant is responsible for completing and signing the disclosure certificate. Sometimes, the certificate is delayed in being issued.
- 290 The following documents are relevant:
- (a) The Collaborative Agreement 2019 (refer to 'Exhibit 23')
 - (b) Disclosure Certificate (**attached** and marked at 'Exhibit 86')
 - (c) Brief Adjudication Form (I do not have a copy of this)
 - (d) Prosecution Policy ACT 2021 (refer to 'Exhibit 8', Policy 4)
 - (e) Bar Rules 2021 (ss60;66A)
 - (f) *Victims of Crime Act* (ss14F, 29)
 - (g) *Evidence (Miscellaneous Provisions) Act, (Division 4.4.3)*
 - (h) *Evidence Act (Division 3.10.1A)*
- 291 I refer to the Answer to Question 11.

55. State whether you are aware of when the brief of evidence in the matter of *R v Lehrmann* was first served on the legal representatives for Mr Lehrmann (**Brief of Evidence**). Provide details of:

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SKYE LEWELLYN JEROME

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Witness

(a) how you first became aware that the Brief of Evidence was served directly on the legal representatives for Mr Lehrman;

(b) whether you are aware if the DPP/ODPP requested or accepted service in this manner; and

(c) whether service in this manner was unusual.

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

- 292 I became aware that AFP had served the brief of evidence directly on John Korn, Sydney Counsel for Mr Lehrmann, when I was copied into an email chain between DPP and Superintendent Moller on 16 September 2021. From 12 September 2021 to 17 September 2021, I was prosecuting a sexual offence matter of [REDACTED] in the Supreme Court, via AVL.
- 293 **Attached** and marked ‘**Exhibit 88**’ a copy of DPP’s email to Superintendent Moller dated 16 September 2021 and reply on the same date.
- 294 During 16 September 2021 and 21 September 2021, a number of emails were sent between DPP, Ms Priestly and myself regarding the brief as served on Defence and as received by ODPP. On 17 September 2021, I raised in an email to DPP about omissions from the brief that I hoped police had checked the Defence copy of the brief for sensitive information and redacted it. I stated this concern because of my past experience with SACAT briefs.
- 295 On 17 September 2021, Ms Priestly sent an email about her review of the brief identifying issues including sensitive information having been disclosed with redactions which could be unlocked and disclosure of protected confidences such as counselling records. On the same date, DPP asked me to draft an email to Superintendent Moller, outlining the items of concern.
- 296 **Attached** and marked ‘**Exhibit 89**’ is the email chain.
- 297 **Attached** and marked ‘**Exhibit 90**’ is a copy of my draft email.
- 298 On 17 September 2021, DPP then redrafted the email and copied myself into the

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 [REDACTED]
 SKYE LLEWELLYN JEROME

.....
 [REDACTED]
 Witness

correspondence with Superintendent Scott Moller. **Attached** and marked '**Exhibit 91**' is the email.

- 299 On 18 September 2021, there was a text exchange between DPP and myself regarding the AFP direct service of the brief. **Attached** and marked '**Exhibit 92**' is the text exchange.
- 300 DPP then copied myself and others into several emails with Superintendent Moller about the direct disclosure of the brief on defence. **Attached** and marked '**Exhibit 93**' and '**Exhibit 94**' are the email chains.
- 301 To the best of my knowledge, the DPP /ODPP had not requested service of the brief in this manner, as reflected in DPP's email to Superintendent to Moller dated 16 September (refer to '**Exhibit 88**') and the subsequent email exchanges at [294] – [295].
- 302 In my experience in both Queensland and the ACT, service of the brief in this manner was highly unusual. I have never been aware of this occurring in a matter that was being prosecuted by the ODPP in either Queensland or the ACT.

56. Outline your involvement (if any) in communicating with the AFP/ACT Policing in relation to the Brief of Evidence served on the legal representatives for Mr Lehrmann. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 303 Please see Answer to Question 55.
- 304 I also sent follow up emails on behalf of DPP requesting the police statements which were to address the erroneous disclosure.
- 305 **Attached** and marked '**Exhibit 95**', '**Exhibit 96**' and '**Exhibit 97**' are the email chains.

57. Outline any concerns you held (if any) regarding the Brief of Evidence served by AFP/ACT Policing on the legal representatives for Mr Lehrmann. Describe the steps you took (if any) in relation to those concerns and why you took those steps. Include information about your communications with AFP/ACT Policing, the legal representatives for Mr Lehrmann, Ms Higgins and/or the Victims of Crime Commissioner in relation to the service

SKYE LLEWELLYN JEROME

Witness

of the Brief of Evidence on the legal representatives for Mr Lehmann. To the extent those communications were in writing, **attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages. To the extent those communications were verbal, provide the usual particulars and outline:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
- (f) the nature of the discussions.

Attach a copy of any file note or diary note in relation to verbal discussions.

306 Please see Answers to Questions 55 and 56.

307 I was concerned that the complainant's personal details and prohibited documents had been directly provided to Mr Lehmann's legal representatives as dated 17 September 2021 exchanged within the legal team as above and the draft email I prepared for DPP to send to Superintendent Moller as above (refer to 'Exhibit 89' and 'Exhibit 100'). I was concerned about the potential affect this would have on Ms Higgins' mental health.

308 I was also concerned about the unusual course taken by the senior police officers in this case to bypass the Judicial Operations and personally serve the brief on defence counsel. I was concerned by the response by Superintendent Moller regarding the erroneous disclosure (personal service of the brief containing prohibited and sensitive information) of the brief as outlined above (refer to 'Exhibit 93' – 'Exhibit 97')

309 I spoke to DPP about all of these concerns over the coming weeks and months.

310 On 31 January 2022, DPP advised Ms Priestly and myself via email that he arranged a face to face meeting with Ms Higgins. DPP, myself, Ms Priestly, Ms Higgins and Ms Yates attended the meeting held on 3 February 2022 in the ODPP Conference room, level 2. I recall that DPP was the dominant speaker and the topic was about the

SKYE LLEWELLYN JEROME

Witness

erroneous disclosure of the brief of evidence. I recall that DPP informed Ms Higgins of the nature of her rights under the *Victims of Crimes Act* and I saw DPP hand over a bundle of documents to Ms Higgins. I had not seen those documents before DPP had handed them to Ms Higgins and I do not know the contents. I do not recall DPP indicating to me before the meeting that he proposed to provide any documents to Ms Higgins during the meeting. I recall that Ms Priestly took notes during the meeting.

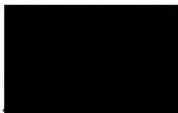
- 311 I left sometime during the meeting to attend to another matter as I had become aware that another complainant, with whom I was scheduled to meet shortly and had arrived early, was standing on the main road outside the ODPP yelling my name abusively at me which could be heard in the conference room. I did not return to the meeting with DPP and others.
- 312 **Attached** and marked '**Exhibit 98**' is the email chain. **Attached** and marked '**Exhibit 99**', is Ms Priestly's file note.

58. State whether '*protected confidence*' material within the meaning of s 79A of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) regarding Ms Higgins was provided to the ODPP (**Counselling Records**). If 'yes', outline:

- (a) your knowledge (if any) as to circumstances in which the Counselling Records were obtained;
- (b) when the Counselling Records were provided to the ODPP;
- (c) whether you reviewed the Counselling Records and, if so, when and for what purpose; and
- (d) whether the ODPP retained a copy of the Counselling Records and, if so, why.

- 313 '**Protected confidence**' material within the meaning of s 79A of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) regarding Ms Higgins was provided to the ODPP (**Counselling Records**).
- 314 On 17 September 2021, I received an email from Ms Priestly stating that our copy (disclosed to ODPP on 6 August 2021) had sensitive information, including Her Time Counselling Records and Canberra Rape Crisis Centre Records (refer to '**Exhibit 89**').

 SKYE LEWELLYN JEROME

 Witness

- 315 I recall checking the documents to ensure that they were in fact ‘protected confidence’ material within the meaning of s79A of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*. I recall that I quickly scanned the documents, noting the headlines and dates. I don’t recall reading any other content of the documents.
- 316 I understand that the documents were removed at some point from the ODPP electronic copy of the brief. I was not involved in that exercise.
- 317 On 24 September 2021, I was copied into an email from Ms Yates to DPP forwarding an email exchange that day between Ms Yates and Assistant Commissioner Peter Crozier, a Deputy Chief Police Officer (ACT) discussing communicating the breach of privacy issue to Ms Higgins. DPP copied me on his reply to Ms Yates attaching the counselling records.
- 318 **Attached** and marked ‘**Exhibit 100**’ is the email chain (without attachments).
- 319 I recall sometime in 2022, DPP asked me orally to check to see whether another document fell within the meaning of s79A of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* regarding Ms Higgins. I recall opening the document electronically on my computer and looking at the headings, date and author. I recall that I observed the date of the counselling session was pre- offence. I then looked up s79A of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* to check that it included period prior to the alleged offence. I then reported to DPP orally that I thought the document was a ‘protected confidence’ within the meaning of s79 A of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*. I don’t recall what happened to this document.

