

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 SENATOR THE HON. LINDA REYNOLDS CSC

I, Senator the Hon. Linda Reynolds CSC, [REDACTED]
[REDACTED] state as follows:

The following statement is provided in response to the Subpoena to Provide a Written Statement I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory (**Inquiry**) issued on 12 April 2023 (**Subpoena**) 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.

A. Background and Professional History

1. *What is your current occupation?*

1.1 I am currently a Senator for Western Australia in the Federal Parliament. I have been a Senator for Western Australia since 2014.

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

2.1 I obtained a:

- (a) Bachelor of Commerce (Commercial Law and Industrial Advocacy) from Curtin University in 1994; and
- (b) Master of Arts (Strategic Studies) from Deakin University in 2015.

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

3.1 I have obtained a:

- (a) Diploma in Training Development from the Australian Army in 1999;
- (b) Graduate Certificate in Training Development from the Australian Army in 2000;
- (c) Certificate IV in Assessment and Workplace Training from Southern Cross University in 2000;
- (d) Graduate Certificate in Training and Development from Southern Cross University in 2000;
- (e) Graduate Diploma in Defence Management from the University of Canberra in 2003; and
- (f) Graduate Certificate in Strategic Studies from the Australian Defence College in 2011.

[REDACTED]
LINDA KAREN REYNOLDS

[REDACTED]

4. **Attach a current CV.**

4.1 A copy of my current CV is attached and marked 'Exhibit 2'.

B. First involvement in relation to allegations made by Ms Higgins

5. **Attach a copy of your 17 June 2021 statement relating to the AFP investigation into the alleged sexual assault of Brittany Higgins.**

5.1 A copy of my statement relating to the AFP investigation into the alleged sexual assault of Brittany Higgins dated 17 June 2021 (**Statement**) is attached and marked 'Exhibit 3'.

6. **Attach a copy of email correspondence between Fiona Brown and [REDACTED] on or around 29 March 2019 which relates to the adequacy of support that had been provided to Ms Higgins following the alleged incident on 23 March 2019 (**Lauren Barons Email**).**

6.1 A copy of the [REDACTED] Email is attached and marked 'Exhibit 4'.

7. **Outline when and how the [REDACTED] Email first came to your attention and whether to your knowledge, this email was provided to the Australian Federal Police (AFP) or to the Australian Capital Territory Office of the Director of Public Prosecutions (ODPP) prior to the trial of R v Lehmann and if so, the basis for your knowledge that this had been provided to the AFP/ODPP.**

7.1 The [REDACTED] Email first came to my attention when Ms Fiona Brown provided me with a copy in January 2023.

7.2 I do not know whether the [REDACTED] Email was provided to the AFP or the ODPP prior to the trial of R v Lehmann (Trial). However, I understood from my conversations with Ms Brown in January 2023 that the [REDACTED] Email formed part of the evidence she provided to the AFP and, therefore, I assume this would have been provided to the DPP as a result.

7.3 On 27 April 2023, Ms Brown sent me messages on WhatsApp in relation to the [REDACTED] Email which included a reference to the fact that the [REDACTED] Email was part of the brief she handed over to police and that she gave the police everything she had.

7.4 Whilst I have now seen the [REDACTED] Email, I have never seen Ms Brown's contemporaneous notes which I understood from Ms Brown that she also handed over to the police.

7.5 I recall that, on 15 February 2021, an article by Ms Samantha Maiden was published by *news.com.au* (**Maiden Article**). The Maiden Article appears to refer to the [REDACTED] Email as follows:

"By the Friday [29 March 2019], Senator Reynolds' chief of staff [Ms Brown] had outlined her concerns it was an alleged sexual assault to the Department of Finance and received advice on whether or not they should go to police themselves. The advice suggested this should be left in Ms Higgins control.

It also included a checklist of things that needed to be done such as offering to expand the number of EAP sessions Ms Higgins could access — something Ms Higgins insists never happened.

[REDACTED]

LINDA KAREN REYNOLDS

[REDACTED]

The advice also suggests that the chief of staff and Senator Reynolds had repeatedly encouraged her to go to police, something that did not occur until several days later.”¹

- 7.6 The description of the advice referred to in the Maiden Article clearly fits the description of the [REDACTED] Email (see Exhibit 4 and paragraph 9.27 below). Accordingly, in retrospect, it seems to me that Ms Maiden was aware of the [REDACTED] Email by 15 February 2021, at the latest. Considering the description of the advice in the Maiden Article (i.e. the [REDACTED] Email), I assume that the identification and consideration of the contents of such an advice would have been of interest to the AFP and DPP.
- 7.7 Although I was aware of the Maiden Article from the date of its publication on 15 February 2021, I did not know what advice was being referred to in it (see paragraph 7.5 above). As indicated in paragraph 7.1 above, I only became aware of the [REDACTED] Email in a conversation with Ms Brown in January 2023. This conversation caused me to reflect on the events in 2019 and 2021 when this matter became public which led me to revisit previous media articles, including the Maiden Article which assumed greater significance in light of the information received from Ms Brown in January 2023.
- 7.8 On 19 February 2023, Ms Maiden was part of a panel appearing on the ABC program, *Insiders*. During the course of the panel discussion, questions relating to the [REDACTED] Email were put to Ms Maiden. Ms Maiden said, among other things:
- "It's not a secret email. It was actually reported by news.com in the very first story...we wrote about it in the very first story, because the government [i.e. the Morrison Government] gave it to us to say 'look, this is all the things that we did, we really did try to help this person', which I think is a legitimate point, we then quoted from it again a couple of days later".²*
- 7.9 Upon obtaining a copy of the official transcript of the Trial (**Transcript**), I have reviewed it. I note that the [REDACTED] Email was not tendered in evidence at the Trial based on my review of the official Transcript.

C. Involvement with the DPP/ODPP pretrial

8. *Outline when you first interacted with the ODPP or the Director of Public Prosecutions, Mr Shane Drumgold (DPP), in relation to the investigation of Ms Brittany Higgins' allegation of sexual assault against Mr Bruce Lehrmann (Investigation) and/or the matter of R v Lehrmann.*
- 8.1 I understand that the first interaction with the ODPP occurred on 11 February 2022 when my legal representative, Dr Ashley Tsacalos (Clayton Utz), unsuccessfully attempted to return the call of Ms Erin Priestly (Senior Prosecutor, ODPP) in relation to the service of a Subpoena for the purposes of the Trial. I understand that, on the same day, Ms Priestly (ODPP) returned the call from Dr Tsacalos (Clayton Utz) and left a voice message for him.
- 8.2 I understand that, on 14 February 2022, Dr Tsacalos (Clayton Utz) again unsuccessfully attempted to return the call of Ms Priestly (ODPP). On the same day, Dr Tsacalos (Clayton Utz) sent an email to Ms Priestly (ODPP) which stated:

¹ Samantha Maiden, 'Young staffer Brittany Higgins says she was raped at Parliament House', *news.com.au*, (online, 15 February 2021) <<https://www.news.com.au/national/politics/parliament-house-rocked-by-brittany-higgins-alleged-rape/news-story/fb02a5e95767ac306c51894fe2d63635>>.

² 'Sunday February 19 Full Program', *Insiders*, (ABC, 2023), 51:00 to 51:30, <<https://www.abc.net.au/news/2023-02-19/sunday-february-19-full-program/101995610>>.

[REDACTED]
LINDA KAREN REYNOLDS

[REDACTED]
Witness

"Thank you for your voice mail on Friday afternoon in response to my phone call earlier in the day. I tried ringing a short time ago but it rang out without any ability to leave a message.

When you are available, can you give me a call on [REDACTED]

A copy of this email is attached and marked **'Exhibit 5'**.

- 8.3 I understand that, on 28 February 2022 at 12:19am, Dr Tsacalos (Clayton Utz) sent an email to Ms Priestly (ODPP) which stated:

"I refer to our conversation earlier this month.

Can you advise when we can expect to receive the Subpoena we discussed."

A copy of this email is attached and marked **'Exhibit 6'**.

- 8.4 I understand that, on 28 February 2022 at 3:21 pm, Ms Priestly (ODPP) sent an email to Dr Tsacalos (Clayton Utz) which stated:

"My apologies for the delay in getting back to you.

I have made enquiries about whether we would be able to proceed by way of substituted service through you – unfortunately, we cannot. I understand the subpoena must be personally served on Senator Reynolds.

Would it be preferable for this to occur next time Senator Reynolds is in Canberra, or for service to be effected in Western Australia?"

A copy of this email is attached and marked **'Exhibit 7'**.

- 8.5 I understand that, on 8 March 2022 at 12:36 pm, Dr Tsacalos (Clayton Utz) sent an email in response to the email from Ms Priestly (ODPP) which stated:

"It is not substituted service but rather service on the legal representative of the addressee of the Subpoena. This occurs all the time. Are you able to stress test this and, if the answer remains the same, I can let you know when the Senator is in Canberra."

A copy of this email is attached and marked **'Exhibit 8'**.

- 8.6 I understand that, on 8 March 2022 at 3:57 pm, Ms Priestly (ODPP) sent an email in response to the email from Dr Tsacalos (Clayton Utz) which stated:

"I have confirmed with the Director that, unfortunately, personal service must be effected (rule 6605 of the Court Procedure Rules). Service on a solicitor is only valid if the addressee is a party to the proceedings (rule 6481). I apologise for the difficulty.

I am happy to make arrangements to effect service tomorrow. I understand that a police officer will attend the DPP office in order to serve Senator Reynolds. Would any time after 12pm be suitable for Senator Reynolds?"

A copy of this email is attached and marked **'Exhibit 9'**.

[REDACTED]

LINDA KAREN REYNOLDS

- 8.7 I understand that, on 9 March 2022, Dr Tscalos (Clayton Utz) liaised with Ms Priestly (ODPP) to make arrangements for me to be personally served with the Subpoena in relation to the Trial at the offices of the ODPP in Canberra. A copy of this email chain is attached and marked 'Exhibit 10'.
- 8.8 On 9 March 2022, I attended the offices of the ODPP in Canberra in order to be personally served with the Subpoena in relation to the Trial.
- 8.9 On 3 May 2022, Ms Priestly (ODPP) sent an email to Dr Tscalos (Clayton Utz) which stated:
- "I write in relation to the above matter, which is listed for trial on 6 June 2022. Senator Reynolds will be called as a prosecution witness.*
- I am hoping to arrange a time to proof Senator Reynolds. I understand this is an exceptionally busy time, but was wondering if she might be available at all the week of 23 May? We can arrange for it to occur over AVL. You are welcome to attend also."*
- A copy of this email is attached and marked 'Exhibit 11'.
- 8.10 On 10 May 2022, Dr Tscalos (Clayton Utz) sent an email to Ms Priestly (ODPP) which stated that: *"Both the Minister and I can be in Canberra on Tuesday 24 May 2022. Is a time around say 10 or 11am suitable?"* On the same day, Ms Priestly (ODPP) sent an email to Dr Tscalos (Clayton Utz) which stated: *"11.00am on 24 May 2022 would work well. I will send you a calendar invite"*. A copy of this email chain is attached and marked 'Exhibit 12'.
9. *Outline the proofing you undertook with the ODPP on 24 May 2022 in relation to the matter of R v Lehrmann. Include details as to:*
- (a) who was present;*
- (b) broadly what was discussed; and*
- (c) any matters which were not discussed or put to you during this proofing which, at the time or in retrospect, you believe should have been discussed or put to you, and the basis for any such views.*
- Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes, diary notes or trial transcripts. To the extent those communications were verbal outline the parties to the communications and the effect of the words spoken (the **usual particulars**).
- 9.1 On 24 May 2022, I attended a conference with the ODPP in relation to proofing me for the Trial that was originally to commence on 6 June 2022 (**Proofing**). In addition to myself, the following people attended the Proofing:
- (a) the DPP, Mr Drumgold SC;
- (b) Ms Priestly (ODPP);
- (c) Dr Tscalos (Clayton Utz); and
- (d) Mr [REDACTED] my partner.

