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**SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY****THE HONOURABLE CHIEF JUSTICE MCCALLUM  
AND A JURY OF SIXTEEN****EXTRACT OF PROCEEDINGS – EVIDENCE ONLY****SCC 264 of 2021****DAY 10****DIRECTOR OF PUBLIC PROSECUTIONS  
and  
BRUCE LEHRMANN****CANBERRA****10.00 AM, MONDAY, 17 OCTOBER 2022**

MR S. DRUMGOLD SC with MS S. JEROME appeared on behalf of the Office of the Director of Public Prosecutions.

MR S. WHYBROW with MS K. MUSGROVE and MR B. JULLIENNE appeared on behalf of the Accused.

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**START OF EXTRACT**

**[10.03 am]**

5 <SARAH ELIZABETH HARMAN, Affirmed:

**[10.03 am]**

<EXAMINATION-IN-CHIEF BY MS JEROME

10

HER HONOUR: Thank you, detective. Take a seat. Yes, Madam Prosecutor.

15 MS JEROME: Thank you. Please state your full name and rank?---Sarah Elizabeth Harman, detective senior constable.

Are you currently attached to the sexual assault child abuse team?---I'm currently on leave but I am attached to the sexual assault and child abuse team, yes.

20

You were working for that unit in April 2019?---Yes, I was.

25 On 4 April 2019, were you tasked with investigating Brittany Higgins' allegation of being sexually assaulted by Bruce Lehrmann in Parliament House?---Yes.

You were given a briefing by federal agents [REDACTED] and [REDACTED]?---I wasn't given a briefing of them on that day. I was given a briefing by my sergeant on that day, yes.

30

On 5 April 2019 did you request footage from the Dock at Kingston on – for Friday, 22 March 2019 for the hours from 6.00 pm to approximately 11.00 pm?---Yes.

35 On that following Monday, so that is Monday 8 April 2019 at 5.00 pm, did yourself and Detective Senior Constable Kristy [REDACTED] collect Ms Higgins from Parliament House?---Yes.

40 You drove her back to Winchester police station?---Yes.

That was for the purpose of meeting with Ms Higgins and for what is called a meet and greet?---Yes, that's correct.

45 Essentially that is to discuss the roles of the various agencies in the investigation?---Yes.

The role of police?---Yes.

Then the court process?---Yes.

Now that meeting commenced at approximately 5.30 pm?---Yes.

5

In addition the three of you there was also a counsellor from the Canberra Rape Crisis Centre in attendance?---That's correct.

10

Can you tell the jury what Ms Higgins told you about her allegation of sexual assault?---I mostly discussed with her the processes for reporting the allegation at that time, so the roles of – and responsibilities of everyone involved. I did not get a – the entire version of events from Ms Higgins at that time. I only got some brief points from her. If I'd be able to refer to my notes at this time?

15

Did you make notes during that meeting?---I did make notes in that meeting, yes.

20

HER HONOUR: Any objection, Ms Musgrove?

MS MUSGROVE: No, thank you, your Honour.

25

HER HONOUR: Yes, you may refer to your notes?---Thank you. Sorry, I don't have a copy of my diary printout made. I do have my statement which goes through that. Am I able to go from my statement?

MS JEROME: Just one moment. We have - - -?---Or I can go from my physical diaries.

30

Thank you. I am indebted to my friend who has a copy of your notes - - -?---Sorry.

- - - which I will be able to hand - - -

35

HER HONOUR: Does that deprive you of your copy, Ms Musgrove?

MS MUSGROVE: No, thank you, your Honour.

40

HER HONOUR: Thank you.

45

THE WITNESS: I do have the original diaries here, of course, but. Thank you. So on that – during that meeting, during the course of that meeting, Brittany went through where she attended on that evening and we went through the timings of that, so she had gone to the Dock and then she went to a bar in Civic and she was unable to give me the location of the bar after the Dock on that evening. She said she was at the Dock approximately 6.30 to

10.30 pm on that day and then went somewhere in Civic and then got a Uber to Parliament House. It was not her Uber account on that day.

5 It was Bruce Lehrmann's account. When they got to Parliament House she was signed in. There was some security guards there. They buzzed her into the office suites and they gave her some number passes. She did speak to security on that day as well. He signed her name, and by 'he' that was Bruce Lehrmann she meant at that time, as she didn't have a work pass as she was out with her friends on that occasion. The security guards weren't members of the AFP. They were a private security company that ran that. 10 [REDACTED]. The AFP came into the suites, is what she told me at the time that she was in there, and then they left and that was someone called [REDACTED] [REDACTED] that had told her that information following the incident. 15

At 8.00 am in the morning she approximately left that location and security asked her if she was okay as she departed. [REDACTED] [REDACTED] She went to work on the Monday, which was Monday, the 23rd of March and security – sorry, security had already had already informed members of staff that there had been a security breach on that evening in question. Bruce Lehrmann was fired on Wednesday the 27th of March and that was prior to having spoken to Brittany about what had occurred on that evening. She had not seen him since and she did not have any concerns for her safety or her welfare. She was a bit concerned about work as he was fairly well connected and had been there for some period of time. She had only been there for a period of six months and she hadn't had the same connections that he had at work and she was quite concerned about how this would be at work and the replaceable nature of her employment coming up to the election. 20 25 30

She hadn't had any contact with him since that and there was no contact on social media and she said that she had blocked him on social media as well. Work spoke to her on the 27th of March and asked her what had happened. That was about the security breach. She then reported what had occurred to work and they asked her if she wanted to report it and they said they wouldn't stop her if she did want to report it. However, they would like to know that if she was going to report it to police. Sorry, I'll just have some water. She spoke with the AFP unit inside of Parliament House which is Parliament liaison officers. 35 40

That's run by the AFP and that's Rebecca [REDACTED] she met with after and she spoke with her about making a report to police and that's how it subsequently came to me. She said she didn't want to personally report what had happened as she was worried about those workplace issues. She said she may want to go ahead with a report following the election. At the time – sorry, my nose a bit. At the time it was nearing to an election. I can't recall exactly when that was but that was approaching. She said that did she have photos of the 45

evening that she had taken on her mobile phone and I asked her not to delete those images.

5 We also spoke about whether protection had been used during this incident. She said she didn't know and I discussed following up with the sexual health clinic at that time surrounding testing and pregnancy testing, sexually transmitted diseases and the like and she was open to me following that up for her.