59. Outline your involvement (if any) in the preparation of any disclosure certificate prepared in the matter of *R v Lehrmann (Disclosure Certificates)*. State when any Disclosure Certificates were provided to the ODPP. **Attach** a copy of any Disclosure Certificates provided to the ODPP and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 320 The disclosure certificate is the responsibility of the AFP, particularly, the informant.



SKYE LEWELLYN JEROME



Witness

In this matter, AFP requested meetings with the ODPP regarding the disclosure certificate. DPP had appointed Ms Priestly as the main contact for AFP regarding the disclosure certificate (refer to 'Exhibit 93').

- 321 To the best of my knowledge, the first meeting regarding the disclosure certificate was held on 8 October 2021. I refer to the Answer to Question 52 at [207].
- 322 On 10 February 2022, there was a further meeting where the disclosure certificate occurred. I refer to the Answer to Question 52 at [212].
- 323 On 28 February 2022, there was a further meeting where the disclosure certificate occurred. I refer to the Answer to Question 52 at [214].
- 324 On 20 April 2022, there was a further meeting where the disclosure certificate occurred. I refer to the Answer to Question 52 at [216].
- 325 On 16 June 2022, there was a further meeting where the disclosure certificate occurred. I refer to the Answer to Question 43 at [175] (repeated in the Answer to Question 52 at [237]).

60. State whether you were involved in any communications with, or the provision of any written or oral advice to AFP/ACT Policing regarding the Disclosure Certificates. In providing your response, describe any communications regarding amendments to the Disclosure Certificates and/or claims of legal professional privilege regarding documents listed in the Disclosure Certificates. Include details about who was involved in those communications, the purpose of the communications, any advice provided and the basis for any advice provided. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 326 I participated in the meetings set out in the Answers to Question 59. I listened to the AFP concerns and took these to DPP who determined the issues and provided the advice to AFP in relation to this.

61. State whether you were involved in any communications with the DPP, ODPP staff and/or AFP/ACT Policing (including AFP Legal) regarding requests for advice and/or advice provided to the AFP/ACT Policing (if any) in relation to the "investigative review documents" and whether the AFP/ACT Policing could claim legal professional privilege over these documents. Include details of the substance of that advice, the basis of the views


 SKYE LEWELLYN JEROME


 Witness

expressed in any advice provided and whether it was provided orally or in writing. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of the usual particulars.

327 Please see the Answer to Question 43 at [175] regarding the meeting on about 16 June 2022.

328 On 20 June 2022, Ms Priestly forwarded to myself and DPP an email from Stephanie [REDACTED] regarding the investigative review documents. On 21 June 2022, I emailed DPP and Ms Priestly stating that my view is that it wasn't disclosable. On same date, DPP also sent his view regarding the investigative review documents being subject to LPP.

329 **Attached** and marked '**Exhibit 101**' and '**Exhibit 102**' are the email chains.

330 On 21 September 2022, DPP informed me via text message that the AFP had released the 'Moller Document'. I understood this was a reference to a document pertaining to the 'Investigative Review Documents'.

62. State whether you were involved in any communications with the DPP, AFP/ACT Policing and/or the legal representatives for Mr Lehrmann in relation to the disclosure of all, or part, of Ms Higgins' and/or Mr Lehrmann's Cellebrite records. Include details about who was involved in those communications, the purpose of the communications and what was discussed. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

331 Please see the Answers to Questions 52 and 59.

332 To the best of my knowledge, DPP, myself, Mr Grieg and Ms Pitney had a couple of meetings where we discussed the potential disclosure of Ms Higgins fully unredacted Cellebrite report to defence. We discussed the High Court decision of *Edwards v The Queen* [2021] HCA 28 and how arguably that did not apply to the complainant's phone. We discussed the ODPP Disclosure Policy. We shared the same concern that quite likely sensitive and personal information would be disclosed if not redacted (for

[REDACTED]

SKYE LLEWELLYN JEROME

[REDACTED]

Witness

example, bank details, passwords/usernames, sensitive photos/information of others, location of photographs taken that could lead to identification of Ms Higgins' address/family members' addresses etc.)

- 333 At around this time, the issue of unredacted Cellebrite reports generally in sexual offence matters was raised with the Directorate by myself and [REDACTED] I recall that Mr Whybrow had previously given an undertaking to view the full unredacted Cellebrite report of a complainant in a different sexual assault matter. I recall that DPP decided that this was not best practice.
- 334 I recall that the Directorate agreed with the following general approach for informants of sexual assault matters: the informant may want to search for the following relevant items within the Cellebrite report:
- (a) Phone activity prior, during and after the alleged sexual assault.
 - (b) Electronic communication between the parties, prior, during and after the alleged sexual assault.
 - (c) Any reference made by either party about the allegation to another person or on electronic record, up until the Cellebrite is downloaded.
 - (d) Anything else that is relevant to the investigation.
- 335 It remains my view that AFP were responsible for the Cellebrite report exhibit for Ms Higgins and should have redacted all irrelevant information prior to disclosure to the ODPP.
- 336 To the best of my knowledge, I sent the following emails to the legal representatives arranging the full disclosure of Mr Lehrmann's unredacted and unlocked Cellebrite records.
- 337 **Attached** and marked '**Exhibit 103**' is the email chain dated 28 September 2022.
- 338 To the best of my knowledge, sometime after a legal argument or mention in September 2022, I was present in the court room standing next to DPP and Mr Whybrow. I recall Mr Whybrow and DPP discussing the disclosure of Ms Higgins

[REDACTED]
SKYE LLEWELLYN JEROME

[REDACTED]
Witness

full and unredacted Cellebrite report. I also recall at this time I intervened in the discussion after I heard Mr Whybrow say something insulting about DPP (but I cannot recall what was said). Mr Whybrow was wanting unfettered access to the Higgins' Cellebrite report. I recall that I referred to the *Victims of Crime Act* and the DPP Disclosure Policy. DPP and myself both expressed concern to Mr Whybrow about disclosing sensitive and irrelevant material in the report, if not first redacted

339 I recall that the issue of Ms Higgins' fully unredacted Cellebrite report was briefed out to Mr Keegan Lee, another barrister in the ACT, to handle. I understood that it was briefed out because of the timing of the application being too close to the trial.

340 I recall the issue of Ms Higgins' unredacted Cellebrite report was discussed in a meeting on 16 June 2022 as outlined in Answer to Question 43 at [175].

The trial in the matter of *R v Lehrmann*

63. State whether you are aware of any communications from any witnesses (including but not limited to Ms Fiona Brown and/or Ms Linda Reynolds) during the trial of *R v Lehrmann* in relation to any witness who was being called to give evidence or had given evidence. If so, provide details of when you became of any such communications, how you became aware any such communications and what steps (if any) you took in relation to those communications.

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


341 I refer to the Answer to Question 52, paragraphs [242]-[244] regarding my conference with Senior Constable Frizzell on 13 October 2022.

342 I recall discussing the disclosure of Senior Constable Frizzell's email regarding the Phillip Medical Centre with DPP on or around 13 October 2022 and/or 14 October 2022. This was raised by myself in DPP's office.

343 On 14 October 2022, Detective Madders sent an email to Mr Grieg and Ms Pitney stating that he had attached Senior Constable Frizzell's email regarding the Phillip Medical Centre enquiries and that 'the bosses just wanted to confirm it had been seen and passed onto defence'. That email was recalled by Detective Madders. A further

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email was sent by Detective Madders which again attached the email regarding the Phillip Medical Centre enquiries and stated that ‘he was just checking that it was received and passed onto defence’.