[REDACTED]

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[REDACTED]

- 9.2 It is significant to note that the DPP met my partner, Mr [REDACTED] on this occasion and he was therefore known to the DPP and Ms Priestly from the date of the Proofing, which was well in advance of the commencement of the Trial. In paragraph 9.13 below, I address the concerns that were later raised in relation to Mr [REDACTED]'s attendance at the Trial. However, I note that at no time during the Proofing conference (or any time subsequently) was I advised that Mr [REDACTED] could not (or should not) attend the Trial and nor was Mr [REDACTED] advised at any time not to attend the Trial.
- 9.3 In the Proofing, I recall that the DPP explained the Trial process, the purposes of the Proofing and took me through my Statement in a chronological and sequential manner. I recall that the DPP asked me whether I was certain that Ms Higgins had never told me that she had been raped. I recall responding that I was absolutely certain that Ms Higgins had never told me that she had been raped.
- 9.4 However, given the manner in which the DPP examined me during the Trial and in retrospect, there were matters that were not discussed during the Proofing that I believe should have been raised with me during the Proofing, namely:
- (a) the propositions which formed the basis of the application made by the DPP in the course of the Trial to cross-examine me as a witness who was giving evidence which was "unfavourable" to the complainant (i.e. as an "unfavourable witness") under section 38(1)(a) of the *Evidence Act 2011 (ACT)* (**Evidence Act**)³ (see paragraphs 9.5 to 9.25 below) (**Unfavourable Witness Application**);
 - (b) the contents of the [REDACTED] Email, in the event that it had already come to the attention of the DPP and ODPP by the time of the Proofing (see paragraphs 9.26 to 9.31 below); and
 - (c) the contents of my Statement regarding the meeting between myself, Ms Brown and Assistant Commissioner Leanne Close (AFP) (**A/C Close**) on 4 April 2019 (**4 April Meeting**) (see paragraphs 59 to 63 of my Statement).

I address each of these matters, in turn, below, including the reasons why I believe that they should have been put to me during the Proofing.

- (a) *The propositions which formed the basis of the Unfavourable Witness Application*

9.5 In the course of addressing this matter, I have included references to sections of the Transcript which I have reviewed since I gave evidence on 17 October 2022. A copy of the Transcript is attached and marked 'Exhibit 13'.

9.6 I am now aware that, on 17 October 2022 and before I gave evidence, the DPP made an Unfavourable Witness Application at the Trial in relation to Senator the Hon. Michaelia Cash. This was prompted following a question put to Senator Cash in relation to whether she had ever spoken to me about the alleged incident involving Ms Brittany Higgins and Mr Bruce Lehrmann that took place in my Ministerial suite early on the morning of 23 March 2019 (**Incident**). I was not present in the Court when the following exchange took place but I have subsequently become aware of it after I gave evidence on 17 October 2022 as a result of reviewing the Transcript. The relevant extract of the Transcript is as follows:

³ Transcript (Exhibit 13), 17 October 2022, page 725, lines 10 to 46.

[REDACTED]
LINDA KAREN REYNOLDS

[REDACTED]
Witness

"[DRUMGOLD:] *Did you at any time talk to Linda Reynolds about this event [i.e. the Incident]? [Senator Cash:] ---I did not.*

[DRUMGOLD:] *I make an application at this stage, your Honour.*"⁴

- 9.7 I understand that the basis for the Unfavourable Witness Application advanced by the DPP included reference to me as well as Senator Cash. I became aware of the exchanges extracted in paragraphs 9.7 to 9.25 upon reviewing the Transcript after I gave my evidence on 17 October 2022 but I was not present when it took place. Senator Cash and the jury were also absent from the Court. The relevant extract of the Transcript is as follows:

"MR DRUMGOLD: Your Honour, the application is on the basis of [section 38(1)(a) of the Evidence Act], unfavourable. I just need to set it in a context of the structure of this case.

*Now, the complainant in this case has said all along that she had several conversations with Senator Cash. That she had detailed conversations with Senator Cash in around the media inquiry time in October 2019. And that she had direct conversations with Senator Cash. Now, the relevance of this is this. **There are two operative and opposing forces in evidence that are competing. One is, the evidence of the complainant is that there was a political motivation to suppress the complaint. The other opposing force is that there were welfare considerations favouring reporting the events.***

The complainant's evidence is that the political motivations were the dominant factor and that this was imparted on her back with Senator Reynolds, but also during the conversations, particularly leading up to her departure from Minister Cash. The relevance of this is a pretty central tenet. At the time – well, two relatively central tenets, back in 2019, this essentially faced her with a fork in the road between reporting and remaining employed.

Now, she says the political motivation to suppress that was imparted on her was – led to that fork in the road. And the second thing she said, which is a central tenet, is the residual political motivation meant that she had to resign in 2021 in order to recommence the complaint.

Now, a central part of this case is the motivation, is the reason why she did not proceed with the complaint, and the action that she took to recommence the complaint. This witness says that there was no political motivation to suppress.

HER HONOUR: Can I just make sure I got down the last question correctly. The point at which you made the application was your question, 'Did you talk to Minister Reynolds about that?' being what she had just said. And she said, 'No.'

MR DRUMGOLD: Correct. But what she has said is that she knew nothing of this complaint until the - - -

HER HONOUR: Nothing of the sexual aspect of the complaint?

MR DRUMGOLD: Nothing of the sexual aspect of the complaint until 5 February 2021.

⁴ Transcript (Exhibit 13), 17 October 2022, page 666, lines 29 to 31.

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Witness

HER HONOUR: *Until February 2021?*

MR DRUMGOLD: *Fifth February 2021. And the evidence of the complainant is that she knew about it all along. I can take your Honour to - - -*

HIS HONOUR: *The complainant can't say she knew about it, but the complainant says they had conversations about it.*

MR DRUMGOLD: *About this – she said 'detailed conversations about it'. And she said particularly in and around the media inquiry of October.*

HIS HONOUR: *And what was the date of the media inquiry?*

MR DRUMGOLD: *It was – I don't think we have a precise date. It was October 2019 but I don't think she gave a precise date.*

HER HONOUR: *October 2109 [sic]?*

MR DRUMGOLD: *Correct. So, I have to set the ambit of what I am seeking to cross-examine and I am seeking to cross-examine about, first of all, the political motivations that were operative that caused the complainant to have to resign in order to recommence the complaint. And, secondly, what if any welfare considerations existed during her employment with Minister Cash – with Senator Cash.*

HER HONOUR: *I understand why you are raising it now, but I need to be satisfied of an element and I am wondering whether the application has come before that has been demonstrated. Or, are you making an application based on what you anticipate will come next, based on a statement?*

MR DRUMGOLD: *No. I am making based on a fact that she said that she doesn't know – she didn't know anything about the sexual element until 5 February.*

HER HONOUR: *I see. On her previous account of the conversation which included no sexual - - -*

MR DRUMGOLD: *Correct.*⁵

(emphasis added)

9.8 I note that the DPP added: *"I'm also seeking leave under sub-section [38] (3) [of the Evidence Act] that inherently goes with the motivation behind that."*⁶

9.9 I also note that section 38(3) of the Evidence Act states:

"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."

9.10 The DPP then asserted, incorrectly in my view, as follows

"MR DRUMGOLD: Yes, the only caveat I would add is there is no requirement for substantial probative value.

⁵ Transcript (Exhibit 13), 17 October 2022, page 667, line 15 to page 669, line 1.

⁶ Transcript (Exhibit 13), 17 October 2022, page 669, lines 35 to 36.

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Witness

HER HONOUR: *I am sorry, say the last - - -*

MR DRUMGOLD: *There is no requirement for substantial probative value on subsection (3), 38(3).*

HER HONOUR: *Well, except that that requirement always applies, doesn't it, on any cross-examination that is confined to credibility.*

10 MR DRUMGOLD: *Yes. Yes, that would correct, I accept that.*⁷

9.11 Later the same day, on 17 October 2022, during the course of my evidence, the DPP made a separate Unfavourable Witness Application in relation to me. In contrast to the approach taken with Senator Cash (see paragraph 9.7 above), the DPP did not provide an explanation to the Court in respect of the basis for the Unfavourable Witness Application in respect of me.

9.12 The Unfavourable Witness Application in relation to me was made after a line of questioning regarding the meeting in my office between Ms Higgins, Ms Brown and myself on 1 April 2019 (**1 April Meeting**).⁸ The Unfavourable Witness Application immediately followed a question in relation to my knowledge of when the 2019 Federal Election was going to be called. I note that neither the jury nor myself were excused by the Court when the DPP initially made the Unfavourable Witness Application in relation to me. Accordingly, the jury and I were present during the following exchange:

[DRUMGOLD:] *The election was held on 18 May?* [REYNOLDS:] *---Yes.*

[DRUMGOLD:] *Were you aware that that was the weekend of the election as of this stage?* [REYNOLDS:] *---I don't believe the exact date, because we knew the PM was about to call the election, he was – it was imminent after we'd had the Budget, and he does have a small degree of flexibility in terms of whether it is a five or a six week campaign.*

[DRUMGOLD:] *I will probably make the application at this stage, your Honour.*

HER HONOUR: *Should I send the jury out?*

MR WHYBROW: *I am just not – I might be able to just quickly speak to my friend. I understand it relates to what may have been known on the 1 April meeting, so in that sense my only concern is if there is no breadth to any - - -*

HER HONOUR: *I think the same position as before.*

MR WHYBROW: *Yes.*

HER HONOUR: *You are not opposing it, but - - -*

MR WHYBROW: *I am not opposing it.*

HER HONOUR: *But on any individual issue you let me know if there is an issue.*

...

⁷ Transcript (Exhibit 13), 17 October 2022, page 669 line 46 to page 670 line 10.

⁸ Transcript (Exhibit 13), 17 October 2022, page 722 line 4 to page 724 line 32.



HER HONOUR: Yes. I grant leave.

MR DRUMGOLD: Thank you, your Honour.

I am going to suggest that you knew that there was a sexual element the previous Saturday?---No, I did not.

MR WHYBROW: Excuse me one second. I object to that question.

MR DRUMGOLD: Yes, I accept my friend's correction.

[DRUMGOLD:] I am suggesting to you that you were aware that Ms Higgins had made an allegation about Mr Lehrmann being on top of her at this stage?---I was not.

[DRUMGOLD:] Would you agree that in the run up to election that having an allegation that one staff member sexually assaulted another staff member would be potentially politically embarrassing?---No, I do not accept that.⁹

(emphasis added)

- 9.13 The jury and I were not excused during the above exchange. We were excused later, between 3:18pm and 3:29pm on 17 October 2022. This occurred just as I was about to be cross-examined and at the point that Mr Whybrow SC (Defence Counsel)¹⁰ objected to questions in relation to the text messages that I had sent to him regarding the messages between Ms [REDACTED] and Ms Higgins.¹¹
- 9.14 In the course of cross-examining me as an Unfavourable Witness, the DPP's line of questioning included the following propositions, which were said to go to my credibility, namely:
- (a) my partner, Mr [REDACTED], was sitting in the court room throughout the complainant's evidence;¹²
 - (b) I sent a text message to Mr Steve Whybrow (Counsel for the Defendant) requesting a transcript of the Trial at the time the cross-examination of the complainant commenced on 6 October 2022;¹³ and
 - (c) I sent a further text message to Mr Whybrow stating: "*Also, if you have text messages between Brittany [Higgins] and [REDACTED] they may be revealing*".¹⁴

(together, the **Propositions**)

⁹ Transcript (Exhibit 13), 17 October 2022, page 725 lines 1 to 27.

¹⁰ I note that Mr Whybrow SC's (Defence Counsel) appointment as Senior Counsel was announced by the ACT Bar Association on 3 November 2022, which followed most of the events described in this Statement. Nonetheless, for consistency, I have referred to Mr Whybrow SC throughout.

¹¹ Transcript (Exhibit 13), 17 October 2022, page 727 line 24 to page 733 line 10.

¹² Transcript (Exhibit 13), 17 October 2022, page 727, lines 29 to 34.

¹³ Transcript (Exhibit 13), 17 October 2022, page 726, lines 36 to 41.

¹⁴ Transcript (Exhibit 13), 17 October 2022, page 734, lines 9 to 14.