10 MS JEROME: Did she mention if she had been to a doctor?---No, she'd not been to a doctor.

15 Is that what she said?---Yes. She said that she could – work was giving her time off to go to these appointments should she need to go. She was concerned that Bruce was getting employed elsewhere and would have access to records obtained by the AFP and I assured her at that time that my records had been locked down at that time as well as the Canberra Rape Crisis Centre who was present during our meeting. We – when I concluded meeting with her she met with Canberra Rape Crisis and then we had some further follow up phone conversation – sorry, further conversation on the way back to Parliament House in the car and that's - - -

20 Before we get to that - - -?---Yes, sorry, yes.

25 - - - point in the conversation could you just tell the jury your observation of her demeanour during that meeting?---She seemed fairly nervous to be meeting with police but also quite relieved to be getting some information surrounding the processes I think, so.

30 Okay, and you have mentioned a further conversation. Did that occur in the car on the way back to Parliament House?---Yes, it did.

35 Okay, and what did she tell you in the car?---She told me that the clothes that she wore on the evening were in a bag and she would keep them that way and she would also follow up the location with a friend of where she attended between the Dock and Parliament House for CCTV.

40 Her demeanour during that part of the conversation?---She was in the rear of the vehicle and it was dark by this time and I was actually driving at the time.

Sure. All right, on 13 April 2019 did you receive an email from Ms Higgins stating she wished not to proceed with the investigation at that time?---Yes, I did.

45 Your Honour, could this witness please be shown Exhibit P, for Paula.

THE WITNESS: Thank you.

MS JEROME: Recognise that document?---Yes, I do.

That is the email that you received from Brittany Higgins?---That's correct.

5

Your reply?---Yes.

Yes, thank you. That could just be returned, [REDACTED]

[REDACTED] ---Yes, if that was in one of the emails.

Were you required to send six monthly emails asking for the footage to remain quarantined?---Yes.

15

You did that?---I went on leave shortly after. Another colleague of mine I believe ensured that that was done.

Thank you. No further questions.

20

HER HONOUR: Yes, Ms Musgrove?

**<CROSS-EXAMINATION BY MS MUSGROVE**

**[10.15 am]**

25

MS MUSGROVE: Thank you. Officer, when you made inquiries with the Dock on 5 April 2019 in relation to the CCTV footage was that based on information that you had received from other police officers?---Yes.

30

Was – to your knowledge was that information that they had received from Ms Higgins when they met with her on 1 April 2019?---Yes.

35

In – how long were you meeting with Ms Higgins on 8 April 2019?---Do you mind if I refer to my notes to – I collected Brittany at approximately 5.00 pm and we arrived at Winchester Police Centre at 5.25 and then I conveyed her back to Parliament House at 7.19 pm, so that's approximately 2 hours.

40

In that period she – sorry, approximately 2 hours. In that period she had a meeting with someone from Canberra Rape Crisis Centre, is that correct?---Yes.

45

Do you recall how long that meeting went for?---So I've got in my notes here 6.25 pm I departed the room to allow her some privacy to speak to Canberra Rape Crisis and then we departed at 7.19, so most of that time we would have just went back to the room and then departed, so.

Right, and in the time that you were with Ms Higgins in the police station you were taking notes, is that correct?---Yes.

5

Yes, and that was whilst Ms Higgins was speaking to you?---Yes.

10

During the – after the car rides did you make notes as to what had been said in the car ride there and back from Parliament House?---There wasn't much discussion on the way to Winchester Police Centre about anything that had happened. It was more just general conversation until we arrived. On the way back I actually made the notes in my diary in the car after she departed the car.

15

Okay, and it is the case, isn't it, that at no point in time have you written anywhere that Ms Higgins raised that she had a bruise on her leg?---No, I've not written that.

Would you accept that if you have not written that that is because Ms Higgins did not say that to you?---That's correct.

20

[REDACTED]

30

Do we take it from that that if you were not experiencing problems at that time you did not express any such problems to Ms Higgins on the 8th?---I didn't - no, that's right.

I have no further questions, thank you.

35

HER HONOUR: Any re-examination?

MS JEROME: No, your Honour.

40

HER HONOUR: Detective, I am sorry you have dragged you off your leave to come to court?---No, that's okay.

You are excused. You are free to go now?---Thank you.

45

Thank you?---Gives me a nice break from the kids.

<WITNESS WITHDREW

[10.18 am]

HER HONOUR: Yes, Madam Prosecutor.

5 MS JEROME: I call Peter [REDACTED]

<PETER [REDACTED] [REDACTED], Affirmed: [10.20 am]

10

<EXAMINATION-IN-CHIEF BY MS JEROME

15 HER HONOUR: Thank you. Take a seat, please, sir. Yes, Madam Prosecutor.

MS JEROME: Thank you. Can you please state your name and occupation?---My name's Peter [REDACTED] and I am a digital forensic examiner with the Australian Federal Police.

20

What are your qualifications?---I hold a degree in digital forensics from Edith Cowan University and a certificate of cyber-security or computer security from Edith Cowan also and I've undertaken a number of training courses in phone extractions and computer extractions through industry vendors over the years.

25

The phone extraction training, does that involve the use of Cellebrite reports?---Yes, it does.

30 You have completed many phone extractions which produce the Cellebrite reports?---I have. I couldn't put a number on it but it'd be in the many hundreds, if not more.

35 On 26 May 2021 at about 9.40 am were you provided a mobile phone which belonged to Brittany Higgins?---Yes, I was.

That was a Apple iPhone?---That's correct.

40 You performed an extraction of that phone?---I did.

With her consent, as you understand?---Yes.

45 Can you tell the jury, please, what the process you used and what information you obtained in that phone?---The software I used connects to the phone. I unlock the phone with the PIN number that was provided and the software downloads all the content of the mobile phone and it stores on a hard drive that I had with me. I then generate a report of all that data. It shows the



calls, the messages, chats and all that. Once that extraction is completed I then provide that information to the case officer and then they look through all that information and identify what they deem to be of interest to the investigation. Do you want me to – I can go on. Once they have identified that information they then ask me to produce a report of that information. They may request specifics about certain items on the phone, calls, chats or photographs, and I might provide further information relating to those individual items that are identified to me. Once that's all complete I then produce a report back to the case officer which subsequently gets tendered in court with my statement.

In relation to this particular phone of Brittany Higgins, was the date and time settings correct?---Yes, they were.

When you completed the copy of the phone, did you check that it was a complete copy?---To the best of my ability using the software, yes. I'd have to say we don't know what we don't know but the software downloads as much as it is able to download, yes.

Are you able to extract deleted items?---In some instances we are.

Can you explain to the jury in what instances you are able to?---It more pertains to SMS or messages, if you like. When a message is deleted by the user of the phone, that deleted message will – fragments of that deleted message will sometimes stay in the phone for a period of time and the phone's operating system may re-use that storage location at a later date and overwrite it with other information. When we undertake the extraction, it will sometimes provide us with deleted information but the longer time goes on, the less likely that those deleted items will appear in a phone.