- 344 On 17 October 2022, Mr Grieg forwarded both emails from Detective Madders referred to at [344] above to myself, DPP and Ms Pitney. **Attached** and marked ‘**Exhibit 104**’ and ‘**Exhibit 105**’ are the email chains.
- 345 On 17 October 2022, I recall DPP asked me to email him an extract of the relevant evidence given by Senior Constable Frizzell that she provided in court compared to the additional research stated in her email about the Phillip Medical Centre enquiries. I did this immediately as I wanted the email disclosed particularly given Senior Constable Frizzell was my witness. I recall walking into DPP’s office after sending this email and recommending that ODPP disclose the email to defence. I recall DPP authorised the disclosure during this discussion. I subsequently verbally instructed Mr Grieg to disclose the email to defence which I understood he did on 17 October 2022 at 9:15am. **Attached** and marked ‘**Exhibit 106**’ and ‘**Exhibit 107**’ are the emails.
- 346 On 14 October 2022, I was copied into an email from Fiona Brown to Ms Pitney and Mr Grieg after Ms Brown had completed her evidence and been excused. Ms Brown had not been one of my witnesses. I can’t recall taking any steps in relation to this email. The topic of this email was raised in a complaint to the Bar Association referred to in media articles earlier this year. I discussed this email with DPP after the media articles. Rereading this email and the transcript after that article, Ms Brown had already given evidence about the matters the subject of her email. **Attached** and marked ‘**Exhibit 108**’ is the email. **Attached** and marked ‘**Exhibit 109**’ is a text message exchange.
- 347 Ms Priestly and Mr Grieg were updating DPP and myself about Ms Reynolds’ availability for trial. I understood that ODPP had to communicate through Ms Reynolds’ lawyers and that Ms Reynolds was in Rwanda, South Africa during the trial. I was copied into several emails. **Attached** and marked ‘**Exhibit 110**’ and

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SKYE LLEWELLYN JEROME

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'Exhibit 111' are the email chains.

348 On 15 October 2022, DPP forwarded to myself an email which included a PDF attachment which contained the text messages sent by Ms Reynolds to Mr Whybrow. Attached and marked 'Exhibit 112' is the email. I understood that Mr Whybrow had provided the PDF attachment to DPP.

64. List any unfavourable/hostile witnesses in the trial in the matter of *R v Lehrmann*. Provide details as to why those witnesses were declared unfavourable/hostile, the process of how the witnesses became unfavourable/hostile, any views expressed by the DPP to you in relation to these witnesses and your views in relation to these witnesses (if any). Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of the usual particulars.

349 Leave was granted on 17 October 2022 by Chief Justice McCallum under s38 of the *Evidence Act 2011* to cross-examine the following witnesses, in effect as 'unfavourable witnesses':

- (a) Michaelia Cash
- (b) [REDACTED]
- (c) Linda Reynolds

350 Section 38 *Evidence Act 2011* states the following about 'Unfavourable Witnesses':

(1) A party who called a witness may, with the leave of the court, question the witness, as though the party were cross-examining the witness, about—

(a) evidence given by the witness that is unfavourable to the party; or

(b) a matter of which the witness may reasonably be supposed to have knowledge and about which it appears to the court the witness is not, in examination-in-chief, making a genuine attempt to give evidence; or

(c) whether the witness has, at any time, made a prior inconsistent statement.

(2) Questioning a witness under this section is taken to be cross-examination for this Act (other than section 39 (Limits on re-examination)).

(3) The party questioning the witness under this section may, with the leave of the court, question the witness about matters relevant only to the witness's credibility.

Note The rules about admissibility of evidence relevant only to credibility are set out in pt 3.7.

(4) Questioning under this section must take place before the other parties cross-examine the witness, unless the court otherwise directs.

[REDACTED]
 SKYE LLEWELLYN JEROME

[REDACTED]
 Witness

- (5) If the court gives a direction under subsection (4), the order in which the parties question the witness must be as the court directs.
- (6) Without limiting the matters that the court may take into account in deciding whether to give leave or a direction under this section, it must take into account—
- (a) whether the party gave notice at the earliest opportunity of the party's intention to seek leave; and
 - (b) the matters on which, and the extent to which, the witness has been, or is likely to be, questioned by another party.
- (7) A party is subject to the same liability to be cross-examined under this section as any other witness if—
- (a) a proceeding is being conducted in the name of the party by or on behalf of an insurer or someone else; and
 - (b) the party is a witness in the proceeding.

351 The word, 'unfavourable' in s38(1)(1), does not mean 'adverse'. It means 'not favourable'. *R v SH* [2011] ACTSC 198 [29] per Refshauge J. The word 'unfavourable' should be given a broad meaning thereby ensuring that in the course of any criminal trial, the court would not be denied evidence as to any relevant issue and would not be denied the opportunity for that evidence to be appropriately tested. *R v Le* [201] NSWSC 174 [15] per McHugh J.

352 I recall that on 17 October 2022, DPP and I had a brief conversation as to how to deal with Ms Cash's and Ms Reynold's evidence. DPP was of the view that he would likely make an unfavourable witness application in respect of Ms Cash and Ms Reynolds because their anticipated evidence was completely different to Ms Higgins, regarding the timing and detail of the complaint. DPP and I both agreed that there was an additional reason to make an application under s38 for Ms Reynolds due to her text messages to Mr Whybrow and her partner's presence during Ms Higgins' cross examination.

353 The DPP made an application under s38(1)(a) and (3) in respect of Ms Cash, on the basis that her evidence regarding the timing of the complaint made to her was very different to when Ms Higgins stated that she first told Ms Cash. This application was not opposed by Mr Whybrow. The application was granted by Chief Justice McCallum.



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Witness

- 354 During the morning tea break, I recall that DPP and myself conferred with [REDACTED] Chief of Staff for Ms Cash, and his legal representative on level 1 in a breakout room of the Supreme Court. DPP and I asked [REDACTED] about a covert recording of a conversation between Ms Higgins and [REDACTED] recorded by Ms Higgins. I recall that either the DPP or myself specifically asked [REDACTED] what his understanding of the word 'assault' was that had been spoken by Ms Higgins in covert recording. I recall that [REDACTED] said he didn't know or couldn't recall. DPP asked [REDACTED] about his recollection of first being told by Ms Higgins regarding the complaint. I recall that [REDACTED] said that his memory was that he found out on 5 February 2021. These answers were consistent with his prior evidence. DPP and I reminded [REDACTED] on the importance to tell the truth when giving evidence.
- 355 Whilst walking back into the court room, DPP decided to take the evidence of [REDACTED] instead of myself. We agreed that it was likely DPP would make an application under s38 in respect of [REDACTED] as his evidence was also inconsistent with Ms Higgins regarding the timing of the complaint.
- 356 The DPP made an application under s38(1)(a) and (4) in respect of [REDACTED] on the basis that his evidence regarding the timing of the complaint made to him was very different to when Ms Higgins stated that she first told [REDACTED]. Katrina Musgrove, Junior Counsel for Defence, did not object to the application. Chief Justice McCallum allowed the application.
- 357 Later in the day, DPP made an application under s38(1)(a) and (4) in respect of Ms Reynolds, on the basis that Ms Reynold's evidence as to her knowledge on 1 April 2019 was different to Ms Higgins' evidence. Mr Whybrow did not object to this part of the application. Chief Justice McCallum allowed the application. Later during evidence, Chief Justice McCallum permitted DPP to cross examine on wider issues relating to credit.

[REDACTED]
SKYE JEWELLYN JEROME

[REDACTED]
Witness

Interactions with Ms Higgins

65. State whether, in your experience, it is usual for the DPP and/or the ODPP to discuss a sex offence investigation/prosecution directly with the complainant. Provide a basis for your views.

- 358 Pursuant to Director's Instruction 13. (refer to 'Exhibit 4'), the allocated lawyer must conduct a meet and greet with the complainant of a sexual offence within the first four weeks of receiving the file. At this initial meeting, the prosecutor will discuss and answer questions regarding the trial process, special measures available, support services available, victim rights, communication options and witness expectations.
- 359 In my experience, it is not unusual for the prosecutor to discuss procedure, special measures available, time estimates, or the complainant's evidence with the complainant.
- 360 In this matter, I understood that the ODPP was obliged to inform Ms Higgins that certain private information had been erroneously disclosed on Mr Lehrmann's legal counsel. This obligation arose pursuant to s14C,E,F *Victims of Crime Act*. This was the subject of emails between DPP and Ms Yates dated 24 September 2021 (refer to 'Exhibit 100') and the meeting on 3 February 2022 (refer to 'Exhibit 98' and 'Exhibit 99').
- 361 Also, in this matter, AFP had exposed Ms Higgins to several other pieces of evidence and asked her to comment. I was not surprised when DPP conferred on some of these matters during conferences in preparation for trial. As a general rule, witnesses should not be exposed to other pieces of evidence and asked to comment as it can contaminate their evidence.

