

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 ANTHONY WILLIAMSON SC

I, ANTHONY BRIAN WILLIAMSON SC, of 20-22 London Circuit, Canberra, ACT, state as follows:

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

A. Background and Professional History

2. I am currently the Chief Crown Prosecutor and Deputy Director of Public Prosecutions for the Australian Capital Territory. I have held this position since August 2019. My duties and functions in this role include:
 - a. Appearing as lead prosecution counsel in the most complicated criminal trials, including homicide trials, matters involving organised criminal gangs, high level drug trafficking matters, and serious sexual assault matters;
 - b. Appearing as lead counsel for the prosecution in appeals before the ACT Court of Appeal;
 - c. Overseeing the prosecution of all serious indictable criminal matters being prosecuted under Territory law, except for those being personally prosecuted by the Director of Public Prosecutions, Mr Shane Drumgold SC ('the DPP');
 - d. Overseeing the prosecution of civil matters arising under the *Confiscation of Criminal Assets Act 2003*;

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- e. Overseeing the day-to-day operations of Crown Chambers within the Office of the ACT Director of Public Prosecutions ('ACT ODPP').
3. I have been employed with the ACT ODPP since September 2009. My employment with that office has been continuing and ongoing, with the exception of two secondments: the first being to the ACT Justice and Community Safety Directorate in 2011 as a Legal Policy Officer to assist in the drafting of a Bill relating to law enforcement powers; and the second being to the ACT Legal Aid Commission in 2015 where I was the Acting Deputy Chief Executive of that organisation.
4. Prior to being appointed as the Deputy Director of Public Prosecutions in August 2019, I have held the following positions in the ACT ODPP:
- General Prosecutor (2009 – 2013);
 - Supervising Prosecutor, Family Violence Unit (2013 – 2015);
 - Practice Manager (2015 – 2016);
 - Supervising Prosecutor, Confiscation of Criminal Assets Unit (2015 – 2016) (this position was held in addition to that of Practice Manager); and
 - Crown Advocate (2016 – 2019).
5. I am one of two prosecutors in the ACT ODPP who has been delegated all of the DPP's powers. **Exhibit AW-2** is a copy of the most recent delegation issued by the DPP. Those delegations included, but are not limited, to:
- Signing indictments and commencing proceedings in the ACT Supreme Court;
 - Discontinuing indictable proceedings in the ACT Supreme Court by signing a 'Notice Declining to Proceed';
 - Commencing and discontinuing appeals on behalf of the DPP in the ACT Supreme Court and ACT Court of Appeal, and responding to appeals instituted in those courts against the DPP; and
 - Commencing proceedings under the Confiscation of Criminal Assets Act 2003.

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6. The Delegations that I hold are to be exercised in accordance with '*Director's Instructions 14.1 and 14.2*', which are issued pursuant to section 12 of the *Director of Public Prosecutions Act 1990*. **Exhibit AW-5** is a copy of those Director's Instructions.
7. I hold the following Tertiary qualifications:
 - a. A Bachelor of Laws from the Australian National University;
 - b. A Bachelor of Arts from the Australian National University;
 - c. A Graduate Diploma of Legal Practice form the Australian National University; and
 - d. A Certificate II in Public Safety (Fire-fighting Operations), issued by the ACT Emergency Services Authority.
8. I was appointed as Senior Counsel (SC) for the ACT in November 2022.
9. **Exhibit AW-4** is an up to date copy of my curriculum vitae

B. My involvement in the prosecution of Bruce Lehrmann

10. On Friday 6 August 2021 I was made aware that Mr Bruce Lehrmann had been charged with sexual offences which were alleged to have been committed against Ms Brittany Higgins. I instructed that the file be brought to me for review, and any documents the ODPP held electronically be sent to me. The file had only just been transferred to our office by the Australian Federal police ('the **AFP**').
11. Upon reviewing the file, it immediately became apparent to me that the matter would attract significant media and public attention given the alleged offending involved political staffers in a Cabinet Minister's office in Parliament House.
12. I then spoke the DPP and advised him that the file was in our office and it would likely attract significant media attention. I suggested that the matter be immediately allocated to one of the most serious prosecutors in the ACT ODPP and then be 'locked down' on our electronic systems. The main electronic database utilised by the ACT ODPP is called CASES. All ACT ODPP staff have access to any given matter on CASES unless positive steps are taken to 'lock down' the matter. I took the view that matter should be 'locked down' so as to minimise the risk of sensitive information being leaked to the media.