Is that because they'll be replaced by more recent deleted items?---By more recent items and it can be any particular item. Doesn't necessarily need to be another message. It can be just – the phone requires storage of something and it will overwrite those locations.

Now your extraction was completed by about 12.10 pm that day?---Yes.

Then you returned that phone to Ms Higgins?---Yes, I did.

Did you then upload the copy of that phone to a police software system?---A police network that facilitated the ability for the case officer, Senior Constable Frizzell, to review that from her work location, yes.

Can I just ask, because the time and date was set correctly on the phone, in regards to the Cellebrite report that was produced, so the date and timestamp is also in ACT time?---Yes, yes, that's correct.

Now on 22 July 2021, did you attempt to extract data on two additional phones belonging to Ms Higgins?---Yes, I did.

5 Were you able to extract any information from either phone?---No, I was not, no. The PIN numbers provided for those two phones were unsuccessful and I was not able to extract any data from those phones.

10 Was there also a faulty cable in regards to one of them that prevented - - ?---A faulty charge cable from recollection, yes.

I see, okay. On 27 July 2021 did you access the Google account belonging to Ms Higgins?---I did.

15 Did you access images of a leg on the Google account?---Yes.

Your Honour, may this witness please be shown Exhibit F. It is electronic I am being told, my apologies. I will arrange for it to be put on the screen. Has that come up on your screen?---Yes, that's the image.

20 Is that the photo that – or is that the image that you saw on the Google account?---That image was identified to me and I did subsequently see that image on the Google Drive account, yes.

25 Now when you saw it on the Google account were you able to determine the date when it was originally taken?---No, I was not.

30 Can you tell the jury why?---When a photograph is taken on some devices and mobile phones the mobile phone in this instance will record information within the photograph data of when that photograph was taken and sometimes the location of where that photograph was taken. However, when images are uploaded or shared on platforms - - -

Such as?---such as WhatsApp or Google Drive or iCloud or Instagram - - -

35 Or a Google account?---Or a Google account, the metadata, which is what that information is called, is actually removed by the platform, Google Drive, therefore when I reviewed the metadata within that image there was no metadata that indicated the date and time that that photograph was taken.

40 Is it correct that on the – on Ms Higgins' Google account there were actually two photographs of this same image electronically?---Yes, yes.

Did you examine both electronic photo?---Yes, I did, yes.

45 Were you able – was the metadata lacking in both photographs?---In both, both images, yes. There was none in either.

Thank you. No further questions.

HER HONOUR: Mr Whybrow.

5

**<CROSS-EXAMINATION BY MR WHYBROW**

**[10.28 am]**

10 MR WHYBROW: Sir, in relation to – you gave some evidence about deleted items?---Yes.

Are you referring to a user potentially deleting a thread or a contact from their phone?---Yes.

15 That is – sorry, I withdraw that. The Cellebrite extraction is designed to get everything that you can off that phone - - -?---Yes.

- - - at the time that you do the extraction?---Yes.

20 It might contain deleted items where the operating system has not re-used the memory?---That's correct.

25 Now in this case you also got a whole lot of data in terms of photographs, contacts, images, websites, et cetera?---That's correct.

It was in the order of about 8,000 photographs that you – were on the phone, or thereabouts. Is that correct?---Yes, thereabouts.

30 The photograph that you were just shown, Exhibit F, that had been flagged for you as an item of interest to look for in the Cellebrite data?---Yes.

It is the case that you did not find that photograph, as far as you could find, in those 8,000 odd images?---No, I couldn't.

35 You only found it on a iCloud or a Google Drive?---Yes, it was only the Google Drive from recollection.

40 You have undertaken a search of all of that data for the word 'bruise'?---I have.

That includes against all the text messages, emails or anything that has been downloaded?---Yes, the entire contents of the phone.

45 And is it the case that apart from one message with [REDACTED] about him falling off a bike, there is no reference to any bruise until about February 2021?---That is correct.

And then it is a reference in a chat between Ms Higgins, her partner and Lisa Wilkinson?---Yes. I'm not sure if Lisa Wilkinson – I didn't identify the third party. It had an obscure - - -

5 Okay?--- - - - handle.

But it was a - - -?---But it was a third person, yes.

10 I apologise. I will withdraw that - - -?---Yes.

- - - and say you didn't see any reference to the word bruise other than that message to Mr [REDACTED] or from Mr [REDACTED]---Yes, that's correct.

15 Prior to February 2021?---That is correct.

And in relation to two particular contacts, an [REDACTED] and an [REDACTED], did you find any messages between the owner of the phone and those individuals or those persons?---No, I did not.

20 Thank you.

They're my questions, your Honour.

25 HER HONOUR: Any re-examination?

MS JEROME: No. Thank you, your Honour.

HER HONOUR: Mr [REDACTED] thank you so much for coming to give evidence?---Thank you.

30 You are excused.

35 <WITNESS WITHDREW [10.31 am]

END OF EXTRACT [10.31 am]

40 START OF EXTRACT [10.32 am]  
<MICHAELIA CASH, Sworn: [10.32 am]

45 <EXAMINATION-IN-CHIEF BY MR DRUMGOLD

HER HONOUR: Thank you. And the next voice you will hear is the Crown Prosecutor.

Yes, Mr Prosecutor.

5

THE WITNESS: Thank you very much.

MR DRUMGOLD: Can you see and hear me, Ms Cash?---I can. Thank you very much.

10

In March of 2019 you were a senator for Western Australia. Is that correct?---That is correct.

15

And you also held a portfolio in the government. Is that correct?---That is correct.

And what was your portfolio in March of 2019?---I believe it may have been the Skills portfolio and Employment.

20

And you are aware that another senator from Western Australia, Linda Reynolds, was also in the government?---That is correct.

25

And you are aware toward the end of January 2019 Minister Steven Ciobo, who then held the portfolio of Defence Industries, decided not to contest the next election. Is that correct?---To the best of my knowledge. I don't recall the exact timeline, but I do recall that Mr Ciobo had determined he would not contest the next election, that is correct.

30

And you are aware that on around 2 March 2019 Senator Reynolds was sworn in as the Minister for Defence Industries. Is that correct?---To the best of my knowledge. I will accept that the date you are providing me with is the relevant date. I don't recall the relevant date exactly, but I do recall that Minister Reynolds was sworn in as the Minister for Defence Industries, that is correct.

35

And from that time she joined Cabinet. Is that correct?---That is my understanding.

40

So as soon as she is Defence Industries Minister she then joins Cabinet and you sit on Cabinet with her?---I was a member of Cabinet with Linda Reynolds.

45

Thank you. Now, you are aware that on around 11 April 2019 the then Prime Minister called an election for 18 May 2019?---Again, I will accept that the dates you are providing with me (sic) are the correct dates. But, yes, the Prime Minister did call an election around that time for that date.