66. Outline whether you are aware of the DPP directly meeting or communicating with Ms Higgins in relation to the Investigation and/or the matter of *R v Lehrmann* up to, and until the date of this subpoena. If you are aware of any interactions, provide details about those interactions. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments / invitations, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars. In chronological order, outline your direct interactions with Ms Higgins (if

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any) in relation to the matter of *R v Lehrmann* up to, and until the date of this subpoena. Include information about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
- (g) the nature of the discussions.

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

362 I recall that in the week commencing 6 September 2021, DPP advised me verbally that he had arranged to meet with Ms Higgins that week. On 10 September 2021, DPP suggested that I focus on preparing the trial of [REDACTED] which had been re-allocated to me from a colleague who had become unavailable at short notice.

363 **Attached** and marked '**Exhibit 113**' is the text message.

364 On or about 16 September 2021, DPP advised that he had conducted a meet and greet with Ms Higgins. I was not present in the meeting as I was involved in the trial of [REDACTED]

365 Please refer to '**Exhibit 28**' for a copy of the email.

366 As described at [310] – [312] in response to Question 57, on 31 January 2022, DPP advised by email that he had organised a meeting with Ms Higgins and Ms Yates that was held on 3 February 2022.

367 On 1 April 2022, Ms Yates texted DPP and myself to arrange a time to speak with the complainant. I do not recall that I was present for the call that took place that day.

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SKYE LEWELLYN JEROME

[REDACTED]
Witness

- 368 **Attached** and marked '**Exhibit 114**' is the text message.
- 369 On 29 April 2022, DPP contacted Ms Higgins via telephone. I recall that DPP used his mobile phone to ring David Sharaz's mobile phone and linked in Ms Yates. I recall that myself, DPP, Ms Priestly and Mr Grieg was present for the call. I recall that DPP updated the complainant on the legal argument and passed on the message from the Chief Justice to cease talking about the matter on any public forum.
- 370 **Attached** and marked '**Exhibit 115**' is Ms Priestly's file note.
- 371 On same date, Ms Yates sent a text to DPP and I about the conference. **Attached** and marked '**Exhibit 116**' is the text message.
- 372 On 17 May 2022, Ms Higgins, Mr Sharaz (Ms Higgin's fiancé) and Ms Yates attended ODPP office for a trial preparation conference that had been arranged by Ms Priestly or Mr Grieg. I took notes during this conference for my own trial preparation. I recall that the conference commenced in the conference room with everyone present: DPP, myself, Mr Grieg, Ms Priestly, Ms Higgins, Mr Sharaz, a counsellor attached to Mr Sharaz and Ms Yates. DPP was the main speaker in the beginning and he only spoke about trial and court procedure generally.
- 373 Mr Sharaz requested to speak to myself privately about procedure so Mr Sharaz, ■■■■■■■■■■, Mr Grieg and myself met in my office. I answered Mr Sharaz's questions about procedure, he left the building, and I made a file note after the meeting. I recall that Mr Grieg also made a file note during the meeting.
- 374 Mr Grieg and I then re-joined the conference with DPP, Ms Priestly, Ms Higgins, and Ms Yates. Whilst I was present, DPP and Ms Higgins were the main speakers. I continued to make notes for my own preparation for trial. This included observations that I made during the playing of the CCTV. Throughout the conference, I recall that Ms Priestly and Mr Grieg both took notes on their laptops.
- 375 Please refer to '**Exhibit 34**' for the file note I created on 17 May 2022 regarding the conferences with Ms Higgins and Mr Sharaz. **Attached** and marked '**Exhibit 117**' is Ms Priestly's file note. I cannot locate Mr Grieg's file note of meeting with Mr

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 SKYE LEWELLYN JEROME

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Sharaz.

376 I am aware that on 23 September 2022, a conference was held between DPP, Mr Grieg and Ms Higgins. I was not present for the conference as I was in court for another matter.

377 **Attached** and marked '**Exhibit 119**' is Mr Grieg's file note.

378 On 3 October 2022, DPP, myself, Mr Greig, Ms Pitney met with Miss Higgins and Ms Yates. I recall that Mr Grieg took notes. I am unable to locate the file note prepared by Mr Greig.

379 I have not addressed matters the subject of Court orders prohibiting publication, which orders have been the subject of separate communication with the Board.

67. State whether, at any time between 29 June 2021 and 2 December 2022, you became aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information, including, but not limited to any discussions you had at that time with the DPP and/or the AFP/ACT Policing regarding Ms Higgins mental health. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

380 On or around 15 February 2022, DPP informed me verbally that Ms Higgins was [REDACTED]
[REDACTED] I can't recall that he gave me any further details about this. Shortly after the conversation with DPP, I sent a text to Ms Yates.

381 [REDACTED]

382 On 5 April 2022, I was copied into emails from Ms Priestly to DPP and myself referring to Ms Higgins' mental health plan and whether that could be disclosed. DPP authorised disclosure. I was unable to read the actual mental health plan because the attachment was blurry.

383 [REDACTED]

384 Upon receipt of Ms Wilkinson's correspondence with Mr Sharaz, after it was produced on subpoena in September 2022, I learnt that [REDACTED]

[REDACTED]
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SKYE LEWELLYN JEROME

[REDACTED]
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[REDACTED]

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[REDACTED]

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[REDACTED]

Interactions with the Victims of Crimes Commissioner

68. Outline your observations of the Victims of Crime Commissioner’s involvement in the matter of *R v Lehrmann* including but not limited to providing support to Ms Higgins and the evidence provided by the Victims of Crime Commissioner in relation to this matter. Provide details about whether the Victims of Crime Commissioner’s involvement was unusual in those instances and the basis of your views. Provide examples where appropriate.

[REDACTED]

SKYE LEWELLYN JEROME

[REDACTED]

Witness

- 391 My observations of Ms Yates' involvement in the matter of *DPP v Lehrmann* regarding providing support to Ms Higgins include the following:
- (a) Ms Yates acted as an advocate and as a support for Ms Higgins in communications between AFP/ACT Police and Ms Higgins.
 - (b) Ms Yates acted as an advocate and as a support for Ms Higgins in meetings and other communications with DPP and ODPP.
 - (c) Ms Yates acted as an as a support for Ms Higgins before, during and after court.
- 392 Prior to *DPP v Lehrmann*, I had only engaged with Ms Yates on two other sexual offence matters as outlined at [87] and in a different prosecution as outlined at [93]. I did not have a sufficient basis to form a view as to whether Ms Yates' involvement was unusual, bearing in mind the high profile of this prosecution and the seniority of the others involved in the prosecution (DPP as lead prosecutor and Superintendent Moller as the Informant in the matter)
- 393 As I have outlined at [116], on 22 September 2021, AFP interviewed Ms Heidi Yates. I was not aware prior to the interview that Ms Yates was to be interviewed. Ms Yates was not called as a witness during the trial. In my experience, support people, in sexual offence matters, are not usually interviewed by police prior to them providing support to the complainant, at trial.
69. Outline when you became aware of the DPP's interactions with the Victims of Crime Commissioner in relation to the matter of *R v Lehrmann*, including interactions prior to, during, and after the trial. Include information about how you became aware and what your impressions of the interactions between the DPP and the Victims of Crime Commissioner were (with reference to the duties of both the DPP and the Victims of Crime Commissioner). **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes.
- 394 DPP and myself were aware from May 2021 to go through Ms Yates if we wanted to contact Ms Higgins. To the best of my recollection, I became aware on 10 August 2021 that DPP had met with Ms Yates in relation to the matter of *DPP v Lehrmann*.



SKYE LLEWELLYN JEROME



Witness

- On 10 August 2021, DPP advised in an email that he had met with Ms Yates on 9 August 2021.
- 395 **Attached** and marked '**Exhibit 127**' is the email dated 10 August 2021.
- 396 On 25 August 2021, DPP copied myself into an email he sent to Ms Yates regarding advice to Ms Higgins' participation in the Gaetjen's inquiry.
- 397 **Attached** and marked '**Exhibit 128**' is the email chain including Ms Yates' reply the following day.
- 398 On 16 September 2021, I was copied into an email from Ms Yates to DPP querying Mr Lehrmann's bail address on behalf of Ms Higgins.
- 399 **Attached** and marked '**Exhibit 129**' is the email chain.
- 400 On 24 September 2021, I was copied into an email from Ms Yates to DPP discussing communicating the breach of privacy issue to Ms Higgins.
- 401 Refer to '**Exhibit 100**'.
- 402 On 5 November 2021, I was copied into an email from Ms Yates to DPP, regarding court updates to be passed on to Ms Higgins.
- 403 **Attached** and marked '**Exhibit 130**' is the email chain.
- 404 On 1 April 2022, Ms Yates texted DPP and myself to arrange a time to speak with the complainant.
- 405 Refer to '**Exhibit 114**' for the text message.
- 406 On 14 April 2022, I was copied into an email from Ms Yates to DPP, regarding contact details of her staff in her absence.
- 407 **Attached** and marked '**Exhibit 131**' is the email chain.
- 408 On 29 April 2022, Ms Yates texted DPP and myself thanking us for speaking with Ms Higgins.
- 409 Refer to '**Exhibit 116**' for the text message.