- 9.15 I discuss my concerns as to breaches of duty and legislation on the part of the DPP arising from the Propositions in my response to Question 17 below.
- 9.16 The DPP also repeatedly asked questions which alleged that I was motivated by "*political forces*" and was "*politically invested*" in the events that were the subject of the Trial.¹⁵ In my evidence, I strongly rejected these allegations.¹⁶ I was shocked by these questions and bare assertions because they were completely at odds with my Statement which makes clear, in paragraphs 46 to 51, that Ms Higgins never used the words "*rape*" or "*sexual assault*" or any other language suggesting something of that nature in the course of the 1 April Meeting. In any event, due to the fact that Ms Higgins indicated that she recalled waking up not fully dressed and that she was unable to recall the events of the night of the Incident and was visibly distressed, I had encouraged Ms Higgins to go and see the AFP who would be able to assist. Accordingly, there was no proper basis on which the DPP could assert that I suppressed Ms Higgins' complaint regarding a sexual assault due to "*political forces*", as I was not aware the alleged incident was sexual in nature, and I had in fact indicated to Ms Higgins that, if she was open to the idea, she could consider talking to the AFP. The DPP did not ask me any questions in relation to these aspects of my Statement. The relevant extract of my Statement in relation to this issue is as follows:
- "46. *As a I recall, the fact that Ms Higgins could not recall the events of the evening of 22 March 2019 and the morning of 23 March 2019 and that she recalled waking up not fully dressed, as well as my recollection of the events of 2 March 2019, prompted in my mind, during the Meeting, the possibility that Ms Higgins may have been concerned that a sexual act had occurred while she and the Male Adviser were in my office.*
47. *However, I do not recall that at any point during the Meeting Ms Higgins indicating that she had been raped or sexually assaulted in any way. I distinctly remember that she did not use the words "rape", or "sexual assault", or any other language alleging that any such offences had taken place. I am certain that these words were not used by Ms Higgins as I believe they would have resonated strongly with me and caused me great concern. I know, from previous experiences, that such words would have had an emotional impact on me as I have previously been told, in other contexts, by women that they had been raped. I still remember the effect they had on me at the time. I recollect no such emotions being evoked during my conversation with Ms Higgins on 1 April 2019.*
48. *During the Meeting, I recall Ms Higgins telling me that she had obtained information about the availability of the Employee Assistance Program (EAP) for counselling through Ms Brown and may have said that she did access the counselling through EAP.*
49. *During the Meeting, I also recall feeling uncomfortable having such a sensitive and personal discussion with Ms Higgins such that I considered others may be better placed to have these discussions with her and that it was more appropriate that they do so.*
50. *In light of the above and given that Ms Higgins was concerned that she was unable to recall the events of the night and was visibly distressed, I indicated*

¹⁵ Transcript (Exhibit 13), 17 October 2022, page 735, line 4 and line 20; page 736, line 4.

¹⁶ Transcript (Exhibit 13), 17 October 2022, page 735, line 4 to 5; page 736, line 5.

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Witness

to Ms Higgins that, if she was open to the idea, she could consider talking to the Australian Federal Police (AFP) regarding the events of the evening of 22 March 2019. I was Chief of Staff to the Justice Minister, Chris Ellison, between 2001 and 2003 and had deep knowledge of the AFP. I told Ms Higgins that I understood that the AFP had expertise in handling sensitive personal matters, and could also provide her with access to the appropriate support services. I thought they would be better placed than me to provide advice on these matters as they have people with the necessary expertise and could provide access to other services. I recall saying words to the effect that, if Ms Higgins wished, Fiona and I could seek to facilitate a private meeting with the ACT AFP to get their advice, and then she could make her own informed decisions about her options and what she wanted to do.

51. I recall that, in the Meeting, Ms Higgins was initially reluctant to speak with the AFP but did agree to do so. It was agreed that Ms Brown would contact the AFP presence in Parliament House to facilitate a meeting between the local ACT AFP Policing and Ms Higgins - without specifically mentioning her name to the AFP in Parliament House.¹⁷

9.17 I note that, in the DPP's closing submissions on 18 October 2022, he again cast doubt on my credibility. The DPP repeated his allegation that I was motivated by "political forces" and stated that:

*"Suffice to say that there were **clearly strong political forces at play** in the period immediately after the events through the election and beyond. These forces, I submit to you, were at play through the almost two years that she worked with Senator Cash and it is **abundantly clear from the evidence and actions of Senator Reynolds during this trial that those political forces were still a factor.**"¹⁸*

(emphasis added)

9.18 No indication had previously been given to me by the DPP, either at the Proofing (see paragraph 9.1 above) or in the correspondence between Clayton Utz and the ODPP following the Proofing (see paragraphs 8.9 to 12.18 below), that I would be subject to an Unfavourable Witness Application such that I would be cross-examined in relation to credibility.

9.19 I was shocked and frustrated at this approach as it appeared that the DPP was seeking to undermine my credibility (and that of Senator Cash) in an effort to re-assert the credibility of Ms Higgins and increase his prospect of securing a conviction. Alleging that a politician was motivated by "political forces" was an easy line to run.

9.20 As the DPP indicated:

*"... the evidence of the complainant is that there was a **political motivation to suppress the complaint...** The complainant's evidence is that **the political motivations were the dominant factor** and that this was imparted on her back with Senator Reynolds...**a central part of this case is the motivation, is the reason why [Ms Higgins] did not proceed with the complaint.**"¹⁹*

¹⁷ Statement, paragraphs 47 to 51.

¹⁸ Transcript (Exhibit 13), 17 October 2022, page 764, lines 5 to 10.

¹⁹ Transcript (Exhibit 13), 17 October 2022, page 667, lines 20 to 40.

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(emphasis added)

- 9.21 As discussed above in paragraph 9.16, the assertion made by the DPP that I was motivated by "*political forces*" was in contradiction to my Statement. It was also at odds with the evidence of Ms Brown regarding the 1 April Meeting. Having reviewed the Transcript since I gave evidence on 17 October 2022, I note the following account provided by Ms Brown of the 1 April Meeting:

"[BROWN:]---Minister Reynolds did most of the talking and she wanted to check on the welfare of Brittany. She said, you know, 'How are you?' They just had a bit of an exchange of, you know, chit chat and then she wanted to check on her welfare. She asked how she was. She said if that something had happened, that Brittany was, you know – wanted to talk about or you know, felt there was a complaint to be made, that she was within her rights to make a complaint and to go to the police. She would be fully supported. Minister Reynolds also referred to a time in her – times in her life when she had repressed going and speaking out and she had – it had come back to her and she regretted it and Brittany seemed to, you know, like they seemed to be relating really well and – and Linda said – sorry, Senator Reynolds said, 'You know, if you want to – if you want to do something, we will really support you and we're happy to help you. If you let us know, we can help facilitate that.' And so I don't remember having a lot to say during that meeting.

[DRUMGOLD:] Then the meeting terminated? [BROWN:]---I'm trying to recall if it was at that meeting Brittany agreed that she would like us to approach the AFP on her behalf or whether I did it subsequent, when the meeting was over, but I do recall that Brittany at some point, either at that meeting or shortly after, said that she would like to talk to the AFP – because that's the other thing, Senator Reynolds also said – she encouraged the discussion with the AFP because it was a way to talk these things through and it was giving Brittany the opportunity for that independence and agency, if you like."²⁰

(emphasis added)

- 9.22 The alleged existence of a "*political motivation to suppress the complaint*" was considered "*a central part*" of the case.²¹ The complainant, and in turn the DPP, claimed that this political pressure was first exerted by me. Accordingly, these allegations should have been put to me during the Proofing conference rather than ambushing me and taking me by surprise in the manner the DPP attempted to do so at the Trial.
- 9.23 The evidence of Ms Brown above was broadly consistent with my evidence in relation to the 1 April Meeting I have since come to realise after reviewing the Transcript. The DPP never put any propositions arising from Ms Brown's evidence to me in an effort to test my recollection or to identify any inconsistencies.
- 9.24 At the time of the Proofing, the DPP would have known the nature of the complainant's evidence in terms of the alleged "*political motivation to suppress the complaint*".²² The DPP also had my Statement and would have known that I addressed the issue of my knowledge of the nature of the Incident as at the 1 April Meeting and the fact that I encouraged

²⁰ Transcript (Exhibit 13), 17 October 2022, page 409 line 33 to page 410 line 9.

²¹ Transcript (Exhibit 13), 17 October 2022, page 667, lines 20 to 40.

²² Transcript (Exhibit 13), 17 October 2022, page 667, lines 20 to 40.

Ms Higgins to approach the AFP in paragraphs 46 and 47 of my Statement (see the extract in paragraph 9.16 above).

9.25 However, the DPP did not take me to this part of my Statement during the Trial. Nor was my Statement ultimately tendered.

(b) *The contents of the [REDACTED] Email*

9.26 As discussed in my Statement, from the date of the Incident (i.e. 23 March 2019) to the 1 April Meeting, I was travelling between Brisbane, Canberra and Perth. I understand that, on 26 March 2019, Ms Brown had been informed that Ms Higgins and Mr Lehrmann had accessed my Ministerial Suite in the early hours of Saturday 23 March 2019. From that point, due to my ongoing travel arrangements, Ms Brown was updating me by telephone and in person in relation to her actions and relevant communications with both Mr Lehrmann and Ms Higgins. By the time of the 1 April Meeting, Ms Brown had informed me that the Incident involved a security breach and that Ms Higgins was becoming increasingly distressed and feeling unwell.²³ However, as I said in paragraph 31 of my Statement: "*I recall that [Ms Brown] had developed a concern that there may have been something more serious in relation to the events...as a result of Ms Higgins' lack of recollection of the events of that night and her increasing distress levels*".

9.27 The [REDACTED] Email dated 29 March 2019 (see Exhibit 4 and paragraph 6.1 above) sets out the steps which Ms [REDACTED] (Department of Finance) had understood that Ms Brown had taken in relation to Ms Higgins' account of the Incident, and provided her with the following advice as to the appropriateness of those actions:

"Following our discussions, I understand that you have taken the following actions in relation in discussions with the staff member in your office:

- Made her aware of the Employee Assistance Program (EAP) and other support services available. If you haven't already you may wish to ensure the staff member is aware of 1800Respect.org.au

- Notified her that, should she choose to, she is able to pursue a complaint, including a complaint made to the police, and that to do so would be within her rights.

- You have made it very clear to her that if she requires assistance in making a complaint, you would be willing to support her.

- In addition, I understand you have discussed with her on several occasions that if she does choose to pursue a complaint, either now or at a later date, she would have the full and ongoing support of yourself and the Minister.

- You have provided the employee with the opportunity to come to you for further assistance, support or guidance at any time.

- You have encouraged the employee to access to the EAP provider as soon as possible, and on days she was not in the office, you have checked in with her to make sure she is OK and has support at home.

- You have provided the employee with the leave required to attend medical and EAP appointments.

²³ Statement, Paragraphs 20 to 38.

[REDACTED]
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[REDACTED]
Witness

I consider that the steps you have taken are appropriate, taking into account guidance material available including from the Human Rights Commission (see links under Section E of the Workplace Bullying and Harassment Policy).

Ultimately any decision as to whether to lodge a police report or pursue any other form of complaint relating to this matter would be a personal choice of the person involved. I note the 1800Respect website recommends the person should have 'as much control as possible over what to do next' and that a person 'may decide not to report to police, or not to have a medical or examination This is their choice and must be respected'. For a referral to be made on her behalf or without her consent or against her wishes could be harmful to her.

We acknowledge that there is also an obligation to ensure a safe working environment. It may be the case that should further information come to light, or there is a concern about the employees ongoing safety in the office, an alternate approach may need to be considered.

I would encourage you to continue to show your support and provide her with the assistance she requires to make a decision on whether she does want to take this further."

9.28 Significantly, the [REDACTED] Email does not indicate that Ms Brown had disclosed to me that there was a "sexual element" to the Incident and nor was I ever sent a copy of this email until Ms Brown told me about it in January 2023. Accordingly, I consider that the [REDACTED] Email should have been put to me at the time of the Proofing conference (assuming it had already come to the attention of the DPP and ODPP) or during my evidence (or Ms Brown's evidence).

9.29 As discussed in paragraph 9.7 above, the DPP stated:

*"There are two operative and opposing forces in evidence that are competing. One is, the evidence of the complainant is that there was a political motivation to suppress the complaint. **The other opposing force is that there were welfare considerations favouring reporting the events.***

The complainant's evidence is that the political motivations were the dominant factor and that this was imparted on her back with Senator Reynolds..."