And the election you – the Coalition Government won the election?---That is correct.

5 Now, we have heard evidence of people going into deferment when such an event occurs, and that occurred: all of your staff went into deferment and you re-employed staff. Is that correct?---There is a process that is put in place by the relevant Department of Finance. Some staff will accept it, some staff determine not to. But, yes, my staff continued on.

10 Now, on around 8 June 2019 Brittany Higgins came to work for you, didn't she?---On or about that date, that is correct.

Now, did you interview her for that role?---My chief of staff interviewed her for that role.

15 Were you aware at that stage that she was – she had been previously employed by Minister Reynolds, by Senator Reynolds?---To the extent that my chief of staff advised me of that, yes, I was.

20 And were you aware that prior to Senator Reynolds she had been employed by Steven Ciobo?---Only to the extent that my chief of staff advised me of that.

25 But he did advise you when she joined your office that she had previously been in the employment of Linda Reynolds prior to the election and - - -?---That is correct.

30 Now, did you subsequently become aware of an allegation of sexual assault on a lounge in Minister Reynolds' office?---In a conversation that I had with Brittany in or about 5 February in 2021.

35 Are you aware that there was a media enquiry in around October of 2019?---You'd need to refer to the media enquiry that you are referring to, because obviously the media made enquiries into my office each and every day, given I was a Cabinet minister.

Well, did you have a conversation with Ms Higgins about a Canberra Times enquiry of October 2019?---That is correct, yes.

40 And what was that enquiry about, to your understanding?---To the best of my knowledge, it was in relation to an incident, a security breach that occurred in Linda Reynolds' office when Brittany had worked there.

45 Did you have a conversation with Brittany Higgins about that at the time of the media enquiry?---I did, and my chief of staff. I did.

Can you tell us about that conversation that you had with Brittany Higgins?---Yes. They came into my office one evening and they said that they needed to talk to me about an issue that had arisen. There had been, I understand, an enquiry from a journalist with The Canberra Times. Brittany was embarrassed because it was in relation to herself and a security incident that had occurred when she'd worked for Linda Reynolds. She and another staff member had returned to the office one night after they'd been out drinking and they didn't have passes, I understand, and she'd been signed in by the other staff member, was what I recall being told. And I understand they had been drinking and they were potentially intoxicated. They'd gone back in to the Minister for Defence's office and that Brittany had fallen asleep on a couch and that security had found her – I believe it was the next day.

Did you at any time talk to Linda Reynolds about this event?---I did not.

I make an application at this stage, your Honour.

HER HONOUR: Yes. How do you want us to deal with this? Send the jury out, Mr Prosecutor? And do you want me to terminate the connection with the witness temporarily?

MR DRUMGOLD: Yes, I think so, your Honour.

HER HONOUR: Senator, the prosecutor wants to raise a matter with me about your evidence?---Yes.

And ordinarily if you were here in the courtroom I would ask you to wait outside the courtroom. But as you are appearing by audiovisual link, the only way to isolate you from the argument is to terminate the connection now. But we will - - -?---Not an issue at all. I will await to be reconnected.

Thank you.

**<WITNESS STOOD DOWN** [10.39 am]

**END OF EXTRACT** [10.39 am]

**START OF EXTRACT** [10.48 am]

**<MICHAELIA CASH, Recalled:** [10.48 am]

**<EXAMINATION-IN-CHIEF BY MR DRUMGOLD CONTINUED**

HER HONOUR: Thank you, member of the jury.

Senator Cash, can you hear me?---I can hear you. Thank you.

5 Thank you. We are ready to proceed now and the prosecutor will now ask you some more questions.

Yes, Mr Prosecutor.

10 THE WITNESS: Thank you very much.

MR DRUMGOLD: Ms Cash, I want to suggest to you that you had relatively detailed conversations about the sexual element of her complaint during the course of her employment with you prior to 5 February 2021.  
15 What do you say about that?---Well, I don't believe – I don't believe so. I have always recalled it was a security breach in an office. Two staffers had come back and they were intoxicated and that Brittany had fallen asleep.

20 And I'm suggesting to you that Ms Higgins had detailed conversations with you where she disclosed the sexual nature of what happened in Senator Reynolds' office well before 5 February 2021?---The time that I spoke with her about it was in October of 2019. I cannot recall – until she wanted to resign in 2021, ever speaking about it again.

25 No, no. Okay, the proposition I'm putting to you is, I'm suggesting that as early as October of 2019, that Ms Higgins had conversations with you about her – about the sexual element of what she said happened to her in Senator Reynolds' office?---The only time I spoke with her about it was in relation to when they had come into my office. I don't recall again speaking about it  
30 until we jumped to 2021, when out of the blue she wanted to resign from my office.

35 But your position is that she in October 2019 at around the time of The Canberra Times report – The Canberra Times inquiry, that you say that Ms Higgins at that time did not disclose the sexual element of what she said occurred in Senator Reynolds' office?---Not a sexual element, no.

40 Do you agree it would be - - -?---First time she mentioned a sexual element was, I think, in the conversation on the 5th of February 2021.

45 You say at no point did you inquire of Minister Reynolds about what this media was about?---I don't recall inquiring of Linda myself but, again, it was a long time ago. I may have had a conversation with her but, again, I don't recall any conversation with her.

Do you agree it would be politically embarrassing to the government to have an allegation that one party staff member sexually assaulted another party



staff member in a lounge belonging to – in a lounge in a minister's office?  
Do you agree with that proposition that that would be politically embarrassing?---Absolutely not.

5 You say it would not be politically embarrassing if it became known that there was an allegation that one staff member had raped another staff member in a minister's office?---I don't know how it could be politically embarrassing. It'd be something that needed to be attended to.

10 Right. Do you agree that it would be politically harmful if it came out in the media that that staff member that alleged that was still working in an office belonging to a government minister?---Absolutely not. I just don't understand a political connection to this.

15 In October 2019 did you consider that there was something potentially politically harmful to address at the time of the media inquiry?---In – no.

20 At the time leading up to the election were you aware that there was some political issue that needed to be addressed in Senator Reynolds' office?---Which election are you referring - - -

The 2019 election?---Absolutely not.

25 Are you familiar with the term 'plausible deniability'?---I'm not quite sure what you're referring to. You'd need to put it into context.

30 Plausible deniability with regard to a sexual – to an allegation of sexual assault by one staff member against another staff member in a government minister's office?---I do apologise, I don't understand what you're trying to ask me.

35 I am suggesting that you were aware of what Ms Higgins alleged during the course of her employment with you between 8 June 2019 and 29 January 2021. Do you accept that proposition or do you deny that proposition?--- Well she advised me on the 5th of February 2021 that – and I think that was – she said that there had been an assault.

Okay, on 5 February?---That is correct.