SKYE LEWELLYN JEROME

Witness

- 410 On 17 May 2022, Ms Yates texted DPP and myself informing us that Ms Higgins was taking a break from the conference with us.
- 411 On 20 June 2022, Ms Yates texted DPP and myself with a recording of the Logies Speech.
- 412 On 23 June 2022, Ms Yates texted DPP and myself about the October trial listing.
- 413 On 3 October 2022, Ms Yates texted DPP and myself, thanking us for our time at the conference with Ms Higgins.
- 414 **Attached** and marked '**Exhibit 132**' are the text exchanges between 17 May 2022 – 3 October 2022.
- 415 On 27 June 2022, I was copied into an email from Ms Yates to DPP, regarding a publication written by the Australian.
- 416 **Attached** and marked '**Exhibit 133**' is the email.
- 417 On 14 October 2022, DPP texted Ms Yates and myself, offering an alternative entry point for Ms Higgins.
- 418 On 17 October 2022, DPP texted Ms Yates and myself, advising that closing submissions would be made the following day.
- 419 On 02 December 2022, Ms Yates texted DPP and myself, thanking us.
- 420 Refer to [390] at '**Exhibit 126**' for the text message exchange between 7 October 2022 and 2 December 2022.
- 421 My impression of the interactions that I witnessed between DPP and Ms Yates were professional. As I understood the situation, DPP, as lead counsel, was required to communicate with Ms Yates, the support person, in order to communicate with Ms Higgins.

70. In chronological order, outline your interactions with the Victims of Crime Commissioner in relation to the matter of *R v Lehrmann* up to, and until the date of this subpoena. Include information about:

- (a) the person who initiated the meeting/discussion;

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SKYE LLEWELLYN JEROME

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- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
- (g) the nature of the discussions.

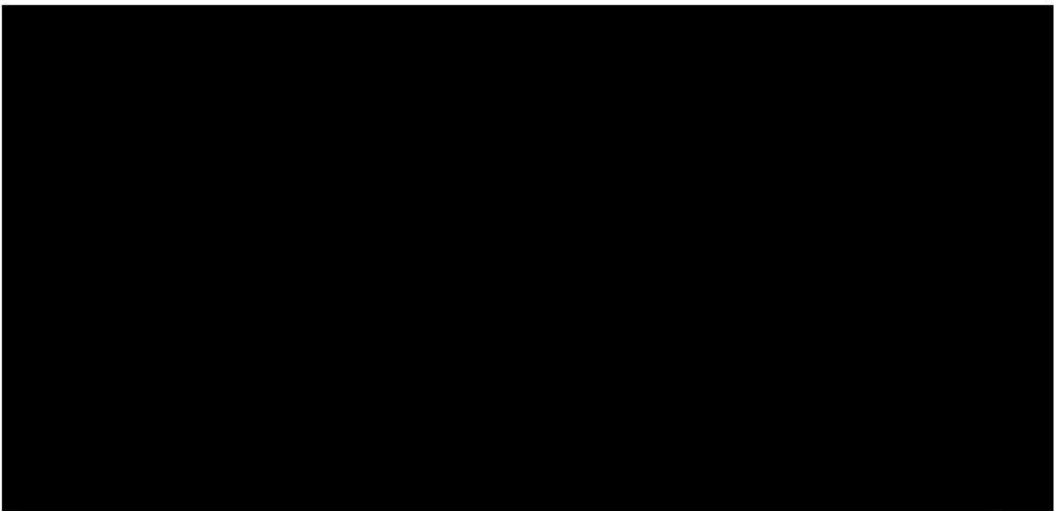
Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

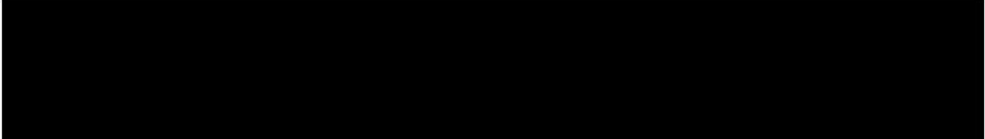
422 I refer to all of the emails I have cited to in the Answer to Question 69.

423 The following are in addition to those emails.

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 SKYE LLEWELLYN JEROME


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431 On 4 October 2022, I texted Ms Yates about the progress of the trial and closed court application.

432 On 5 October 2022, I texted Ms Yates asking her to call me and informed her that a camera crew were out the front.

433 Also on 5 October 2022, I rang Ms Yates to advise Ms Higgins if Ms Higgins gave evidence in the court room, it was likely that her evidence would not be recorded, to ensure that Ms Higgins was aware of the need to give evidence again in a retrial. Ms Yates rang me back and stated that Ms Higgins understood the consequence if she gave evidence in the court room.

434 Please refer to '**Exhibit 41**' for the file note.

435 On same date, I texted Ms Yates asking where Ms Higgins and herself were as court was commencing.

436 On 6 October 2022, Ms Yates texted myself asking to save a seat for her in the public gallery.

437 On 7 October 2022, I texted Ms Yates advising that we (the court) were waiting for them.

438 **Attached** and marked '**Exhibit 135**' the text exchange dated 4 October 2022 – 7 October 2022.

439 On 12 October 2022 at 4:35pm, Ms Yates rang me and asked about the reason why the trial was expected to conclude at a particular point in time. I said it could be seen as inappropriate to tell her the reason why so I wouldn't comment. I then wrote a file note and advised DPP. I recall that DPP agreed.

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SKYE LEWELLYN JEROME

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Witness

- 440 Please refer to 'Exhibit 42' for the file note dated 12 October 2022 at 4:35pm.
- 441 On 14 October 2022, Ms Yates texted myself advising that she and Ms Higgins were waiting outside the court room.
- 442 On 19 October 2022, I texted Ms Yates, stating that the summing up process had almost finished and other processes.
- 443 On same date, I missed a call from Ms Yates and she texted stating no need to return call.
- 444 On 20 October 2022, I texted Ms Yates regarding a welfare check on herself and stating I would text her if the jury came back with a verdict.
- 445 Attached and marked 'Exhibit 136' the text exchange dated 14 October 2022 – 20 October 2022.

Conduct of the AFP/ACT Policing Officers at the Trial of *R v Lehrmann*

71. Outline your views as to the conduct of the AFP/ACT Policing officers during the trial of *R v Lehrmann* including:

- (a) in their dealings with the DPP in relation to his duty to decide whether to continue and to discontinue criminal proceedings against Mr Lehrmann;
- (b) in their dealings with the legal representatives for Mr Lehrmann; and
- (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

Provide details of the relevant officers' names, the basis for your views and provide examples, where appropriate. Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 446 I am unaware of any dealings between DPP and the AFP/ACT Police officers in relation to the DPP's duty to decide whether to continue or discontinue the criminal proceedings against Mr Lehrmann. I do not recall being included in any correspondence with AFP about the discontinuance of the matter.
- 447 During the trial, I observed Detective Superintendent Moller, Detective Inspector Boorman, Detective Madders speak with defence during the breaks on at least 2

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 Witness

occasions. The first time I witnessed the interaction was when I saw Mr Whybrow attempt to extend his hand to shake Detective Superintendent Moller's hand but withdrew his hand quickly. The four men stood talking for several minutes. I recall that DPP, Mr Grieg and Ms Pitney and I were all standing outside of court and I saw the three male officers interact with the defence team. Someone in our group made a joke about the police giving advice to defence. I think this occurred in the beginning of the second week of the trial.