(emphasis added)

9.30 The allegation in relation to the existence of "political motivation to suppress the complaint" was rejected completely by me at Trial, though it had not been put to me by the DPP or ODPP before that point (as discussed in paragraphs 9.5 to 9.25 above). The [REDACTED] Email contradicts the assertion that there was a "political motivation" on the part of Ms Brown (or me) which favoured suppressing Ms Higgins' complaint in opposition to the "welfare considerations favouring reporting the events". The [REDACTED] Email clearly shows that the advice to Ms Brown at the time (and in advance of the 1 April Meeting) was to leave "any decision as to whether to lodge a police report or pursue any other form of complaint relating to this matter" as "a personal choice of the person involved [i.e. Miss Higgins]". Accordingly, it was not the case according to the advice received by Ms Brown at the time that "welfare considerations" favoured reporting the details of the Incident either to the police, myself or any other person. As outlined above, by the time of the 1 April Meeting, Ms Brown had informed me that the Incident involved a security breach and that Ms Higgins was becoming increasingly distressed and feeling unwell. However, Ms Brown

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had not disclosed to me that there was a "sexual element" to the Incident. Ms Brown had simply indicated that she had developed: "a concern that there may something more serious in relation to the events...as a result of Ms Higgins' lack of recollection of the events of that night and her increasing distress levels" (see paragraph 31 of my Statement).

- 9.31 The [REDACTED] Email was directly relevant to what the DPP referred to as "a central part of this case", namely: "the motivation... the reason why [Ms Higgins] did not proceed with the complaint" and "the two operative and opposing forces in evidence that are competing" in relation to the fact the Incident was not reported by Ms Higgins (see paragraph 9.7 above). It was also directly relevant to establishing my knowledge of any "sexual element" to the Incident at the time of the 1 April Meeting, which was part of the DPP's cross-examination of me as an "unfavourable witness", and was presumably a basis for the Unfavourable Witness Application. At no point during the Trial was the [REDACTED] Email tendered or put to myself or Ms Brown. Further, Ms Barons was not called as a witness. The [REDACTED] Email should have been put to Ms Brown during the Trial and to me in the course of the Proofing conference and during the Trial.

(c) *The contents of my Statement regarding the 4 April Meeting*

- 9.32 Similarly, my recollection of the 4 April Meeting with A/C Close set out in my Statement was inconsistent with the DPP's theory "political motivation" was exerted by me in opposition to the "welfare considerations favouring reporting the events" and that this was "the reason why [Ms Higgins] did not proceed with the complaint" (see paragraphs 9.30 and 9.31 above). In paragraphs 59 to 63 of my Statement, I state as follows:

59. I recall that AFP Assistant Commissioner Leanne Close had made an appointment to see me in my office on Thursday, 4 April 2019, whilst I was in Canberra.

60. Assistant Commissioner Close came by to make, what she described as a "courtesy call". I recall that I may have met with Assistant Commissioner Close by myself initially and, a short time later, I requested that Ms Brown join us for the meeting after Assistant Commissioner Close advised me that the purpose of the meeting was to discuss the Incident.

61. Although I do not recall the precise language used by Assistant Commissioner Close, however, I recall that she informed Ms Brown and I that Ms Higgins intended to progress a complaint, or make a report, against the Male Adviser in relation to the Incident.

62. I recall asking Assistant Commissioner Close how Ms Brown and I could best support Ms Higgins in this respect. Assistant Commissioner Close responded with words to the effect that I was doing the right things and should continue to do so. She provided Ms Brown and I with advice that we should take our cues from Ms Higgins at all times as to how she would prefer to respond to the Incident.

63. I recall that Assistant Commissioner Close spent around 10 to 15 minutes in my office at this time."

- 9.33 The DPP did not take me to these parts of my Statement during the Trial and did not call A/C Close (AFP) as a witness to provide evidence in relation to the 4 April Meeting. The 4 April Meeting was directly relevant to what the DPP referred to as "a central part of this case", namely: "the motivation... the reason why [Ms Higgins] did not proceed with the

[REDACTED]
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complaint" and "the two operative and opposing forces in evidence that are competing" in relation to the fact that the Incident was not reported by Ms Higgins (see paragraph 9.7 above). Accordingly, those parts of my Statement that address the 4 April Meeting should also have been explored with me during the Trial and with Ms Brown and, if there was any doubt about the reporting of the Incident or the 4 April Meeting, A/C Close (AFP) should have been called.

10. *Outline any contact you had with the DPP/ODPP subsequent to your proofing up to the commencement of the trial in the matter of R v Lehrmann.*

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

- 10.1 On 8 June 2022, subsequent to the Proofing, Ms Priestly (ODPP) sent an email to Dr Tsacalos (Clayton Utz) stating that the Trial would now commence on 27 June 2022. She stated that it was anticipated that "Senator Reynolds will be called towards the end of that week (likely 1 July), pending any unavailability the Senator may have". A copy of this email is attached and marked 'Exhibit 14'.
- 10.2 On 15 June 2022, Dr Tsacalos (Clayton Utz) sent an email to Ms Priestly (ODPP) asking if I could give my evidence on 5 July 2022. Ms Priestly replied that the ODPP would "organise the witness list so the Senator will give evidence on 5 July 2022" and enquired if the Senator would be flying out of Perth. A copy of this email chain is attached and marked 'Exhibit 15'.
- 10.3 I became aware that, on 21 June 2022, Her Honour Chief Justice McCallum decided to vacate the 27 June 2022 Trial date due to significant pre-Trial publicity and commentary including a speech on live television endorsing the complainant's credibility and her status as a victim. Her Honour held that the recent publicity did, in her view:

"change the landscape because of its immediacy, its intensity and its capacity to obliterate the important distinction between an allegation that remains untested at law and one that has been accepted by a jury giving a true verdict according to the evidence in accordance with their respective oaths or affirmations".²⁴

A copy of the decision in *R v Lehrmann* (No 3) [2022] ACTSC 145 is attached and marked 'Exhibit 16'.

- 10.4 On 13 July 2022, Ms Priestly (ODPP) sent an email attaching a letter dated 6 July 2022 to me informing me that the Trial had been re-listed for a period of 24 days commencing on 4 October 2022 (**New Trial Date Notice**). The New Trial Date Notice stated that the Trial was estimated to finish on 4 November 2022 and that I would be required to attend on a date that would be identified by Ms Priestly (ODPP). This was in circumstances where media reports continued to indicate, up to the commencement of the Trial, that the DPP "will likely call more than 50 witnesses",²⁵ suggesting that the entirety of the listed dates for the Trial would be needed. A copy of the New Trial Date Notice is attached and marked 'Exhibit 17'.

²⁴ *R v Lehrmann* (No 3) [2022] ACTSC 145, [37], per McCallum CJ.

²⁵ Remy Varga, 'Brittany Higgins Trial Gets Underway', *The Australian* (4 October 2022), <<https://www.theaustralian.com.au/the-oz/news/the-brittany-higgins-trial-gets-underway/news-story/b11cda44ed39a909d2ddb64eb6ec36e3>>, accessed 4 April 2023.

D. The Trial of R v Lehmann*Communications regarding date for giving evidence*

11. *Outline any agreement with the ODPP and/or any communications between yourself/your legal representatives and the ODPP, regarding the date for your giving of evidence in the matter of R v Lehmann (Evidence Arrangements).*

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

- 11.1 Between 14 July 2022 and 18 August 2022, Dr Tsacalos (Clayton Utz) liaised with Ms Priestly (ODPP) to convey my availability to give evidence at the Trial commencing on 4 October 2022 so as to ensure compliance with the New Trial Date Notice. At that stage, Ms Priestly (ODPP) continued to offer me a significant degree of flexibility in relation to the dates that I would be required to give evidence. A copy of this email chain is attached and marked 'Exhibit 18'.

- 11.2 On 6 September 2022, on my instructions Dr Tsacalos (Clayton Utz) sent an email to Ms Priestly (ODPP) which stated:

"There has been a slight change to the Senator's plans. She is now travelling to Rwanda as part of a Parliamentary Delegation between 7 and 17 October.

Is it possible to schedule her to give evidence on Monday 24 October otherwise Friday 21 October?"

A copy of this email is attached and marked 'Exhibit 19'.

- 11.3 On 26 September 2022, Ms Sarah Pitney (Prosecutor, ODPP) sent an email to Dr Tsacalos (Clayton Utz) seeking confirmation that I would be available to give evidence on 11 October 2022. On the same day, Dr Tsacalos responded to Ms Pitney reiterating that I was in Rwanda and requested that I be able to give her evidence on either 21 or 24 October 2022. A copy of this email chain is attached and marked 'Exhibit 20'.

- 11.4 On 27 September 2022, Ms Sarah Pitney (Prosecutor, ODPP) sent an email to Dr Tsacalos (Clayton Utz) confirming that Friday, 21 October 2022 would be a suitable date for me to give evidence. A copy of this email is attached and marked 'Exhibit 21'.

12. *If representations or statements were made by the DPP/ODPP (including at court hearings in relation to the matter of R v Lehmann) relating to the date for your giving of evidence in the matter of R v Lehmann or your compliance with a subpoena requiring you to give evidence in the matter, which were contrary to, or misrepresented, the Evidence Arrangements, outline these representations and/or statements and the basis upon which you say these representations/statements were contrary to, or misrepresented, the Evidence Arrangements.*

Attach copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes, diary notes and trial transcripts. To the extent those communications were verbal provide the usual particulars.

- 12.1 Mr [REDACTED] was based in Canberra at the time of the Trial and was an interested observer given the emotional support he had provided to me since the matter that became the subject of the Trial had become public. Mr [REDACTED] did not attend every day of the Trial, but

was present in the court room through some of the proceedings. In the course of the Trial, we did discuss the events of the day from time to time, such as who was giving evidence that day. I otherwise limited myself to being informed by reading media reports on the Trial between performing my ongoing parliamentary duties.

12.2 Both the prosecution (including the DPP and other staff of the ODPP) and defence legal teams knew Mr [REDACTED] was present at the Trial from time to time. At no point did members of either legal team request that Mr [REDACTED] be removed from the court room or not attend the Trial (or any aspect of the Trial).

12.3 I am now aware that, in the week beginning 10 October 2022, the witness list for the Trial was substantially reduced. I am also now aware that, at some point during that week, a solicitor with the ODPP approached Mr [REDACTED] (my partner) in the court room to enquire about my availability to appear sooner than the agreed date of 21 October 2022. Mr [REDACTED] assured the ODPP that he was attempting to contact me while overseas to inform me of the need to curtail my involvement in the Parliamentary Delegation to Rwanda that I was attending and return to Australia urgently. Mr [REDACTED] communicated the ODPP's requests to me contemporaneously whilst I was in Rwanda.

12.4 I am aware that on 12 October 2022, despite confirming that I could give evidence on 21 October 2022 (see paragraphs 11.2 to 11.4), Ms Pitney (ODPP) sent an email to Dr Tsacalos (Clayton Utz) requesting that I make myself available on 18 October 2022 as the Prosecution case was at that stage expected to close before 21 October 2022. The email also indicated that the ODPP "do not anticipate that [Senator Reynolds'] evidence will take very long" and suggesting that she could give her evidence by Audio Visual Link from Rwanda. A copy of this email is attached and marked 'Exhibit 22'.

12.5 On 13 October 2022, Dr Tsacalos (Clayton Utz) sent an email to Ms Pitney (ODPP) which stated:

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

A copy of this email is attached and marked 'Exhibit 23'.

12.6 However, later that day, on 13 October 2022 and before Dr Tsacalos could respond and confirm arrangements to ensure my availability to give evidence at an earlier time, the media was already reporting that I had been called to give evidence on 18 October 2022. On the same day, Dr Tsacalos sought urgent clarification from Ms Pitney as to whether I had been called to give evidence on 18 October 2022 despite no further correspondence with him having taken place. A copy of this email is attached and marked 'Exhibit 24'.

12.7 On 13 October 2022, Ms Pitney (ODPP) sent an email stating that:

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

[REDACTED]
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[REDACTED]
Witness

A copy of this email is attached and marked 'Exhibit 25'.

12.8 The suggestion in the email that I had failed to respond to the subpoena was incorrect, unfounded and diminished my reputation without any proper basis.