40 Well listen to the question, so you are saying no to the question. I am putting to you – well I will put it more succinctly, that at least of October 2019 that you were fully aware that Ms Higgins had said that she'd been sexually assaulted on Senator Reynolds' couch?---I can't – I do not recall that. I had always thought it was a security breach. Two staff members had come back to the office. She'd fallen asleep and been found by security.

45

Right, so you are not accepting my proposition that in October 2019 you were fully aware that Ms Higgins had made an allegation of sexual assault - -  
-

5 MR WHYBROW: Your Honour, sorry, can I object on the basis of we are getting a bit repetitive. It has been asked and answered.

HER HONOUR: I was going to draw the line after this answer, Mr Whybrow.

10 MR WHYBROW: Yes, your Honour.

HER HONOUR: Could you put the question again, please.

15 MR DRUMGOLD: Thank you. It is not an invitation to answer a question not asked. The question is I am putting to you that you were aware, you were fully aware in October 2019, that Brittany Higgins had made an allegation that she was sexually assaulted by Bruce Lehrmann on Senator Reynolds' couch in the early hours of 23 March 2019. Do you accept that proposition or reject that proposition?---I can't accept that. The first time I had ever  
20 heard - - -

Yes, no, we have heard that. The answer is you do not accept it.

25 MR WHYBROW: Your Honour, come on.

THE WITNESS: I don't accept that.

MR DRUMGOLD: I am putting to you that you are denying that because it  
30 would be politically embarrassing for you to have that knowledge during that period?---Absolutely not. As I said, I just don't understand the line of questioning in relation to political embarrassment. I don't know how it could be politically embarrassing.

35 Did you talk about the security incident on multiple occasions with Ms Higgins?---No, I only ever talked about it on that night and then over the weekend we had what's called federal conference and she had come with me because she was my social media adviser and she'd taken photos and spoken to people, et cetera, and she had never wanted to take another call from The  
40 Canberra Times and I had said that was absolutely not a problem and so I think I'd left her a voice message to that effect but I don't recall after that discussing it with her.

45 Just so that I can be clear, your evidence is that she spoke to you about getting drunk on the lounge in October 2019, correct?---That is correct. Well I wouldn't say getting drunk on the lounge. They had been out to drinks was my understanding.

Then you had another conversation with her at the conference over the weekend about that same topic?---The Canberra Times inquiry.

5 Sure, and at no time did you speak to Linda Reynolds and make an inquiry about this?---As I said, I may have spoken to Linda Reynolds but I don't recall. It was a long time ago and I just don't recall whether I did or I didn't.

10 Your evidence is at no time did Linda Reynolds – do you recall Linda Reynolds conveying to you that Ms Higgins had made an allegation of a sexual assault in her office?---Absolutely not.

Thank you, madam.

15 HER HONOUR: Yes, Mr Whybrow.

**<CROSS-EXAMINATION BY MR WHYBROW [10.57 am]**

20 MR WHYBROW: Thank you. Senator Cash, can you see and hear me?---I can, thank you, Mr Whybrow.

25 Senator, could I suggest that it would be political suicide to try and cover up a sexual assault that had occurred between staff?---Correct, hence my confusion with the previous line of questioning, exactly.

30 You were spoken to by the police on 21 May 2021?---I was certainly spoken to by the police. I understand it was around that date and I'll accept that the date that you're putting to me is the correct date.

Have you been given access to a transcript of a interview you had with the police in the course of their investigation?---I have.

35 Okay, and do you recall that you were asked about conversations you had with Ms Higgins in the context of their investigation? Do you recall that - - -?---That is correct.

40 I want to suggest that you have told the police that you had a short conversation in 2019 where Ms Higgins talked about being drunk, coming back to the office one night with a colleague and being caught by security and that the entire - - -?---That is correct.

45 Sorry, and the entire matter had been dealt with at the time?---That is correct.

Is that - - -?---She was adamant that the entire matter had been dealt with at the time, that is correct.

You then indicated that you had another conversation with her before – at about the end of January 2021?---That is correct.

5 Where she said she no longer wanted to go through security and she wants to leave your office?---That is correct.

Do you recall - - -?---That is correct. I think that was on or about the 29th of January.

10 Okay, and she tendered a written resignation dated 29 January to you. Had she tendered that resignation by that stage?---I believe she'd actually handed it to my chief of staff not to myself personally so she provided him with the resignation letter and he had said to her he would like to speak to me about it in the first instance. He didn't want her to resign. She was very good at her job, we wanted her to stay and that I would call her.

15 Okay, and did you call her to try and find out why she wanted to leave and to indicate your support for her in her job?---That is correct.

20 At that stage when you had that conversation, having got her resignation on 29 January 2021, you had never been advised that she had alleged she was sexually assaulted?---I made it very, very clear the first time I ever heard of the word rape was in response to questions from the journalist, I believe it was Samantha Maiden, on or about the 12th of February 2021.

25 Okay. Now - - -?---On the 5th - - -

30 Sorry. On the 5th - - -?---Sorry.

On 5 February 2021 you had a conversation with Ms Higgins with your chief of staff?---That is correct.

35 And did you know that at the time that conversation took place Ms Higgins was recording it?---I did not.

And did you know that she provided it to a public relations person and a number of other people after she'd finished the conversation?---I did not.

40 And you have had an opportunity - - -

MR DRUMGOLD: Is that in evidence?

45 MR WHYBROW: Yes, it is. Excuse me.

HER HONOUR: How does this arise out of cross-examination – out of evidence-in-chief, I mean?

MR WHYBROW: Because it is cross-examination.

HER HONOUR: Well, it was.

5

MR WHYBROW: You didn't know you were being recorded?---I did not.

You have had an opportunity to refresh your memory of that conversation because you have been subsequently provided with a transcript of that call?---That is correct.

10

And do you agree in that call you asked Ms Higgins, 'What actually happened? Did the security guard come back'?---That is correct.

Why did you ask her about whether a security card came – sorry, security guard came back on the 5th - - -

15

HER HONOUR: Mr Whybrow, was any of this put to the complainant?

MR WHYBROW: The content of – the fact of this record of interview was, your Honour.

20

HER HONOUR: No, the content of it?

MR WHYBROW: I am asking this witness about what she asked in the context - - -

25

HER HONOUR: I understand that. But this wasn't raised with the complainant.

30

MR WHYBROW: But certainly the conversation was and that it was recorded and that was the - - -

HER HONOUR: I know the conversation was. You are now going to its content and I don't – I am just asking you was its content raised with the complainant?

35

MR WHYBROW: The fact that this was the first time she had had a discussion about sexual assault with this witness, yes, that was put to Ms Higgins. And, yes, I - - -

40

HER HONOUR: I am not - - -

MR WHYBROW: I don't have the exact transcript here, but it was Ms Higgins' response, 'We had this weird back and forth where it was a cat and mouse', or something of that nature.