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13. The DPP advised that he would take carriage of the matter and that he would be assisted by a Crown Advocate, Ms Skye Jerome. The DPP agreed that the matter should be 'locked down' immediately. Although not expressly discussed, I understood that if Mr Lehrmann were to plead not guilty and the matter were to progress to trial, a prosecution team (i.e. junior counsel and instructing solicitor(s)) would be appointed to work on the matter in due course. The prosecution team's access to the matter on CASES would then be re-instated.
14. I then forwarded the DPP an electronic copy the charge sheets and statement of facts. **Exhibit AW-5** is a copy of the email I sent to the DPP. I then deleted the electronic copy of the charge sheets and statement of facts from my computer. I had not made any modifications to them. In deleting these documents from my computer, I knew that they would continue to be held by the ACT ODPP on the CASES database, including my email to the DPP.
15. I then instructed the ACT ODPP Information and Communications Technology Manager, Mr Cam [REDACTED], to 'lock down' the job. **Exhibit AW-6** is a copy of my email to Mr [REDACTED].
16. At some point that same day I personally gave the DPP the AFP hard copy file.
17. I have not had any subsequent involvement whatsoever in the prosecution of Mr Lehrmann since 6 August 2021.

C. ACT ODPP Freedom of Information Act Practices

Background

18. I understand that myself and the DPP's Executive Officer, Ms Katie Cantwell, are 'Information Officers' for the purposes of Part 3 of the *Freedom of Information Act 2016* ('the FOI Act').
19. I understand that I was appointed as an information officer because:
- a. I regularly deal with subpoenas and requests for prosecution disclosure in criminal proceedings where the DPP asserts that the subpoena or request:
 - i) has no legitimate forensic purpose;

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- ii) seeks the production of legally privileged material; and/or
- iii) the requested material should be the subject of a public interest immunity.

There is some cross-over between the application of the principles governing resisting the disclosure of information under subpoena or the prosecutorial disclosure obligations, and the exemption provisions in the FOI Act;

- b. I had some experience in dealing with FOI requests prior to being employed at the ACT ODPP; and
 - c. Ms Cantwell is not a lawyer and may, from time to time, need assistance with more complicated issues that arise in relation to FOI requests.
20. I understand that the ACT ODPP has a generic email address to which all FOI requests are to be sent, being foiactdpp@act.gov.au.
21. I understand that Ms Cantwell is the ACT ODPP FOI Contact Officer. In that role, she oversees and coordinates all FOI requests made to the ACT ODPP.
22. I do not have access to the foiactdpp@act.gov.au email inbox. FOI requests are not sent to me in the first instance.
23. From time to time Ms Cantwell requests my assistance in relation to individual FOI requests that she has received. More often than not, they relate to possible redactions relating to legal privilege or what I would describe as a public interest immunity exemption (i.e., the requested documents could disclose the identity of human sources or law enforcement methodologies). I will usually respond to Ms Cantwell by saying words to the effect "nil issues", in which case she will be the person who formally responds to the FOI request.
24. I would say that the overwhelming majority of occasions where I have been approached by Ms Cantwell for FOI advice did not technically relate to an FOI request that had been made to the ACT ODPP per se, but rather they involved requests from the AFP for 'third party comment' in relation to FOI requests that have been made to the AFP (see sections 27 and 27A of the *Freedom of Information Act 1982* (Cth)).

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25. On average, I would say that I get a request for this kind of minor assistance from Ms Cantwell once a month.
26. Where Ms Cantwell refers a matter to me which I think is complicated, controversial or significant redactions need to be made, I will advise Ms Cantwell that I will take carriage of the whole request. I then personally act as the decision maker, process the request, and draft the decision letter.
27. There are no set criteria governing when I will take carriage of an FOI request that has been referred to me from Ms Cantwell. The decision is a discretionary one made on a case by case basis and is based on my initial assessment of the request that has been referred to me and my capacity to deal with it in the statutory time frame.
28. My records show that there have only been eight (8) matters where I took carriage of an FOI request and became the decision maker since 2019.
29. I do not recall ever having been the decision maker in relation to an FOI request prior to having being appointed as the Deputy Director of Public Prosecutions.
30. I am unsure of the percentage of matters where Ms Cantwell receives an FOI request and then seeks my assistance. I have not discussed this issue with Ms Cantwell, lest there be some suggestion that my evidence on this point is contaminated by those discussions.
31. I understand that the ACT ODPP maintains a 'disclosure log' as required by Part 5 of the FOI Act. I have no involvement in maintaining or updating the disclosure log. I understand that is a function undertaken by Ms Cantwell.

My training and experience in relation to FOI requests

32. To the best of my recollection, I have never received any formal training in how to respond to FOI requests.
33. I do, however, have some experience in the operation of the FOI Act. In 2006 I was employed as a political and policy advisor to the then Shadow Minister for Education in the ACT, Ms Vicki Dunne MLA. At that time, the Territory Government announced that it proposed to either close or amalgamate some 39 public schools in the Territory.