12.9 I note from the Transcript on 13 October 2022 (page 579) that the following exchange occurred in relation to the Subpoena to Give Evidence directed to me:

MR DRUMGOLD: I'm sorry. Your Honour, I'm sorry. Just on the timing. There was that one question mark about the conclusion of the case. I understand that we will be able to obtain Senator Reynolds on either Tuesday or Wednesday. I am negotiating - - -

HER HONOUR: Is she under subpoena?

MR DRUMGOLD: Yes, she is.

HER HONOUR: If you have run out of witnesses by the end of Monday, I expect her here on Tuesday.

MR DRUMGOLD: I will convey that to – it was prompted by a phone call by me to her lawyer yesterday and we received a response yesterday. I will pass on your Honour's comment today.

HER HONOUR: All right. The subpoena required her here on the 4th and continuously after that until you require her, Mr Prosecutor.

MR DRUMGOLD: Indeed, your Honour."

12.10 The suggestion that I had "failed to answer her subpoena" was inaccurate and an unfair assessment. The suggestion was also made despite my proactive, responsive and cooperative approach in ensuring my availability for:

- (a) the initial Trial date (see paragraph 10.1);
- (b) the new Trial date (see paragraph 11.2) by alerting the ODPP of my unavailability due to me joining a Parliamentary Delegation to Rwanda and my efforts to return early from Rwanda. This was despite only having been informed a day earlier about the ODPP's revised assessment of the expected closing date of the Trial and the consequent need to give evidence sooner than expected (see paragraph 12.1).

12.11 No effort was made by the DPP to correct the record in the course of the exchange extracted at paragraph 12.9 above or at any subsequent point in the Trial.

12.12 On 14 October 2022, Dr Tsacalos (Clayton Utz) sent an email to Ms Pitney (ODPP), in which he stated:

"I reject the suggestion that Senator Reynolds has failed to answer her Subpoena. The Subpoena was issued and it was agreed with the issuing party (namely, the ACT DPP) that Senator Reynolds would give evidence on Friday 21 October 2022 due to her being overseas between 7 and 17 October 2022. That is, the Subpoena would be complied with by Senator Reynolds giving evidence on the agreed date. The issuing party is now seeking to resile from

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this agreement and requests that Senator Reynolds make alternative travel arrangements in an effort to give evidence earlier than the agreed date in circumstances where she is overseas and her ability to return is dependent on the availability of flights – that is, on circumstances beyond her control.

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

A copy of this email is attached and marked '**Exhibit 26**'.

- 12.13 On 14 October 2022, Mr Michael Greig (Prosecutor Associate, ODPP) sent an email to Dr Tscalos (Clayton Utz) stating that: "*The Court has requested Senator Reynolds attend at the earliest possible opportunity*". There was no acknowledgement of Dr Tscalos' objection (see paragraph 12.12 above) in this email or any subsequent correspondence from the ODPP. A copy of this email is attached and marked '**Exhibit 27**'.
- 12.14 On 16 October 2022, Dr Tscalos (Clayton Utz) sent an email to Mr Greig (ODPP) confirming that I could attend to give evidence on the morning of Tuesday, 18 October 2022. Dr Tscalos also asked for advice in relation to the previous arrangements that had been foreshadowed, namely:

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

A copy of this email is attached and marked '**Exhibit 28**'.

- 12.15 On 17 October 2022, Ms Pitney (ODPP) responded to Dr Tscalos (Clayton Utz) and stated:

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

In relation to your other questions:

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

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- *The courtroom has been well below capacity, so we imagine there will be ample room.*
4. *the estimate length of her evidence.*
- *It is difficult to say accurately at this stage, but it is anticipated that it will be less than 2 hours."*

A copy of this email is attached and marked 'Exhibit 29'.

- 12.16 Therefore, based on the above email exchange, it was clear that it was agreed that I would give evidence on Tuesday, 18 October 2022 and that none of the arrangements that had previously been represented to me would exist would be honoured.
- 12.17 However, on 17 October 2022 at 11:10am, Ms Pitney (ODPP) sent an email to Dr Tsacalos (Clayton Utz) which stated that: "*The Court has enquired whether Senator Reynolds could be available to give her evidence this morning. Could you please **urgently** confirm Senator Reynolds' availability?*". On the same day at 11:39am, Dr Tsacalos (Clayton Utz) confirmed "*Linda can give evidence at 3pm*". A copy of this email chain is attached and marked 'Exhibit 30'.
- 12.18 Accordingly, on 17 October 2022, I made myself available to give evidence at the Trial that afternoon.

Text messages with Steven Whybrow

13. *During the trial in the matter of R v Lehrmann you texted Steven Whybrow seeking copies of the transcripts in the matter of R v Lehrmann (Transcripts). Outline the reason you texted Mr Whybrow seeking copies of the Transcripts.*
- 13.1 On 27 July 2022, I attended a conference with my lawyer, Dr Ashley Tsacalos (Clayton Utz), Mr Steven Whybrow SC (Defence Counsel) and his instructing solicitor, Rachel Fisher (Kamy Saeedi Law) in relation to the Trial. I was advised by the DPP, Mr Whybrow SC (Defence Counsel) and Dr Tsacalos (Clayton Utz) that there is no property in a witness and no bar on lawyers for the accused speaking to a witness - if the witness is willing to do so. I was willing to assist both the DPP (and ODPP) and the lawyers for the accused to ensure a fair Trial and in the interests of the proper administration of justice. In this conference, Mr Whybrow SC (Defence Counsel) specifically asked me if there was anything that occurred to me at a later date that might be relevant that I should let him know. It is for this reason that I sent the text message to Mr Whybrow SC (Defence Counsel) suggesting that he obtain the text messages between Ms Higgins and [REDACTED].
- 13.2 Part of the reason that I sought a copy of the Transcript from Mr Whybrow (Defence Counsel) was provided in the course of my cross-examination by the DPP on 17 October 2022 as follows:

[DRUMGOLD:] *You have sought the transcripts of Ms Higgins's evidence in this trial, haven't you?* [REYNOLDS:] *—Yes.*

[DRUMGOLD:] *Why?—* [REYNOLDS:] *Because I was – I was curious to know what had been said but I was advised by my lawyer that that wasn't appropriate.*

...

[REDACTED]
LINDA KAREN REYNOLDS [REDACTED]

[REDACTED]
Witness

[DRUMGOLD:] *You wrote to my friend – you wrote an SMS to my friend asking him to send transcripts to your lawyer at the conclusion – at the commencement of Ms Higgins' cross-examination, didn't you?* [REYNOLDS:] *---Yes, but I was advised that it was not appropriate. I hadn't realised it wasn't appropriate because I haven't been in this situation before, so my lawyer made it very clear that it wasn't appropriate.*

...

[DRUMGOLD:] *And two hours into Ms Higgins's cross-examination you texted my friend asking him to send your lawyer transcripts of the trial. Correct?* [REYNOLDS:] *--Yes.*

...

[DRUMGOLD:] *At 4.27 pm on Thursday, 6 October, you sent a text - - ?*
[REYNOLDS:] *---Yes.*

[DRUMGOLD:] *- - - to the defence lawyer saying, 'Hi, do you have the daily transcripts? If so, are you able to provide my lawyer?'* [REYNOLDS:] *---Yes.*

[DRUMGOLD:] *Now, first of all I am suggesting that your lawyer had no interest in these transcripts, it was you that had interest in these transcripts and that message is to say 'Can you send them to my lawyer' with a clear understanding that your lawyer would pass them on to you?* [REYNOLDS:] *---Yes, I did ask for them. But, again, it was explained to me that it wasn't appropriate to make that request - - -*

[DRUMGOLD:] *Okay, I'm - - - ?* [REYNOLDS:] *--- - - - so they were not sent.²⁶*

- 13.3 In addition, I note that on 29 March 2022, Dr Tsacalos (Clayton Utz) had received confidential correspondence from [REDACTED] in relation to a civil claim being brought by Ms Higgins against multiple defendants, including me (**Civil Claim**). The Civil Claim broadly related to the matters which were also the subject of the Trial. It was anticipated that a mediation in relation to the Civil Claim would take place after the outcome of the Trial was known. Accordingly, Dr Tsacalos (Clayton Utz) had indicated to me that it would be necessary to review the Transcript at the conclusion of the Trial in order to provide an advice on prospects with respect to the Civil Claim. I had misunderstood this such that I prematurely sought to obtain the Transcript, during the Trial, from Mr Whybrow SC (Defence Counsel) who had established direct contact with me in June 2022 before learning that I had legal representation via Dr Tsacalos (Clayton Utz). This was the other reason that I sent the text message to Mr Whybrow SC in the course of the Trial. However, Dr Tsacalos (Clayton Utz) indicated that he had intended only to seek a copy of the Transcript at the conclusion of the Trial. However, the fact that Ms Higgins may bring a Civil Claim may have been discussed with the DPP during the Proofing conference.
14. *Was the basis for which you sought the Transcripts described in your response to the above paragraph ever communicated to the DPP/ODPP? If so, provide details as to when and how this was communicated.*
- 14.1 The basis for which I sought the Transcript was not communicated to the DPP or ODPP other than in the responses provided in the course of my cross-examination by the DPP on 17 October 2022 (see paragraph 13.1 above). However, I understood that the DPP became aware of the request for the Transcript when Mr Whybrow SC (Defence Counsel)

²⁶ Transcript (Exhibit 13), 17 October 2022, page 726 line 23 to line 41 and page 733 line 31 to line 41.

[REDACTED]
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[REDACTED]
Witness

showed him the text message that I had sent to Mr Whybrow SC requesting a copy of the Transcript. The DPP then saw the text message I had sent to Mr Whybrow SC suggesting that he obtain a copy of the text messages between Ms Higgins and [REDACTED]. I am not aware of the circumstances that caused Mr Whybrow SC to show the DPP the text messages and whether it was appropriate to do so but I would have thought that the text messages would have been shown to the DPP in confidence and that, therefore, the use of the text messages by the DPP in these circumstances was highly inappropriate.

- 14.2 On 6 December 2022 at 10:33 am, Dr Tsacalos (Clayton Utz) arranged for a request to be sent to the Registrar of the ACT Supreme Court seeking authorisation to obtain a copy of the Transcript. On the same day, at 2:07 pm, the Registrar approved this request. A copy of this email chain is attached and marked 'Exhibit 31'.
- 14.3 On 7 December 2022, Dr Tsacalos (Clayton Utz) received an email from the Court's transcription service provider attaching a copy of the Transcript. A copy of this email is attached and marked 'Exhibit 32'.
- 14.4 Shortly afterwards, on 21 December 2022, the Chief Minister and Attorney-General of the ACT announced that the ACT Government would establish the Inquiry.

E. The 1 November letter

15. *Outline any contact you had with the DPP/ODPP regarding the release of the DPP's 1 November 2022 letter to Neil Gaughan pursuant to a freedom of information request including any consultation between yourself/your legal representatives and the DPP/ODPP regarding any redactions required to those parts of the letter which related to you.*

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

- 15.1 I had no contact with the DPP or ODPP either prior to, or following, the release of the DPP's 1 November 2022 letter to Deputy Commissioner Neil Gaughan (Chief Police Officer, AFP) (**Letter**). A copy of the Letter with names redacted, which was easily found by me online as at 4 April 2023, is attached and marked 'Exhibit 33'.

- 15.2 The first I heard of the Letter was when I received an email query from Mr Christopher Knaus (Reporter, *The Guardian*) on 10 December 2022 (see paragraph 16.1 below).

16. *Outline any communications that you or your legal representatives had with Christopher Knaus regarding the 1 November 2022 letter.*

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

- 16.1 On 10 December 2022 at 11:28am, Mr Knaus (*The Guardian*) sent an email to my parliamentary email address as follows:

"I'm just hoping to obtain a response to a piece I'm preparing on the Lehrmann matter.

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

[REDACTED]

[REDACTED]

Witness

In that letter, the DPP also raises concerns about the conduct of senator Reynolds during the trial.

He describes the conduct as "disturbing" and then raises a number of actions by the senator during the trial, which were previously ventilated in open court during senator Reynolds' evidence. They include:

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

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

The letter says:

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

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

My questions are:

- how does Reynolds' respond to the suggestions in the letter that her conduct was "disturbing"?*
- why did she have access to the texts between Higgins and Hamer?*
- was her husband conferencing with the defence team during breaks in proceedings? was this appropriate?*
- does Reynolds' concede she should not have texted Whybrow suggestions during the cross-examination? Does she concede she should not have sought transcripts from him?*

My deadline is 4pm tomorrow."