45

HER HONOUR: And you are now putting the content to the senator, but the content wasn't put to Ms Higgins. Do you have any objection, Mr Prosecutor?

5 MR DRUMGOLD: I do. Exactly that point, the Browne v Dunn point, your Honour.

HER HONOUR: Sorry?

10 MR DRUMGOLD: The Browne v Dunn point. I think none of this was ever put to the complainant to - - -

HER HONOUR: If she wasn't give an opportunity to explain particular exchanges then - - -

15 MR WHYBROW: No, your Honour.

HER HONOUR: - - - it doesn't seem fair to put them before the jury now, which – they should have been put to her, shouldn't they?

20 MR WHYBROW: Well, not this. This was a representation by another witness and I have put to this witness 'Why did you ask this question?' That is not something that goes to Ms Higgins, it is - - -

25 HER HONOUR: What is the relevance of why she – if it is to say – she already has made it clear to the point that you objected on the grounds of repetition that her evidence is she didn't know until 5 February 2021.

30 MR WHYBROW: Yes, and I am entitled - - -

HER HONOUR: Is this going to bolster her credibility in giving that evidence?

35 MR WHYBROW: Yes.

HER HONOUR: I reject it.

40 MR WHYBROW: Could I ask on what basis, your Honour, in cross-examination why I cannot explore this issue?

HER HONOUR: It is because of the longstanding rule that evidence that goes only to bolster the credibility of a witness is not admissible.

45 MR WHYBROW: In cross-examination, not in evidence-in-chief, in my submission. And where the Prosecutor has sought to attack the credibility of this witness, in my submission - - -

HER HONOUR: So, you are re-establishing credit?

MR WHYBROW: Well, not so much re-establishing, just asking the circumstances of what he was asking Senator Cash about.

5

HER HONOUR: No, you are seeking to bolster the credibility of a statement.

MR WHYBROW: Not - - -

10

HER HONOUR: Mr Whybrow, I am not going to argue with you. You asked for reasons. I don't actually have to give them, but I have given the reason. I reject the question.

15

MR WHYBROW: Can I put it this way: I am exploring her evidence that there was only one conversation and the date of it.

HER HONOUR: Yes, and you are seeking – that is her evidence and you are seeking to bolster her credibility in that evidence, and that is – there is a rule against that and I reject the question.

20

MR WHYBROW: Well, does your Honour reject other aspects of that conversation?

25

HER HONOUR: Yes.

MR WHYBROW: So, I can't ask her - - -

HER HONOUR: Because it wasn't – well, for two reasons: because it wasn't put to Ms Higgins in that level of specificity, and because it can only go to bolster the credit of the witness, which is not permitted. It is a longstanding rule.

30

MR WHYBROW: Well, can I ask you this question, Minister Cash – or, sorry, Senator Cash: once you – sorry, I will withdraw the question. Did you at any stage seek to prevent Ms Higgins from going to the police?---Absolutely not.

35

Did you at any stage seek to encourage her not to raise her complaint with anybody?---Absolutely not.

40

Excuse me a second, your Honour.

Did you offer her any support you could give her once you became aware that she was alleging she had been sexually assaulted?---Absolutely. Every possible support if she wanted it.

45

Okay.

HER HONOUR: I think you need the words said, Mr Whybrow.

5 MR WHYBROW: Beg your pardon?

HER HONOUR: Could you please ask for the words said. 'Did you offer support?', 'Absolutely' - - -

10 MR WHYBROW: Sorry.

HER HONOUR: - - - is not in admissible form.

15 MR WHYBROW: Can you recall to the best of your ability the way you expressed this support to Ms Higgins?---I believe it was – it was in that conversation and I had said to her if she wanted to go to the police she would and that we would support her every single step of the way. Words to that effect.

20 Notwithstanding having been advised from your evidence that Ms Higgins – sorry, I will withdraw that. On 5 February on your evidence Ms Higgins disclosed to you that she had – or she was alleging she had been sexually assaulted. Is that correct?---Assaulted.

25 Did you on that day – or were you still then still prepared to keep her in your employment going forward after 5 February?---Absolutely. Absolutely. She was a very good employee.

30 Was her area of expertise, or one of them, in your office as managing your social media?---That is correct. She was very good at it.

35 At the time you spoke with her on 5 February, and on your evidence was the first time there was a disclosure of an assault, were you aware at that time that she had been engaging with journalists about this matter?---I was not.

Excuse me a second. They are my questions. Thank you, senator.

HER HONOUR: Any re-examination?

40 MR DRUMGOLD: Nothing in reply, your Honour.

HER HONOUR: Senator Cash, thank you for making yourself available to give evidence. You are excused. We will - - -?---Thank you very much, your Honour.

45

We will sever the connection?---Thank you, your Honour.



Thank you.

5 <WITNESS WITHDREW [11.07 am]

END OF EXTRACT [11.07 am]

10 START OF EXTRACT [11.33 am]

< [REDACTED], Sworn: [11.33 am]

15 <EXAMINATION-IN-CHIEF BY DRUMGOLD

20 HER HONOUR: Thank you. Take a seat, Mr Try. Yes, Mr Prosecutor?

MR DRUMGOLD: Thank you, your Honour. Sir, can you please state your full name?---[REDACTED]

25 And what's your occupation?---I'm chief of staff to Senator Michaelia Cash.

And what does a chief of staff do?---Basically runs the senator's office essentially. Looks after the staff. Yes, just has a bit of a hand in everything really.

30 And a bit of a hand in everything?---Well, it's quite - - -

35 What sort of everything would we be talking about?---It's quite varied, parliamentary advice, political advice, media advice and yes, previously when I was her chief of staff as minister, you have quite a number of staff. So looking after day to day issues with – with staff and that type of thing as well.

40 Sure. Can I get you to unpack a little bit what your role is with regard to media advice?---Well, essentially, if there's a media inquiry, the media advisers would have a proposed response and I would look that over and, yes, use it with my approval or make suggested changes, that type of thing.

45 And a proposed response to what end? What are you trying to achieve? What's your objective in viewing it and changing it? What is the ultimate goal of a response to a media inquiry? ---I suppose just to get the message as clear and succinct as possible.

What sort of messages?---Well, it depends. I mean, if it's an inquiry on a particular issue, we want to make sure the response, I suppose, is what is appropriate.

5 Sorry, I'm not being obtuse but appropriate for what?---Just essentially that it – you know, the answers is clear and I suppose, yes, is aligned with – is what the senator wants to say on a particular issue.