- 448 The second occasion was later in the second week, Thursday or Friday. I recall seeing Superintendent Moller seated in the back row on the prosecution side, near where Minister Reynold's partner was described to be seated. I recall that Superintendent Moller spoke briefly with Mr Whybrow in the back of court, as Mr Whybrow was leaving the court room.
- 449 I was disappointed that the police seemed to be talking to the defence rather than the prosecution which I felt would have been obvious to everyone waiting outside the court room in relation to the first instance in particular. This is contrary to my usual experience in the ACT and Queensland of the engagement between the prosecution legal team and police at court during a trial.
- 450 The fact that Senior Constable Frizzell followed up on a defence request for further investigation without waiting for me to relay the views of the DPP as lead counsel was similarly unusual. I refer to the Answer to Question 52 at [244] – [425].
- 451 Other than the Freedom of Information document, I am unaware of who provided documents to the media, following 2 December 2022.

72. Outline your communications (if any) with AFP/ACT Policing during the trial. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications including but not limited to:

- (a) whether you requested tasks to be actioned by any AFP/ACT Policing officers. If so, provide details including to whom the request was made to, what the task involved and the approximate date the request was made;

[REDACTED]

SKYE JEWELLYN JEROME

[REDACTED]

Witness

(b) any communications from the AFP/ACT Policing in relation to enquiries regarding Ms Higgins' appointments with a Medical Centre;

(c) interactions between the AFP/ACT Policing and the legal representatives for Mr Lehmann during the trial; and

(d) the provision of information by the AFP to any persons in relation to the matter of *R v Lehmann*. Provide details about whether AFP/ACT Policing's communication and involvement with the ODPP during the trial was unusual and the basis of your views. Provide examples where appropriate

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

- 452 At the beginning of the trial, Detective Sergeant Lauren Gilliland advised me that she would be seated in the back of the courtroom as she was reporting back to AFP Command.
- 453 To the best of my recollection, the only communication that I recall having with AFP/ACT policing during the trial was with Senior Constable Emma Frizzell. I refer to [451] in Answer to Question 71 regarding Senior Constable Frizzell's enquiries on 13 October 2022 in connection with the Phillip Medical Centre.

Discharge of the Jury and the Retrial

73. State when and how you became aware of the circumstances giving rise to the discharge of the jury in the trial of *R v Lehmann*. Include information about who informed you, what you were informed of, whether you were told to disclose the information to any persons and whether you disclosed the information to any persons. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 454 On 26 October 2022, at about 6pm, DPP telephoned me. DPP advised me that he and Mr Whybrow had earlier been called into Chief Justice McCallum's chambers. DPP told me that Chief Justice McCallum informed both counsel that the Sheriff officer/s had found an article in the jury room and that this would likely mean that the juror would be discharged in the morning. DPP directed me to not tell anyone about the likely discharge of the juror. I agreed that I would not tell anyone. I took DPP's



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direction to not tell anyone to mean that I could not tell anyone else in the legal team including Mr Grieg. DPP advised me that he was about to drive to the airport for a flight from Canberra to Perth for a meeting and that he would be available online tomorrow morning.

74. Outline when and how you became aware of any persons, apart from the DPP and the legal representatives for Mr Lehmann, had become aware of the circumstances giving rise to and/or the decision to discharge the jury. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

455 I did not advise anyone of the juror information until after I received a telephone call from Mr Leon Zwier on 27 October 2022 at about 9:12am. I recall that Mr Zwier said that he or Ms Yates had spoken to/received a message from DPP and that they were told that the jury would be discharged that morning. I was surprised by Mr Zwier saying that he knew about the anticipated discharge of the juror because DPP in his call to me referred to in [455] had said he was telling me in confidence. In the moment of Mr Zwier's comment, I thought that DPP must have changed his mind about not telling anybody else and I replied to Mr Zwier that it was also my understanding. Mr Zwier asked if one juror got discharged would the entire jury get discharged. I said it was likely that the entire jury would get discharged. Mr Zwier said that he would tell Ms Higgins to prepare for all outcomes that morning. Mr Zwier asked if Ms Higgins should come over to court and I replied that was totally a matter for her to make.

456 On same date, I telephoned DPP and explained what Mr Zwier told me on the phone. I asked DPP if he had told Mr Zwier or Ms Yates and he said no.

457 On same date, I then telephoned Mr Zwier back to confirm that I didn't actually know what would occur at court, until I was over there and find out for myself.

458 **Attached** and marked '**Exhibit 137**' is the file note.

459 Following the conversation with Mr Zwier, I informed Mr Grieg prior to going to court what had occurred on the telephone and the reason why we were going to court



SKYE JEWELLYN JEROME



Witness

early.

75. Outline your involvement in relation to any application regarding bail conditions for Mr Lehrmann following the listing of the matter for retrial including:

(a) information about your views in relation to the bail conditions for Mr Lehrmann at this time including the reasons for your views and your views in relation to Mr Lehrmann surrendering his passport;

460 On 24 October 2022, I emailed Ms Pitney and Mr Grieg enquiring about Mr Lehrmann's bail conditions because I could not locate them on our data system. Ms Pitney confirmed that Mr Lehrmann was not on bail.

461 I recall that between 24 October 2022 and 27 October 2022, I discussed with DPP if the prosecution could apply for an accused person to be on bail in the Supreme Court if they had been issued a summons in the Magistrate Court. I recall that DPP's view was that s19 *Bail Act 1992* gave the Supreme Court the power to impose and grant bail. I accepted that view.

462 On 27 October 2022, I emailed DPP with proposed bail conditions which were:

1. Not to contact directly/indirectly by any means Ms Higgins, Mr Sharaz or any other prosecution witness.
2. Surrender passport and not to approach any international departure point
3. Residential condition.

463 **Attached** and marked '**Exhibit 138**' is the email.

464 On same date, I recall that I had a telephone conversation with one of Mr Lehrmann's counsel (I can't recall which counsel) about the proposed bail conditions. I recall that they didn't agree with the condition regarding surrendering the passport but agreed with conditions 1 and 3.

465 On same date, I then emailed DPP stating that Mr Whybrow didn't agree to the passport condition and I stated because Mr Lehrmann hadn't been on bail and had shown up to court, that we need not ask for the passport condition (referring to the whole of condition 2 set out in [463]).

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 SKYE LLEWELLYN JEROME

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466 I received an email from DPP stating that he would apply for it (which I understood to mean, he would apply for condition 2, if he were the prosecutor appearing).

467 **Attached** and marked '**Exhibit 139**' is the email chain.

468 I recall that whilst at court, I relayed this information to Mr Whybrow. I recall that Mr Whybrow told me that the AFP had no issue with Mr Lehrmann being a flight risk.

469 I then reconsidered my position regarding the condition. I decided that I would ask for the condition because of the following matters:

- (a) The accused's mental health issues – [REDACTED]
[REDACTED]
[REDACTED]
- (b) Mr Whybrow and Ms Musgrove had made comments to me, separately, during the trial that [REDACTED]
[REDACTED]
- (c) Mr Lehrmann now had the experience of the high-profile trial and the lengthy wait for verdict. The jury had been out for about five days which potentially indicated the jury were involved in a long decision-making process (his innocence was not straightforward thought process for the jury).
- (d) The accused had the burden of another pending trial which would traverse the same/similar issues.
- (e) The fact that DPP stated he would press for the condition confirmed in my mind that the passport condition was a reasonable submission to make.

(b) any discussions you had with the DPP regarding bail conditions for Mr Lehrmann and the content of those discussions; and

470 I refer to [462] to [468] above.

(c) whether you were aware of the AFP/ACT Policing's engagement with the legal representatives for Mr Lehrmann regarding Mr Lehrmann's bail conditions, including how you became aware, what you were aware of, and what your views in relation to this were.

[REDACTED]
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SKYE JEWELLYN JEROME

[REDACTED]
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Witness

- 471 I refer to [469] above.
- 472 AFP had not communicated that view to myself prior to the issue of bail arising. Ordinarily, I would confer with the informant regarding bail. However, I note that in accordance with paragraph 3.2 of the Collaborative Agreement 2019 (refer to 'Exhibit 23'), court bail is a matter for the ODPP (ACT) and where possible, ODPP will consult with AFP on the issue of bail. I recall there being no opportunity for myself to consult with AFP prior to the court reconvening and dealing with the juror, discharge of jury and then bail. I can't recall whether AFP were present at court on that morning.
- 473 I did not agree with what the AFP had reportedly told Mr Whybrow. I considered that the AFP were not present throughout the entire trial, and that they may not have factored into their consideration the mental health aspect and/or the burden of another trial. In my experience, accused people with mental health issues that have had the experience of a trial or conviction, can become a flight risk during or in between trials/proceedings.