- 16.2 On 10 December 12:37pm, Katharine Murphy (Political Editor, *The Guardian*) sent a text message to me asking for my private email address so that her colleague, Mr Knaus (*The Guardian*), could contact me for comment. This text message from Ms Murphy was sent after I received the email from Mr Knaus to my parliamentary email address. I provided my private email address by reply text message to Ms Murphy on the same day.

[REDACTED]

[REDACTED]

16.3 On 11 December 2022 at 10:16am, Mr Knaus (*The Guardian*) sent a further email which stated: "Hi Linda - just checking to make sure you received this?"

16.4 On 11 December at 10:19am, I sent a text message to Ms Murphy (*The Guardian*) which stated:

"Hi my emailed reply FYI:

Hi Christopher, I returned home last night from a week in PNG with very limited connectivity, clearly an eventful week. See below my on the record and off the record background. Regards, Linda

On the record quote:

"I have not seen the letter from the DPP to ACT Police Chief, Mr Neil Gaughan, that you mention has been released by FOI. If you can send me a copy of the letter, I will consider the references to me and address the specific queries you have raised in context.

It should be noted that the substance of the queries that you have raised have been dealt with in my evidence in the criminal trial. If you do not already have it, you can request a copy of the Transcript from the Supreme Court of the ACT."

Background - Legal Considerations:

Before publishing the DPP's allegations, I would strongly recommend you and The Guardian's lawyer's [sic] review the main part of the Transcript dealing with these issues. I would suggest from page 733 with my full evidence starting at page 715 of the Transcript."

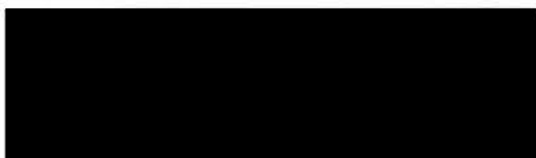
A copy of the text message exchange between myself and Ms Murphy (*The Guardian*) referred to in paragraphs 16.2 and 16.4 above is attached and marked 'Exhibit 34'.

16.5 On 11 December 2022 at 10:24am, I then replied to Mr Knaus' (*The Guardian*) email of 10:16am (see paragraph 16.3) and stated that: "I have replied". I cannot locate a copy of the email by which I provided a full response to Mr Knaus directly. However, my reply to Mr Knaus had also been separately provided to Ms Murphy (*The Guardian*) via text message (see paragraph 16.4 above). A copy of the email chain comprising the emails between myself and Mr Knaus referred to in paragraphs 16.1, 16.3 and 16.5 is attached and marked 'Exhibit 35'.

16.6 I note that, in the first paragraph under the heading "Concerns relating to trial process" on page 3 of Letter, the DPP:

- (a) suggested that I gave evidence "directly contradictory" to Ms Brown (**Contradiction Proposition**); and
- (b) repeated the substance of the Propositions (see paragraph 9.13 above), adding rhetorical flourishes which presented the DPP's personal characterisation about the reasons for my actions as statements of fact, in the following terms:

"[Senator Reynolds]...directly solicit[ed] transcripts of other evidence to tailor her evidence direct from the defence Barrister Steven Whybrow. She further



engaged in direct coaching of defence cross-examination of the complainant by directing them to evidence she should have [sic] access to. This was all done through direct contact with defence barrister Steven Whybrow. [Senator Reynolds] further organised for her partner to attend the court for the entire trial, with him regularly seen conferencing with the defence team during the course of the trial."

(together, **November Propositions**)

16.7 I address each of these matters in turn below.

(a) *the Contradiction Proposition*

16.8 The Contradiction Proposition was not put to me in the course of my cross-examination by the DPP. Since the conclusion of the Trial, I have reviewed the Transcript and it is not clear what "*directly contradictory*" evidence it is that the DPP is specifically referring to. However, I note the following response provided by Ms Brown in the course of giving her evidence regarding the context of the 1 April Meeting:

[DRUMGOLD:] *Two questions. I'm just trying to set a context for this [1 April 2019] meeting. Had you conveyed to Minister Reynolds the 'I recall him being on top of me' comment? [BROWN:] ---Yes.*

[DRUMGOLD:] *When did you convey that to Minister Reynolds? [BROWN:] ---It was either the Thursday [28 March 2019] night or the Friday [29 March 2019] morning. I don't – I don't recall exactly.²⁷*

16.9 When the DPP asked me about my recollection of my conversations with Ms Brown on 28 and 29 March 2019 in the Trial, I provided the following responses:

[DRUMGOLD:] *Which was Thursday the 28th [March 2019]- - -? [REYNOLDS:] --- Thursday and the Friday.*

[DRUMGOLD:] *- - - and Friday the 29th [March 2019]? [REYNOLDS:] ---Yes.*

[DRUMGOLD:] *Okay. Thank you. Did you have any engagement with Ms Brown during that period? [REYNOLDS:] ---I did.*

[DRUMGOLD:] *Can you walk us through that? What day and what was said? [REYNOLDS:] ---I can. So on that Thursday in and around engagements Ms Brown had mentioned to me that she had had conversations further with Brittany Higgins and that she was a bit concerned about her behaviour. She seemed to be distressed.*

[DRUMGOLD:] *This was Thursday the 28th she told you that? [REYNOLDS:] ---Yes. And she also – so we had a conversation about that and she said that Ms Higgins had said she wanted to go to the doctor and that she was going to go to the doctor and that she might not be back the following day, on Friday.*

[DRUMGOLD:] *And what was your response? [REYNOLDS:] ---Strongly supportive.*

²⁷ Transcript (Exhibit 13), 11 October 2022, page 510 lines 15 to 20.

[DRUMGOLD:] *What did you know about the events of the early morning of Saturday, 23 March, at this – as of the conclusion of that phone – - -?* [REYNOLDS:] *---Nothing more than my initial information.*

[DRUMGOLD:] *That she was distressed and she wanted to go to the doctor?*
[REYNOLDS:] *---Yes.*

[DRUMGOLD:] *Did Ms Brown say that she had had a meeting with Ms Higgins as of that stage?* [REYNOLDS:] *---Yes. I believe by that stage she'd had two meetings with Ms Higgins.*

[DRUMGOLD:] *Did Ms Brown convey to you what Ms Higgins said to her during those meetings?* [REYNOLDS:] *---Only that she was discussing sort of the evening, that she couldn't remember what happened, and – but Ms Brown became concerned by Ms Higgins' demeanour, because she was getting upset. So she was so – Fiona was – Ms Brown was becoming concerned, which is what she communicated to me, and so I thought it seemed like a good idea that she go to the doctor.*

[DRUMGOLD:] *So Ms Brown at that stage had not told you anything that Ms Higgins had told her about the events of the previous Saturday?* [REYNOLDS:] *---Not specifically, no.*

[DRUMGOLD:] *In general?* [REYNOLDS:] *---Just that she was concerned that she was upset.²⁸*

- 16.10 Immediately following the granting of the Unfavourable Witness Application in relation to me (see paragraphs 9.6 to 9.12 above), the DPP put to me, among other things, the following:

"[DRUMGOLD:] I am going to suggest that you knew that there was a sexual element the previous Saturday? [REYNOLDS:] ---No, I did not.

MR WHYBROW: Excuse me one second. I object to that question.

MR DRUMGOLD: Yes, I accept my friend's correction.

I am suggesting to you that you were aware that Ms Higgins had made an allegation about Mr Lehrmann being on top of her at this stage? [REYNOLDS:] *---I was not.²⁹*

- 16.11 It may be that this difference in the recollection between Ms Brown and I in relation to whether the *"I recall him being on top of me"* comment (**Comment**) was conveyed to me is the basis of the Contradiction Proposition. However, a difference in recollection in relation to whether or not the Comment was conveyed to me by Ms Brown does not amount to *"directly contradictory"* evidence in relation to whether I had been expressly told that there was a sexual element to the Incident prior to the 1 April Meeting. Further, my responses in the Trial were entirely consistent with my Statement, where I provided no indication that the Comment had been conveyed to me in the lead up to the 1 April Meeting.³⁰
- 16.12 My responses in the Trial were also consistent with my statements and responses to questions in the Senate. In relation to the 1 April Meeting, I stated as follows:

²⁸ Transcript (Exhibit 13), 17 October 2022, page 720 line 12 to page 721 line 5.

²⁹ Transcript (Exhibit 13), 17 October 2022, page 725 line 41 to page 726 line 2.

³⁰ Statement, paragraphs 30 to 38.

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(a) On 18 February 2021:

"On Monday 1 April I met with Brittany and my then former chief of staff. During this meeting I made it clear to Brittany that she would have my full support in whatever course of action she decided to take and that she would have full access to counselling services. My chief of staff and I moved quickly to ensure that Brittany was given access to the police, should she wish to make a complaint."³¹

(b) On 23 February 2021:

"As I've said in this chamber previously, during the course of that meeting it became apparent to me that the matter was more serious than a security breach, of which I had been previously advised. That same day I organised for Brittany to meet with the AFP, something which I have been advised did occur."³²

and,

"On 1 April 2019 I met with my then Chief of Staff and Brittany Higgins, following which I organised for Brittany to meet with the AFP - a meeting that I believe occurred later that day."³³

16.13 In relation to the Contradiction Proposition, in his closing submissions, the DPP suggested to the jury as follows:

"Notwithstanding what Ms Brown said she recalled of the first meeting, what she says of the second meeting is revealing of what was said in the first meeting. Ms Brown says that she was concerned that, and these are her words at 249, line 45, she was concerned that if she kept raising the events of the early hours of the Saturday, in her words:

I might trigger something or whatever so I'm not going to ask anymore.

In our submission, this makes it clear that she was aware something beyond mere drunkenness and an innocent state of address(sic) were discussed at the first meeting because she had actually given herself a trigger warning for her conversation with Ms Higgins on the second meeting. In any event, it is at this point that Ms Brown recalls Brittany Higgins got up to leave and stopped and turned around and said:

I remember him being on top of me.

That is at 250, line 5. Whatever the specifics and whatever the level of information Ms Brown knew or wanted to know or interpreted or at least acknowledged, the complainant quite clearly and unequivocally told Ms Brown of the offence within days of it occurring, we say most likely on the Tuesday, just as she said she did. Of course there was a meeting between Senator Reynolds, Fiona Brown and Brittany Higgins on 1 April 2019 that we say Senator Reynolds clearly attempted to portray as a

³¹ Commonwealth, [Parliamentary Debates](#), Senate, 18 February 2021, (14:00) page 1001, (Senator Reynolds).

³² Commonwealth, [Parliamentary Debates](#), Senate, 23 February 2021, (14:41) page 1272, (Senator Reynolds).

³³ Commonwealth, [Parliamentary Debates](#), Senate, 23 February 2021, (18:34) page 1347, (Senator Reynolds).

meeting about a security breach. She qualified as a serious security breach, of course, but that was purely on the basis of that she entered the office after hours.

Now firstly, on her evidence curiously Senator Reynolds asked Ms Brown to also invite Brittany Higgins' father to the meeting, at 486, so Senator Reynolds asked Fiona Brown, with reference to this meeting about a security breach, for Brittany Higgins to invite her father? In any event, it appears that she declined and there is no evidence that her father was at that meeting. Senator Reynolds said she received a little bit more information about 'getting dressed' which she combined with her state of distress, put those things, getting dressed and her state of distress, and said this:

I'm not a trained counsellor and I'm not the person to be having this conversation.

At 489, line 16, so suggested that she go to the Australian Federal Police.

Now, remember, Fiona Brown at this stage, as of 1 April, had already had two meetings, and the complainant had disclosed that the accused had been on top of her. The evidence is also that she had a one-on-one meeting with Senator Reynolds before they invited Brittany Higgins into the office at 487. It's a matter for you, but it appears apparent that regardless of whatever Senator Reynolds wanted to know or wanted to acknowledge, she clearly had access to more than enough information to make it clear that she was dealing with something of a sexual nature as of that meeting on 1 April, and that's what triggered the reference to the Australian Federal Police."³⁴

- 16.14 This submission by the DPP does not identify "directly contradictory" evidence as between myself and Ms Brown. The submission asks the jury to draw an inference about my knowledge of the alleged nature of the Incident based on Ms Brown's evidence as to her level of knowledge and my ability to access more information. His closing submission does not even specifically advance the argument that I had been told by Ms Brown about the Comment. Indeed, the DPP acknowledged that his submission could not be presented as a statement of fact when he said to the jury: "It's a matter for you". It was only in the Letter that the DPP presented the Contradiction Proposition in a manner that went further than his submission in the Trial by suggesting that I gave "directly contradictory" evidence to Ms Brown.