10 Right and so when you get a media inquiry, to make it align with what a senator wants to say on a particular issue, would you inquire of the senator?--  
-Well, generally. It depends what the media inquiry is but something very mundane and, you know, administrative which we've already answered previously, you wouldn't always ask the senator but, you know, if it was a different type of inquiry, you'd run it by her as well that she was happy with  
15 the proposed response.

Right. Now, you worked for Senator Cash in 2019. Is that correct?---Yes.

20 Now, we've heard evidence that there was an election on 18 May 2019?---  
Yes.

You were Senator Cash's chief of staff prior to the election. Is that correct?--  
-No, that's not correct at all.

25 Okay. When did you take up as chief of staff for Senator Cash?---I believe I was appointed shortly after the election so late May, I think, there was a bit of a handover period with my predecessor.

30 And where were you before that?---I was working with Senator Cash as her senior parliamentary adviser.

Okay. So you were Senator Cash's senior parliamentary adviser prior to the election?---Yes.

35 Right and then you effectively stepped up after the election?---Yes.

Right to the chief of staff?---Yes.

40 Thank you. Now, you know Brittany Higgins. Is that correct?---Yes.

We've heard evidence that Brittany Higgins commenced work in the office of Senator Cash on around 8 June 2019. Does that sound correct?---That sounds about right, yes.

45 And she ceased on around Friday, 29 January 2019 (as said) with a resignation letter?---I think she resigned on that day and then the resignation took effect two weeks later.

Right. Now, did you know of an event that Ms Higgins complained of that occurred whilst she was in Senator Reynolds' office?

5 MS MUSGROVE: I object to that question. It's exceptionally broad. My friend needs to articulate at what point he is speaking about?

HER HONOUR: I think he's just trying not to lead - - -

10 MR DRUMGOLD: That's correct.

HER HONOUR: - - - but are you asking about the allegation - - -

MR DRUMGOLD: Would you like me to lead?

15

MS MUSGROVE: No, I don't want you to lead but ask with specific periods of time whether or not he knew.

20 MR DRUMGOLD: Did you become aware of an incident alleged by Brittany Higgins that occurred in Senator Reynolds' office?---In October 2019, I became aware of an incident. Very little information was provided and I did not know the extent of the allegation that was being raised at that particular time.

25 I didn't ask any of those questions but we will get to those questions. I want to ask how you became aware of this incident?---So Linda Reynolds called me and she said that there had been – she basically said she was about to send someone around from her office to talk to Brittany because there had been a media inquiry about an incident that happened in Linda's office when  
30 Brittany had worked for her. She didn't go into any details or didn't really say much that I can remember. I mean, keep in mind this conversation was three years ago. What I do remember I think she said the incident wasn't Brittany's fault and then shortly thereafter, she sent the person around from her office to speak to Brittany about it.

35

So this is a call from Senator Reynolds direct to you. Is that correct?---Yes.

40 And the only reference was that it was not Brittany's fault?---That's – that's the best reference I can remember, I – but again, she didn't provide a lot of detail.

45 Did you make any further inquiries? Did you ask anything else in this conversation?---No, I – look, it really came out of the blue. I mean, you don't usually have a minister from a different office call on you directly and I just really wasn't sure what – what she was referring to.

Did you know which media outlet made the inquiry?---From memory, it was the Canberra Times.

Right?---But I'd need to double check that.

5

Are you able to do that while you're here, or you can't do that while you're here?---I'm not sure who I would ask, but I think it was, yes.

No, okay, no. So, there was an inquiry to Senator Reynolds, and Senator Reynolds called you and told you about an inquiry?---Yes.

10

And she added on the end of that that it wasn't Brittany's fault or words to that effect?---Basically said the inquiry related to an issue or an incident, and then said she wouldn't - didn't go into detail, but said it wasn't Brittany's fault, basically, and I think it's - looking back, it seems she was careful not to go into detail.

15

Right. At that point, did you understand that that media inquiry was going to ultimately come to you?---I don't think that media inquiry did come to us.

20

But at that time, that conversation with Senator Reynolds, did you understand that it would ultimately come to you?---Well, I understood it was an inquiry to her office, but I didn't believe it would come - I didn't necessarily know whether it would or not.

25

It was about one of your staff, wasn't it?---Well, I don't know if they actually mentioned her specifically or just asked a question about something they had heard. I - yes, I wasn't sure if they had identified her.

30

But so, I just want to make sure I'm understanding this. You're saying you're not sure whether the media outlet identified her, but Senator Reynolds had identified her?---Yes. Well, I mean, I assume if the media inquiry - if they knew that that person worked in our office, they would have called office. But they had called Senator Reynolds' office.

35

And, I'm sorry, if we could continue your evidence, where we finished up was that Senator Reynolds said she was sending somebody around, was that your evidence?---Yes.

40

Did you ask who that was?---I think she said it was one of her - well, an official from her office. I'm not sure what their exact role was.

Did you know this person?---No.

45

Did somebody come from her office?---Yes.

Who?---I don't know who that person was.

So, somebody came from Senator Reynolds' office to talk to Brittany, but you don't know who it was?---No, I don't.

5 Did you ever make a note about who it was?---No.

Did you know Senator Reynolds' staff?---I knew a couple of her staff. I didn't know this person, no.

10 Right. So, somebody - how did you know that this person was from Senator Reynolds' staff?---Well, I - basically they had - I had brought them into the board room. They said they were from her office, but, look, this - as again, this was three years ago. I didn't really - this was a busy sitting week from memory. I didn't really, you know, sort of go into the details at the time.

15 But you remember somebody from Senator Reynolds came and they - purely on the - you didn't know them to be from Senator Reynolds' office, is that correct?---I thought she said she was.

20 But you - other than her representation to you, you're saying you didn't know who it was?---Well, Senator Reynolds said she was sending someone over, and then essentially someone came over who was from - who said she was from her office. There wasn't really a - I mean, I didn't think any further checks needed to be made.

25 And just - so when this person turned up, what did you think they were there to do?---To discuss the media inquiry with Brittany.

30 And tell us what happened next?---So after the phone call - the initial phone call was Senator Reynolds - and just trying to get the events - I think I called Brittany into my office and basically said that there had been a media inquiry to Senator Reynolds' office about an incident which had taken place when Brittany had worked in that office. Brittany looked quite upset when I told her. She didn't really say much else at the time. I said someone was coming around to talk to her about it, and then I brought her into the board room where I'm not sure if the person from Senator Reynolds' office was already there, or was there shortly there afterwards. And when that happened I - at that period of time, I left them alone to discuss what that particular matter was about.

40 Now, tell us what happened at the end of that meeting?---So I left them alone for a particular period of time, and then I walked back into that particular room.