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

1 November 2022 Correspondence from the DPP

76. Were you involved in the preparation of the correspondence from the DPP to the Chief Police Officer, Neil Gaughan dated 1 November 2022 regarding the conduct of the Investigation and trial in the matter of *R v Lehrmann*? If so, include information about:

- (a) who you discussed the contents of the correspondence with;
 - (b) the nature of the discussions (if any);
 - (c) your views in relation to the correspondence; and
 - (d) the basis for your views.
- 474 On 31 October 2022, DPP forwarded to me via email, a draft copy of his letter to the CPO. I do not recall being aware that the DPP was drafting such a letter until I received it. I read it quickly and responded via email, that I agreed with everything in

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 SKYE LLEWELLYN JEROME

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the draft. Please refer to 'Exhibit 25' at [115] for the list of my concerns that I had observed during the matter.

475 I was not asked to be involved any further with the letter and was not aware it had been sent until much later. I do not recall speaking further with DPP about this letter until around the time that the freedom of information request for the letter was made.

476 **Attached** and marked 'Exhibit 140' is the email chain (without attachment).

Discontinuance of Proceedings

77. Outline your involvement (if any) in relation to the DPP's decision to discontinue the criminal proceedings against Mr Lehrmann. Include details about your views in relation to the decision, the basis for your impressions and whether you raised/discussed your views with the DPP. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

477 On 9 November 2022, DPP advised me that he had just received a call from Mr Zwier stating that Ms Higgins did not want the retrial to proceed because of mental health concerns. I recall that DPP told me that Mr Zwier had agreed to obtain a medical report that addressed Ms Higgins' mental health and the likely effects a retrial would have on her mental health.

478 On 24 November 2022, Mr Zwier left a message on my phone asking me to return his call. I did not return it. I advised DPP of this via text. DPP advised me via text message that DPP had spoken with Mr Zwier and that we should speak in the morning. [REDACTED]

479 [REDACTED]

480 Please see the Answer to Question 38 at [143] regarding two medical reports DPP verbally advised me he had received either on 25 November 2022 or during the week commencing 28 November 2022. As I state there, based on what I was told about the content of the medical reports, I agreed that it would not be in the public interest to proceed with the matter.

[REDACTED] SKYE LEWELLYN JEROME

[REDACTED] witness

481 On 30 November 2022, I created the Notice Declining to Proceed and arranged for DPP to sign the document. Mr Grieg told me that he had seen the Notice on our database and asked me, are we discontinuing? I said that we were and to keep it confidential. I then sent a text message to DPP advising that Mr Grieg had sight of the document and that he agreed to keep it confidential. DPP replied via text that he would hold a meeting that afternoon. **Attached** and marked 'Exhibit 141.1' is the text message.

482 Also on same date, DPP arranged a meeting with Ms Pitney, Mr Grieg and myself where DPP explained to everyone the reason for the discontinuance. DPP was the main speaker and advised the group that he had received two medical reports that

[REDACTED]

[REDACTED]

[REDACTED] DPP stated that it was therefore not in the public interest to proceed. [REDACTED]

[REDACTED] DPP also stated that he would inform the court and defence and likely hold a press conference. DPP also asked us to keep it confidential.

78. Outline whether you had any discussions with the legal representatives for Mr Lehrmann prior to the DPP's decision to discontinue the criminal proceedings against Mr Lehrmann. If so, include information about:

- (a) the person who initiated the discussion;
- (b) the purpose of the discussion;
- (c) where the discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the nature of the discussions.

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

[REDACTED]

SKYE LLWELLYN JEROME

[REDACTED]

Witness

- 483 I recall that DPP asked to see Chief Justice McCallum and Steven Whybrow in the Chief Justice's chambers. On Thursday 1 December 2022, DPP, myself, Mr Whybrow and his instructing solicitor attended the Chief Justice's Chambers. DPP advised all that he had received two medical reports opining that [REDACTED] [REDACTED] as such, he had formed the view that it was not in the public interest to proceed with the prosecution of Mr Lehrmann. DPP advised the group that he planned to make a public announcement on Friday 2 December 2022. DPP also made it clear that the discontinuance be kept confidential until that time. All in attendance agreed.
- 484 After the meeting, counsel spoke briefly downstairs at court. Mr Whybrow stated that it was important that he be able to tell Mr Lehrmann and arrange support for him when the announcement was made. Mr Whybrow stated (words to the effect) that he [REDACTED] [REDACTED] DPP and I agreed and stated that we would not tell anyone (except Ms Higgins, Ms Yates and Mr Zwier) of the decision to discontinue until the public announcement. I do not recall being party to any discussions between DPP, Ms Yates and/or Mr Zwier.

Freedom of Information

79. Outline your involvement (if any) in the freedom of information request in relation to the public release of the DPP's correspondence to the Chief Police Officer of ACT Policing dated 1 November 2022. **Attach** a copy of the relevant correspondence and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

- 485 In the week commencing 5 December 2022, DPP advised me orally that a journalist had made/or was going to make a Freedom of Information request for his letter. I recall that I was not previously aware that the DPP/CPO letter had been sent and I think I asked for clarification that the DPP/CPO letter had been sent to the CPO. I recall that DPP confirmed that he had sent the letter to the CPO.

[REDACTED]
SKYE LLEWELLYN JEROME

[REDACTED]
Witness

486 I do not recall communicating further about the freedom of information request with DPP.

80. Have you received any ODPP training relevant to freedom of information applications? If so, provide details on the content of the training, when it was provided and who delivered it.

487 I have not received any ODPP training relevant to freedom of information applications.

Media

81. Outline your involvement (if any) in any communication between the ODPP and the AFP/ACT Policing in relation to the preparation or implementation of the AFP media plan in relation to the matter of *R v Lehrmann*, including the plan shared on 5 August 2021. Include details about whether you perceived the AFP's media plan to be adequate (provide reasons and examples where appropriate). **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

488 I was copied into an email reply from DPP to AFP Media Coordinator and Public Engagement Ellena [REDACTED] on 5 August 2021, regarding AFP Media Plans and I received Ms [REDACTED] further reply to DPP on 6 August 2021. I did not understand why I had been copied into the email exchange regarding AFP Media Plans. I had never been involved with AFP Media Plans in relation to this or any other matter. I do not recall reading the detail of the emails regarding the AFP Media Plan in relation to the matter of *DPP v Lehrmann* on or around 5 August 2021. I recall working on other matters at this time.

489 **Attached** and marked 'Exhibit 142' is the email exchange regarding AFP Media Plan dated 5 August 2021 – 6 August 2021.

82. State whether the DPP expressed any views to you in relation to the AFP media plan. If so, provide details about what those discussions involved. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

490 I do not recall communicating with DPP about the AFP Media Plan.

[REDACTED]
SKYE LEWELLYN JEROME

[REDACTED]
Witness

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

491 I had no interactions with the media in relation to the matter of *DPP v Lehrmann* as is my usual practice to not engage with the media in relation to prosecutions. I did receive an email from Samantha Maiden on 24 November 2022 asking about a stay application. I forwarded the email on to DPP and I did not respond to Ms Maiden and had no further involvement with her enquiry.

492 **Attached** and marked '**Exhibit 143**' is the email chain.

Miscellaneous

84. Outline how and when you become aware of Ms Higgins' pre-published book. Provide details as to how and when you/the ODPP obtained possession of the pre-published book.

493 Defence issued a subpoena to Ms Higgins seeking her pre-published book. ODPP were given first access to material issued under subpoena by Ms Higgins. On 16 June 2022, I received an email from Ms Priestly which attached the material produced under subpoena by Ms Higgins, namely a paragraph from her pre-published book.

494 **Attached** and marked '**Exhibit 144**' the email with the attached material at '**Exhibit 144A**' and '**Exhibit 144B**'.

85. State whether you or someone from the ODPP provided a copy of the pre-published book or any of its contents to the AFP/ACT Policing officers. If so, on what date and to whom was it provided. If not, provide the reasons as to why it was not provided to AFP/ACT Policing.

495 On 17 June 2022, Ms Priestly forwarded an email to myself and DPP, advising that AFP requested a copy of the pre-published book extract.

496 DPP replied to the email stating that it wasn't to be disclosed to AFP. I did not provide a copy of the pre-published book or any of its contents to the AFP/ACT Policing officers.

497 **Attached** and marked '**Exhibit 145**' is the email chain.

SKYE LLEWELLYN JEROME

Witness

86. State whether you or someone from the ODPP provided a copy of the pre-published book or any of its contents to the legal representatives for Mr Lehrmann. If so, on what date and to whom was it provided? If no, provide the reasons as to why it was not provided to the legal representatives for Mr Lehrmann.