(b) repetition of the Propositions with additional characterisation of my actions by the DPP presented as statements of fact

16.15 In relation to the Propositions:

- (a) I have addressed the reasons for my text messages to Mr Whybrow SC (Defence Counsel) in paragraphs 13.1 to 14.4 above.
- (b) In relation to Mr ██████'s attendance at the Trial, the following should be noted:
 - (i) I have already identified that Mr ██████ was known to the DPP and the ODPP from the time of the Proofing conference on 24 May 2022 (see paragraphs 9.1 to 9.2 above);

³⁴ Transcript (Exhibit 13), 18 October 2022, page 779 line 6 to page 780 line 10.

- (ii) Mr ██████'s interest in attending as an observer considering the emotional support he had provided to me since the matter became public;
- (iii) the fact that a solicitor with the ODPP had approached Mr ██████ in the court room to enquire about my availability to appear sooner than the agreed date of 21 October 2022 (see paragraphs 12.1 to 12.2 above); and
- (iv) at no time during the Proofing conference (or any time subsequently) was I advised that Mr ██████ could not (or should not) attend the Trial and nor was Mr ██████ advised at any time not to attend the Trial..

16.16 Accordingly, there was no basis for the DPP to characterise the actions that were the subject of his Propositions in such a negative fashion in the Letter and, in doing so, he compromised the independence of the office of the DPP and brought the office into disrepute.

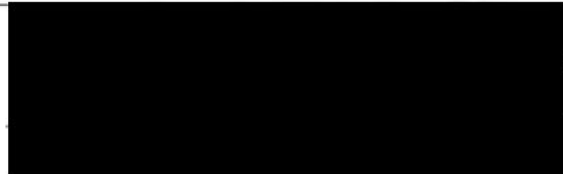
16.17 The DPP's decision to repeat the Propositions outside of Court (that is, in the Letter), and to present them along with his own negative inferences as to the significance of my actions as if these were statements of fact, was deeply irresponsible. I address my concerns in relation to potential breaches of duty and legislation in this respect in response to Question 17 below.

F. Breaches of duty/legislation

17. *To the extent not addressed in response to the above paragraphs, outline any breaches of duties or legislation you believe to have been committed by the DPP, AFP or the ACT Victims of Crime Commissioner which relate to your involvement in the Investigation/matter of R v Lehrmann.*

17.1 I was concerned that there may have been possible breaches of duties or legislation in respect of the DPP's and/or ODPP's dealings with me in relation to the Investigation and the Trial. I asked my legal representatives at Clayton Utz to identify any such potential breaches. Accordingly, in response to Question 17 of this Subpoena, I raise my concerns with the Inquiry that there may have been breaches of various duties and breaches of legislation as a result of the following actions taken by the DPP and/or the ODPP:

- (a) advancing the Propositions in the course of the Trial; and
- (b) the release of the Letter, which contained the November Propositions on page 3 under the heading "*Concerns relating to trial process*"; and
- (c) the public announcement by the DPP, on 2 December 2022, that the prosecution case would be dropped due to concerns about the health of the complainant. In the course of making this announcement, the DPP revealed his opinion as to the merits of the Prosecution's case by stating that he had "*a clear view that there was a reasonable prospect of conviction*" and that he had to weigh the "*'pursuit of justice' against the public interest test of the potential harm*



caused by holding a second trial", including the potential harm to the complainant.³⁵

17.2 As a result of these actions, and based on the material that I have reviewed in relation to this question (see paragraph 17.1), I believe that there may have been breaches of the following:

- (a) the *Freedom of Information Act 2016* (ACT) (**FOI Act**);
- (b) *Human Rights Act 2004* (ACT) (**Human Rights Act**);
- (c) the *Legal Profession (Barristers) Rules 2021* (ACT) (**Barristers Rules**);
- (d) the *Legal Profession Act 2006* (ACT) (**Legal Profession Act**); and
- (e) *The Prosecution Policy of the Australian Capital Territory* (**DPP Prosecution Policy**).

17.3 Accordingly, I ask that the Inquiry give consideration to these potential breaches, each of which I address in turn below.

(a) *The FOI Act*

17.4 Section 38 of the FOI Act requires consultation with third parties in certain circumstances. Section 38 applies if the respondent to an access application considers that:

- "(a) *some or all of the government information applied for is not contrary to the public interest information; but*
- (b) *disclosure of the information may reasonably be expected to be of a concern to a person or another entity other than the Territory (a **relevant third party**).*"

(emphasis added)

17.5 Section 38(2) of the FOI Act states that the respondent: "*must take reasonable steps to consult with the relevant third party before deciding to give access to the information*". Section 38(3)(a)(ii) of the FOI Act states:

"(3) *Disclosure of government information may reasonably be expected to be of concern to a relevant third party if—*

(a) *for a relevant third party that is an individual—*

- (i) *the information is personal information about the individual; or*
- (ii) *the disclosure of the information would, or could reasonably be expected to, affect the person's rights under the Human Rights Act 2004.*"

³⁵ Nick Burnside and Elizabeth Byrne, 'Rape charge dropped against Bruce Lehmann, who was accused of sexually assaulting Brittany Higgins', *ABC News* (2 December 2022), <<https://www.abc.net.au/news/2022-12-02/bruce-lehmann-rape-charge-to-be-dropped-brittany-higgins/101725242>>.

- 17.6 I believe that the November Propositions comprise "*personal information*" as defined in the Dictionary to the FOI Act, namely: "*information or an **opinion** (including information forming part of a database), **whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion**" (emphasis added).*
- 17.7 In addition, the November Propositions comprise information, the disclosure of which, affected my rights under section 12 of the Human Rights Act, which states that:
- "Everyone has the right—*
- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and*
- (b) not to have his or her reputation unlawfully attacked."***
- (emphasis added)
- 17.8 Given the November Propositions are uncontested statements of fact, I consider that the disclosure of the Letter by the DPP clearly affected my right not to have my "*reputation unlawfully attacked*". The November Propositions were not made in the context of interrogating the evidence at the Trial (indeed, in the case of the Contradiction Proposition, the DPP did not identify any "*directly contradictory*" evidence as between myself and Ms Brown, and he did not specifically take me to paragraphs of my Statement relating to the lead up to the 1 April Meeting during my evidence or draw this assertion out in his closing submissions (see paragraphs 16.6 to 16.14 above)). Consequently, there does not appear to have been any proper or lawful basis for the DPP to attack my reputation in correspondence with the AFP. Further, the disclosure of the Letter without such consultation violated my legal right not to have my "*reputation unlawfully attacked*", pursuant to section 12(b) of the Human Rights Act.
- 17.9 Section 38(5) of the FOI Act required that I be consulted by the ODPP prior to the disclosure of the Letter. In deciding whether or not to give *The Guardian* access to the Letter, section 38(5) of the FOI Act required the relevant decision-maker³⁶ in the ODPP to:
- "(a) ask the relevant third party whether it objects to the disclosure of the government information; and*
- (b) if the relevant third party objects to the disclosure—invite the relevant third party to provide its views, within 15 working days, on whether the information is contrary to the public interest information; and*
- (c) tell the relevant third party that if access is given to the information in response to the application, the information (other than personal information) will be made available to the public through the disclosure log of the respondent under section 28."*
- 17.10 No consultation with me or my legal representatives, of any kind, took place before the ODPP disclosed the Letter to *The Guardian*. The first I knew of the disclosure was when I

³⁶ Namely, the DPP's Information Officer (see section 33(1)(a) of the FOI Act).

received the enquiry from Mr Knaus (The Guardian) on 10 December 2022 (see paragraph 16.1 above).

17.11 Section 89 of the FOI Act states that:

"A person commits an offence if the person —

(a) purports to make a decision under this Act; and

(b) knows the decision is not a decision that can be made under this Act.

Maximum penalty: 100 penalty units.³⁷

17.12 I consider that it is likely that the relevant decision-maker within the ODPP would have known that their decision to disclose the Letter, without consulting me, was not a decision that was open to them under the FOI Act. Accordingly, having considered this issue, I ask that the Inquiry give consideration to whether the DPP or the relevant decision-maker within the ODPP has committed an offence under section 89 of the FOI Act. At the very least, serious consideration should be given to making an adverse finding against the decision-maker and the ODPP that they have committed a breach of the FOI Act.

17.13 In light of the potential breaches of the FOI Act, the matter should be referred to ACT Policing in respect of the breach of any offence provisions (such as section 89 of the FOI Act).

(b) *The Human Rights Act*

17.14 For the reasons set out in paragraphs 17.7 and 17.8 above, having considered this issue, I believe that the DPP appears to have violated my legal right not to have my "*reputation unlawfully attacked*", pursuant to section 12(b) of the Human Rights Act.

(c) *The Barristers Rules*

17.15 Having considered the Barristers Rules, I believe that the DPP (in his capacity as a barrister subject to the Barristers Rules) appears to have breached rules 35(a)-(c), 42, 49, 59(a)(iii), 62, 63 and 65 of the Barristers Rules. A copy of the Barristers Rules is attached and marked '**Exhibit 36**'.

17.16 I address each of these potential breaches in turn below:

(a) **Rule 35:** The DPP made an application under section 38(1)(a) of the Evidence Act to treat me as an "*unfavourable witness*". In doing so, I consider that he did not take care to ensure that his decision "*to invoke the coercive powers*" of the Court to make "*allegations*" and "*suggestions under privilege*" against me were "*reasonably justified by the material then available*" to him (see rule 35(a) of the Barristers Rules). The Propositions (see paragraph 9.13) and ensuing allegations that my conduct (from the time of the Incident to the Trial) was informed by "*political forces*" because I was "*politically invested*" were not supported by the material available or any evidence at the Trial.

³⁷ Section 133 of the *Legislation Act 2001* (ACT) indicates that a penalty unit for an offence committed by an individual is \$160. Therefore, committing an offence under section 89 of the FOI Act carries with it a maximum fine of \$16,000.

[REDACTED]

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[REDACTED]

WITNESS

Nor were these allegations or suggestions "*appropriate for the robust advancement*" of the DPP's case against the defendant "*on its merits*" (see rule 35(b) of the Barristers Rules). Bare allegations of a political conspiracy or nefarious motivations in relation to my evidence were in no way appropriate for the robust advancement of the complainant's allegations against the defendant.

It can only be concluded that the DPP's allegations and suggestions were "*made principally in order to discredit or embarrass*" me (see rule 35(c) of the Barristers Rules). The allegations and suggestions made following the Unfavourable Witness Application simply comprised a series of suggestions in relation to my intentions that were purportedly derived by the DPP from the Propositions. In relation to the Proposition regarding Mr Reid's attendance at the Trial, the DPP did not disclose that Mr Reid was already known to him (and others at the ODPP) (see paragraphs 9.1 to 9.2 above) or that a solicitor of the ODPP had approached Mr Reid in the course of the Trial regarding my availability (see paragraphs 12.1 to 12.2 above). The Trial was open to members of the public, not in any way a secret and Mr Reid's attendance should not have been surprising in the circumstances (see paragraph 16.15(b) above).

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rule 35 of the Barristers Rules by the ACT Bar Council.

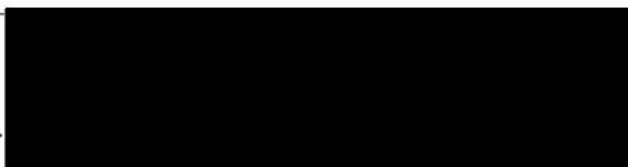
- (b) **Rule 42:** The DPP did not "*limit evidence, including cross-examination* [as an unfavourable witness], *to that which was reasonably necessary to advance and protect*" the DPP's (and/or the complainant's) interests that were "*at stake in the case*" (see rule 42(d) of the Barristers Rules). For the reasons set out in paragraph (a) above, the Propositions were clearly not reasonably necessary to advance the complainant's case against the defendant, but were principally made in order to discredit or embarrass me.