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The announcement was extremely controversial and caused significant public angst. In response, I prepared FOI requests for Ms Dunne which were directed to the ACT Minister for Education, and the ACT Department of Education. The requests were met with significant redactions and thousands of documents were withheld. I then drafted an appeal to the ACT Administrative Appeals Tribunal, together with Ms Dunne's written submissions on the appeal. As far as I am aware, this appeal led to one of the most significant instances of FOI litigation in the Territory.

34. Further, between 2002 and 2007, I sat on the board of Directors of Civil Liberties Australia ('CLA'). CLA is a not-for-profit organisation providing civil liberties and human rights advocacy on questions of law reform. CLA would also provide pro-bono assistance to individuals. In that capacity, I would estimate that I made dozens of FOI requests to various State, Territory and Commonwealth Government agencies. I also prepared appeal submissions for various administrative review tribunals in numerous cases.
35. Between 2007 and 2009 I was employed as a Legal Officer in the ACT Justice and Community Safety Directorate. In that role I would respond to FOI requests made to the Directorate or the Attorney-General. I cannot recall receiving specific training in relation to FOI requests during this time, but I may very well have.
36. I do not recall ever having received FOI training whilst employed at the ACT ODPP.
37. I am scheduled to attend a training session in making decisions under the FOI Act on Tuesday 9 May 2023. I understand that the training will be delivered by members of the ACT Government Solicitor's Office. I am scheduled to attend this training session as the DPP recently identified in an Executive meeting that ACT ODPP staff have not had any specific training in this area, and it would be prudent that we do so.

ACT ODPP FOI Policies and Guidelines and Relevant Considerations

38. As far as I am aware, the ACT ODPP does not have any specific policies or guidelines which direct or assist FOI decision makers.
39. The ACT ODPP website contains detailed information to prospective applicants. A copy of that webpage is Exhibit AW-7.

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40. In processing an FOI request, I am cognisant that the FOI Act promulgates that the starting point that there is a public interest in transparency in government operations and decision making, and facilitates (indeed requires) the disclosure of requested documents. Of course, that starting point is not absolute, and is subject to exceptions.
41. At its core, the FOI Act requires decision makers to balance the general public interest in releasing documents held by Ministers and agencies to promote transparency, against more specifically articulated public interests in maintaining the confidentiality of some documents (for example, the need to protect law enforcement methodologies, the need to protect sensitive personal information, the need to preserve legal professional privilege, etc.)
42. Section 17 of the FOI Act sets out how a decision maker is to approach the balancing test. It is informed by the matters enumerated in Schedule 2 to the FOI Act. Where a matter falls within Schedule 1 of the Act, it is deemed to be contrary to the public interest to release documents relating to it, and no balancing exercise is required.
43. In considering an FOI request, I always start with the language of the FOI Act. Where it is clear and there is no ambiguity, I will make my decision simply based on the language of the Act.
44. Where I am of the view that a term of concept discussed within the Act is nebulous or ambiguous, I will have regard to any jurisprudence concerning the interpretation of similar or corresponding provisions in FOI Acts in force in other jurisdictions.
45. I am aware of the document entitled "Freedom of Information Guidance for Government Agencies" which has been published by the Office of the Australian Information Commissioner.¹ In my view, that document provides extremely useful guidance in the consideration of FOI requests. Most helpfully, it contains detailed reference to tribunal and judicial consideration of provisions of the *Freedom of Information Act 1982* (Cth). Whilst the document is technically concerned with the Commonwealth FOI regime, the substance and effect of the provisions of the Commonwealth Act and the FOI Act are often substantially similar, if not the same. I

¹ The document is accessible at: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies>

therefore consider that document to be an extremely useful resource in deciding applications under the FOI Act.

E. The Release of The Unredacted Version of The DPP’s Letter to Neil Gaughan (01/11/2022) To The Guardian

46. I had no involvement in the release or disclosure of the unredacted version of the DPP’s letter to Neil Gaughan dated 01/11/2022 (‘the letter’) to the Guardian.

47. The first that I was aware that the letter had be released was when I read about it in the media.

48. On Friday 9 December 2022 Ms Cantwell forwarded me correspondence from Mr Peter [REDACTED] of the AFP about the release of the letter. Mr Cantwell queried how to respond to Mr [REDACTED] request. I assumed that Ms Cantwell had spoken with the DPP about the release of the letter, so I advised her to discuss the matter with him. I had no basis to assume that the DPP was involved in the release of the letter other than it related to an ongoing prosecution that he had carriage of. **Exhibit AW-8** is a copy of my correspondence with Ms Cantwell on 9 December 2022.

49. Other than the correspondence referred to at Exhibit AW-8, I did not discuss the release of the letter with anyone in the ACT ODPP or the AFP as I was not involved with the request and I was not the decision maker in relation to the letter.

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Affirmed before me at Canberra in the Australian Capital Territory on 03 May 2023.



Anthony Williamson SC



Signature of witness

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Rory McCrone (lawyer)