498 On 16 June 2022, DPP authorised the disclosure of the pre-published book, produced by Ms Higgins, under subpoena to defence.

499 Refer to 'Exhibit 144', 'Exhibit 144A' and 'Exhibit 144B' at [495].

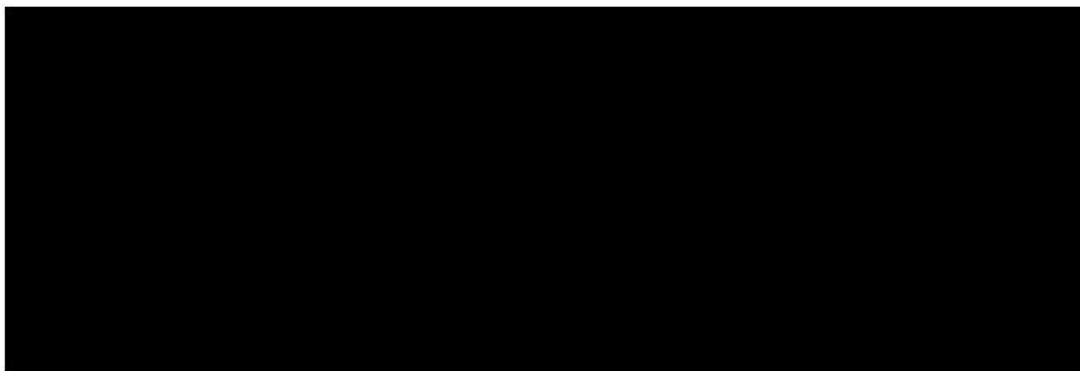
Board of Inquiry

87. State whether you have spoken to the DPP, ODPP staff or any other persons in relation to the provision of evidence to the Board of Inquiry under s 26(I)(b) of the Inquiries Act 1991, including advice surrounding the provision of information to legal representatives. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

500 I answer this question with the understanding that only substantive discussions with others regarding the Board of Inquiry (BOI) are relevant, and excluding communications with my lawyers.

501 On 1 February 2023 the Inquiry was publicly announced. I recall I learnt about the announcement on or about that date.

502 Sometime between early to mid-February 2023, DPP told me that he had met with the Chair of the Inquiry and Counsel Assisting about the process of the Inquiry, DPP said that I was likely to be called as a witness and that his view was that the Inquiry would focus on AFP.

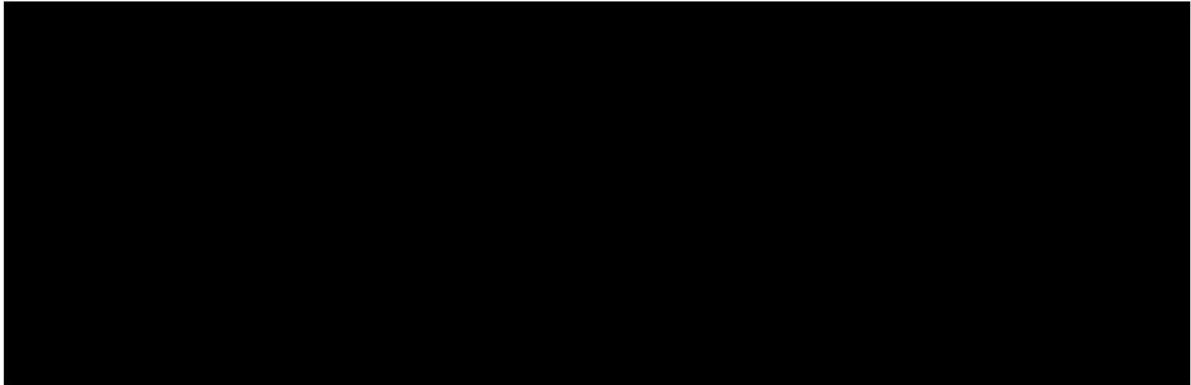




SKYE LEWELLYN JEROME




Witness



- 506 On 27 February 2023 at about 2:00pm, I received an email from the BOI who stated the following, 'Mr Shane Drumgold SC will be attending our offices again this afternoon and I understand he is currently at your office. If it is convenient, could you please provide the USB to Mr Drumgold SC?'
- 507 Shortly after receiving this request from the BOI, I spoke with DPP in his office. DPP told me that it was 'therapeutic to answer questions' of the BOI. DPP referred to a timeline of public comments being made and how it all made sense to him now. I didn't follow what he was actually referring to and I did not ask him about it. I gave DPP the USB which contained the material I was producing under the subpoena and asked DPP to hand this to the BOI when he returned to their office at 2:30pm that day.
- 508 On 28 February 2023, I gave evidence to the BOI in a private hearing.
- 509 On 1 March 2023 at about 9:00am, I asked to speak to the two Deputy Directors, Mr Hiscox and Mr Williamson SC, in Mr Hiscox's office. I report to both of them regarding my work. I spoke to the Deputies about my current workload and my participation in the BOI. I told them that I could not tell them my evidence to BOI. I briefly explained the process of the BOI as I understood it and what was required from myself in this Inquiry (private hearing, written statement, live streamed evidence in public hearing). Most of my work was re-allocated. I left the office following the meeting and I have worked from home (apart from one legal argument).
- 510 On 1 March 2023 and 7 March 2023, I received text messages from DPP. **Attached** and marked '**Exhibit 147**' are the messages.

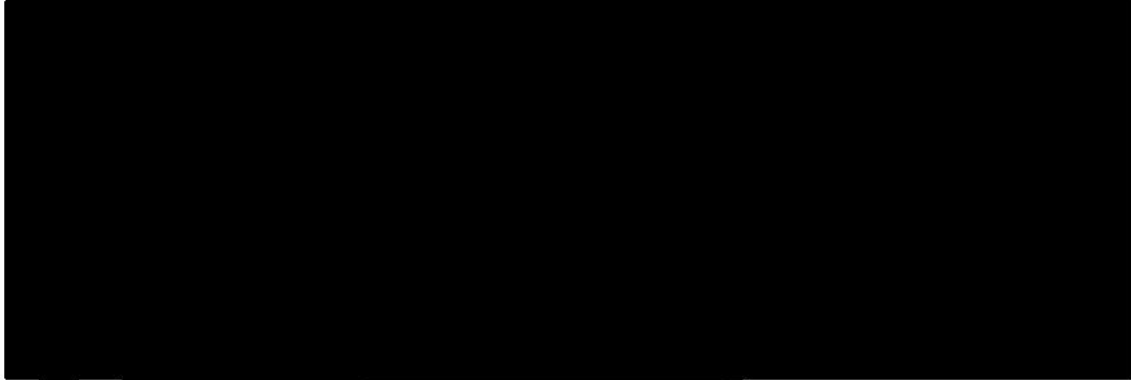


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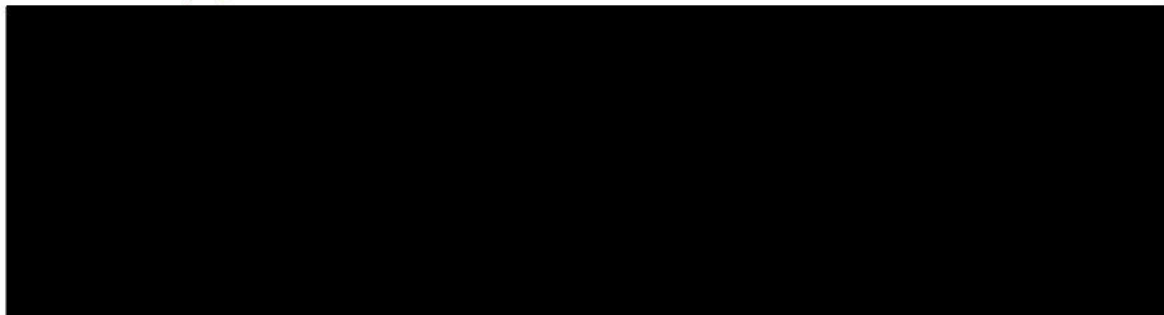


Witness

511 On 19 March 2023 I received text messages from DPP. **Attached** and marked 'Exhibit 148' are the messages.




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




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SKYE LLEWELLYN JEROME


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Witness

 **AFFIRMED** before me at Canberra in the Australian Capital Territory on 4 April 2023.



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SKYE LLEWELLYN JEROME



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Signature of witness

Laura Slocombe

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NAME OF WITNESS