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rule 42 of the Barristers Rules by the ACT Bar Council.

- (c) **Rule 49:** The DPP, in advancing the Propositions, cast negative aspersions on my intent in relation to my correspondence with Counsel for the Defendant. The DPP conceded in his closing submissions that: "*There is simply no property in a witness, there is no problem with counsel talking to a witness but these things were put as an issue of credit to Senator Reynolds' evidence and particularly propositions of what she knew and did not know*".³⁸ Given the DPP's concession in his closing submissions, and the fact that the Propositions and ensuing allegations (see paragraphs 9.13 to 9.18) did not actually relate to my knowledge of the Incident, it is unclear why the DPP advanced the Propositions at all. It could only have been done with the intention to embarrass me (as discussed in paragraph (a) above).

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rule 49 of the Barristers Rules by the ACT Bar Council.

³⁸ Transcript (Exhibit 13), 18 October 2022, page 764, lines 29 to 32.



- (d) **Rule 59:** On 2 December 2022, the DPP made public comments at the press conference announcing the discontinuation of the prosecution during which he stated that he had *"a clear view that there was a reasonable prospect of conviction"* (see paragraph 17.1(c)). The DPP knew that these comments would be published by the media. In fact, a DPP holding a press conference announcing that a further trial would not occur is, in itself, unorthodox and unprecedented. Accordingly, I consider that he took *"steps towards the publication of"* material in which he expressed his opinion of the merits of the Trial (see rule 59(a)(iii)).

In doing so, the DPP appears to have contravened rule 59(a)(iii) of the Barristers Rules. This is particularly pertinent in circumstances where, the decision to discontinue the prosecution had been made, the fact that Ms Higgins may bring a Civil Claim may have been discussed with the DPP during the Proofing conference or, in any event, was able to be reasonably anticipated. Additionally, in the Letter, the DPP himself stated to the Chief Police Officer of the AFP:

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

If the DPP was expecting such an inquiry would be established, his public comments in relation to the merits of the prosecution, which clearly impact the *"potential proceedings"* (namely, the inquiry sought by the DPP) were clearly inappropriate.

The DPP's comments were not *"made in the course of genuine educational or academic discussion on matters of law"* (rule 59(a)(iii)) or made in accordance with any of the exceptions in rule 59(b) of the Barristers Rules.

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rule 59(a)(iii) of the Barristers Rules by the ACT Bar Council for expressing his opinion on the merits of the prosecution at the press conference on 2 December 2022.

- (e) **Rules 62 and 63:** for the reasons set out in paragraphs (a) to (c) above, the DPP pressed *"the prosecution's case for a conviction beyond a full and firm presentation of the case"* (rule 63 of the Barristers Rules). I consider that the DPP overstepped his obligations under rule 63 by advancing the Propositions; by repeating the claim that I was motivated by *"political forces"* to suppress Ms Higgins' complaint; and the public statement on 2 December 2022 in which he expressed his opinion as to the perceived merits of the prosecution case. In taking these actions, and for the same reasons as set out in paragraphs (a) to (c) above, the DPP also failed to *"fairly assist the court to arrive at the truth"* and did not *"seek impartially to have the whole of the relevant evidence placed intelligibly before the court"* (rule 62 of the Barristers Rules).

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rules 62 and 63 of the Barristers Rules by the ACT Bar Council. I note that rules 62 and 63 of the Barristers Rules are replicated in sections 10.2 and 10.3 of the DPP Prosecution Policy (see paragraph 17.21(d) below).

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Witness

- (f) **Rule 65:** for the reasons set out in paragraphs (a) to (c) above, the DPP advanced the Propositions and made the allegations (see paragraphs 9.13 to 9.13) which he could not have believed on "*reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight*" (rule 65 of the Barristers Rules). The allegations and suggestions made following the Unfavourable Witness Application simply comprised a series of suggestions in relation to my intentions derived from the DPP's personal opinion regarding my engagement with Counsel for the Defendant and my partner's attendance at the Trial – neither of which were surprising nor a secret (see paragraph 16.15 to 16.17 above).

I ask that the Inquiry give consideration to recommending that the DPP be investigated for a potential breach of rule 65 of the Barristers Rules by the ACT Bar Council. I also note that rule 65 of the Barristers Rules is replicated in section 10.5 of the DPP Prosecution Policy (see paragraph 17.21(e) below).

(d) *The Legal Profession Act*

17.17 I also note that section 585 of the Legal Profession Act states:

"(1) Legal profession rules are binding on Australian legal practitioners and locally-registered foreign lawyers to whom they apply.

(2) Failure to comply with legal profession rules can be unsatisfactory professional conduct or professional misconduct."

(emphasis added)

17.18 In addition, I understand that the Barristers Rules are made pursuant to section 579(1) of the Legal Profession Act by the Bar Council and constitute the Legal Profession Rules for barristers (see sections 578 and 579 as well as Part 8.3 "*Legal profession rules*" generally).³⁹ I also understand that:

- (a) an "*Australian Legal Practitioner*" is defined to include "*an Australian lawyer who holds a local practising certificate*" (section 8 of the Legal Profession Act);
- (b) the Dictionary to the Legal Profession Act (**Dictionary**) defines a "*local practising certificate*" as "*a current practising certificate*" granted under the Legal Profession Act;
- (c) a "*barrister*" is defined as "*a local legal practitioner who holds a current barrister practising certificate*" (Dictionary);
- (d) a "*barrister practising certificate*" is a "*local practising certificate*" issued under section 35 of the Legal Profession Act; and
- (e) Accordingly, in light of (a) to (d) above, a "*barrister*" is an "*Australian Legal Practitioner*" for the purposes of section 585 of the Legal Profession Act.

17.19 I understand that the DPP, as a "*barrister*", is bound to comply with the Barristers Rules and that failure to do so can constitute "*unsatisfactory professional conduct or professional*

³⁹ I note that the Dictionary to the Legal Profession Act states that "*legal profession rules means rules made under part 7.4*". This appears to be an error as there is no "*part 7.4*" in the Legal Profession Act. Additionally, "*part 8.3*" is entirely dedicated to the "*legal profession rules*".

misconduct" (section 585 of the Legal Profession Act). Having considered the position further, I ask that the Inquiry give consideration to referring the DPP to the ACT Bar Council for investigation in relation to breaches of rules 35(a)-(c), 42, 49, 59(a)(iii), 63 and 65 of the Barristers Rules and, as a result, breach of the Legal Profession Rules (i.e. Part 8.3 of the Legal Profession Act).⁴⁰

(e) *The DPP Prosecution Policy*

17.20 Having considered the position further and the DPP Prosecution Policy, I believe that the DPP appears to have breached sections 1.4, 1.5, 1.7, 9.1, 9.2, 10.2, 10.3 and 10.5 of the DPP Prosecution Policy. A copy of the DPP Prosecution Policy is attached and marked 'Exhibit 37'.

17.21 I address each of these potential breaches in turn below:

- (a) **Sections 1.4 and 1.5:** For the same reasons that I believe the DPP may have breached rules 35(a)-(c), 42, 49, 62, 63 and 65 of the Barristers Rules (see paragraphs 17.16(a) to 17.16(c) and 17.16(e) to 17.16(f) above), I believe the DPP may have also breached sections 1.4 to 1.5 of the DPP Prosecution Policy.

The DPP does not appear to have observed the principle that: *"The purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime"*. The Propositions (see paragraph 9.13) and ensuing allegations that my conduct (from the time of the Incident to the Trial) was informed by *"political forces"* because I was *"politically invested"* were not supported by the material available or any evidence at the Trial. By advancing the Propositions and ensuing allegations, the DPP behaved as if the objective of the Trial was to obtain a conviction by any means necessary, including by seeking to diminish my credibility and embarrass me. Although the DPP is *"entitled to present the prosecution's case firmly, fearlessly and vigorously"*, the Propositions and ensuing allegations were not relevant to advancing the complainant's case at all.

- (b) **Section 1.7:** For the reasons discussed in paragraphs 17.4 to 17.12 above, the DPP and the decision-maker at the ODPP appears to have shown reckless disregard for my human rights as set out in the Human Rights Act, namely, the right contained in section 12 not to have my reputation unlawfully attacked. This appears to be a breach of section 1.7 of the DPP Prosecution Policy which states that *"all staff of the DPP" are "responsible for respecting, protecting and promoting the human rights that are set out in the [Human Rights Act]."*
- (c) **Section 9.1 to 9.2:** Section 9.1 of the DPP Prosecution Policy states that *"there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public."* However, section 9.2 qualifies this substantially as follows:

"...reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are

⁴⁰ See also: Legal Profession Act, sections 394, 575 and Part 4.

given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons."

(emphasis added)

As discussed in paragraph 17.16(d), the public announcement by the DPP on 2 December 2022 that the prosecution case would be dropped appears to have been highly unorthodox and unprecedented. The DPP publicly ventilated his opinion as to the merits of the Prosecution's case by stating that he had "a clear view that there was a reasonable prospect of conviction" and that he had to weigh the "pursuit of justice' against the public interest test of the potential harm caused by holding a second trial", including the potential harm to the complainant. This public announcement clearly caused further "harm" and "serious embarrassment" to the accused and witnesses (such as myself) whose evidence had been held to be unfavourable to the DPP's case. Further, the DPP's public comments amounted to an engagement in public debate concerning the merits of the case, which had been ongoing and ubiquitous in the media since at least February 2021. I consider that the DPP's public announcement appears to have amounted to an egregious breach of sections 9.1 and 9.2 of the DPP Prosecution Policy.

- (d) **Sections 10.2 and 10.3:** rules 62 and 63 of the Barristers Rules are replicated in sections 10.2 and 10.3 of the DPP Prosecution Policy (see paragraph 17.16(e) above). Accordingly, I consider that the DPP appears to have also breached sections 10.2 and 10.3 of the DPP Prosecution Policy.
- (e) **Section 10.5:** Section 10.5 of the DPP Prosecution Policy replicates rule 65 of the Barristers Rules (see paragraph 17.16(f) above). Accordingly, I consider that the DPP appears to have also breached section 10.5 of the DPP Prosecution Policy.

- 17.22 In light of the potential breaches of the DPP Prosecution Policy: the DPP should be referred for investigation to the ACT Bar Council and to the Attorney-General of the ACT, who is responsible for the DPP's appointment (section 28 of the *Director of Public Prosecutions Act 1990* (ACT)).

G. Board of Inquiry

18. *Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry.*
- 18.1 The DPP has caused me distress and harm, including by: making the Propositions in the Trial; repeating and expanding on these in the November Propositions; and disclosing the Letter without any consultation. Additionally, the DPP has alleged that I was motivated by "political forces" to suppress a complaint involving allegations of the upmost gravity and seriousness. This allegation is baseless and has pervaded the DPP's characterisation of me both during and after the Trial. As well as being a false and unfair characterisation, the DPP's suggestion that I was motivated by "political forces", has always been entirely irrelevant to establishing the truth of the allegations that were the subject of the Trial.

[REDACTED]

LINDA KIRBY AND TROTT

[REDACTED]

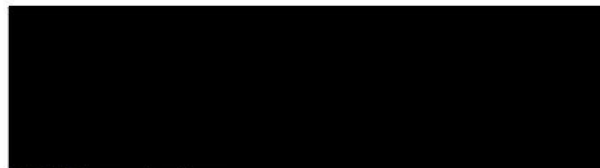
Witness

- 18.2 There has been no avenue for me to respond to this allegation other than to simply reject the proposition in the course of the Trial. I was subject to significant and sustained provocation and unjustifiable criticism by the media, commentators and other politicians – both before and after the Propositions were made in the Trial as well as the subsequent November Propositions contained in the Letter (which have now been made public). I have also experienced vitriolic messages on social media as a result. I have resisted the urge to respond to the Propositions, the November Propositions, or the allegation that I was motivated by "*political forces*" in Parliament. I have always been conscious of the need not to prejudice the Investigation or the Trial in any way. I have always been most concerned to respect Ms Higgins' rights and agency in making the allegations, as well as the integrity of the Investigation and the Trial.
- 18.3 Accordingly, I am grateful for the opportunity made available by the Inquiry to outline my concerns regarding the conduct of the DPP and the ODPP.

SWORN before me at Perth in Western Australia on 1 May 2023.



Linda Reynolds



Signature of witness