45 What particular period of time?---I can't remember. I think maybe 20 minutes, half an hour, but, look, again, it was three years ago and it's hard to - it was a busy sitting week, as I said, lots of stuff was happening at that

particular time. So, I walked in. I think Brittany and Miss - a woman from Senator Reynolds were having a discussion. I sort of sat down. It seemed okay for me to be in there. From what I could ascertain with what was being discussed, the issue they were talking about was a some sort of security incident. I think Brittany had mentioned security; being found by security. I think she mentioned the police had been involved, which I took to mean Parliament House police, because, you know, when something happens in Parliament House - she also mentioned, I think, that it was, you know, after a work drinks of some sort. So, it was a situation where I was getting very little pieces of information, but I wasn't being told the full story or allegation.

Sorry, excuse me a second. Try your best to recall anything further you were told?---I think Brittany had mentioned that it also involved a staff member who had since left the building, and she also said quite emphatically that this was taken care of at the time, and she didn't want it to go any further. So, I was - that was what she said.

Did she say anything about how she was found?---I think she suggested that the security had found her, and I interpreted this to mean that she was, you know, passed out or in some sort of dishevelled state. I don't know if she said those words exactly, but I would have thought if she was - well, basically the fact she said security found her indicated something like that.

And tell me how this meeting came to end?---I think we ended it shortly there afterwards. I then spoke to Brittany and said, 'Hey, look, I think we should give Michaelia a heads up about this particular inquiry.' I worked with Michaelia for a number of years. I knew that she would want to know and she would also want to provide support to Brittany who was upset that this inquiry had taken place. From memory, Brittany said that was okay. I walked into Michaelia's office, told her there had been a media inquiry about Brittany relating to an incident in Linda Reynolds' office and then we brought Brittany into Michaelia's office probably a couple of minutes later. And then we had a very brief discussion as well. I think it was about this particular point in time she mentioned that the other staff member involved was someone who left the building, and I actually, I think, said, 'Was it Bruce?' Because I remembered in early 2019 he left Linda's office quite suddenly. And I think Brittany said that was the case.

How did you know Bruce left Linda's office suddenly?---Well, I was Michaelia's senior parliamentary adviser. I sometimes dealt with Bruce from time to time because he was Linda's parliamentary adviser, so we often discussed senate estimates arrangements. Nothing - nothing much, nothing really too exciting. But I remembered in early 2019 just after Linda had been promoted calling the office and was told that he no longer worked there. I thought this was a bit strange but didn't really give it too - a second thought at the time.

Now, did you know how many staff Senator Reynolds had at this time?---Which time was that, sorry?

5 As of this conversation in October 2019?---Look, I think most ministers would have 15 staff. Defence minister seemed to have a lot more because they usually have, you know, lots of DLOs, aide-de-camps, various people up temporarily. I didn't know the exact number.

10 So, I just want to break those into two. In Defence industry like - sorry, in a portfolio like Defence industry, there are people attached to - - -?---Well, she was actually Defence Minister at the time in October 2019 when she called me.

15 There were actually people attached to Defence?---Yes.

And then there are people employed by her in parliament?---Yes, but in - my understand was though - and this often happens in Defence, you often have people from Defence in those parliamentary advice type roles temporarily, so - is my microphone - - -

20 Yes, it does that?---Yes. Yes, sorry. Okay. So, yes, so I assume she had a mixture, but I don't know how many staff she had.

25 So, this unknown person to you - this person you didn't know?---Yes.

That came and spoke to Brittany on your evidence?---Yes.

30 Was she a Parliament House employee, or was she a Defence employee?---My understanding was she was from Defence, but I don't know if she was there as a parliamentary advisor or as a Defence official.

35 And what led you to conclude that she was from Defence?---Look, I don't know if she was - had some sort of Defence paraphernalia or not. As I said, I really can't remember. It was just - that was - that was my assumption at the time.

So, she could have been in a Defence uniform, you're saying?

40 MS MUSGROVE: Your Honour, I object on the basis of relevance.

HER HONOUR: Where's it going, Mr Prosecutor?

45 MR DRUMGOLD: Well, it's a pretty important conversation, your Honour, and I'm querying why he doesn't know the person involved.

HER HONOUR: Well, he's said he doesn't.

THE WITNESS: I don't remember what she was wearing, sorry.

5 MR DRUMGOLD: So, we've just had a conversation with Ms Higgins after this conversation, is that correct?---So, you - so the conversation - so she had a conversation with this official on their own.

10 And you joined?---And then we had a brief conversation the three of us, and then we went into Michaelia's office, as I mentioned, and had another brief conversation.

15 Now, can you tell us in as much detail as you can about that conversation between yourself, Brittany Higgins and Michaelia Cash?---As I said, from memory Brittany was quite upset and uncomfortable, and that seemed quite logical because, you know, any staff member - - -

20 HER HONOUR: Please don't give your observations, just the words that are said?---Okay. So - but I was about to say I don't think she said a lot at that particular time. I think the same detail sort of came forward that, you know, it was an incident that had happened at the time, you know, in Linda Reynolds' office after work drinks of some sort. And, look, I'm just - I think my memory might sort of be muddle between the first conversation and the second conversation so I couldn't be sure what was said in which particular office, but I think it was largely along the same lines. I think she again mentioned the person was in the building and that's when I thought, 'Oh, maybe it was Bruce', because I remembered he had left quite suddenly at that particular point in time. But - - -

25 MR DRUMGOLD: So, did she mention a date that this occurred?---No. Not from memory, no.

30 Okay. Sorry, how did you know that Bruce left at that particular time?---Well, I remembered he left shortly after Linda had been promoted and that was quite before the election so there was only a narrow window, I suppose, when it could have been. But, look, at that particular point in time I wasn't really thinking about dates and, you know, she indicated - I think she indicated yes, from memory, or she nodded, or something like that, but it was still unclear as to when that actually was.

40 So what did you do with regard to this hovering - to the media enquiry? Did you do anything with regards to that?---So I think what had actually - so basically after the meeting with Michaelia, Michaelia gave Brittany a hug and basically we made sure Brittany knew she was very well supported and that, you know, this particular incident we'd support her 100 per cent. I think there wasn't any further impetus from Linda's office because Linda's office - as you remember, they were the ones that got the media enquiry, it wasn't us. I think I checked with her media advisor a couple of days later, all that type of thing, whether there'd been anything further and the media advisor said no.



5 I just want to come back to the reason why you established the media – I will withdraw that. You established the sit-down meeting with Michaelia Cash and yourself and Brittany Higgins. You said you thought Michaelia Cash might want to know and would be interested in her welfare?---Yes.

10 So to your mind, as the person that initiated this meeting, why did you think that she would want to know?---Well, because there had been a media enquiry about an incident and that the nature of that incident was very unclear at the time. But it involved a staff member in her office, so of course we would want to know what actually – you know, there had been a media enquiry relating to one of her staff members. That would be natural.

15 And other than finding out that it was someone who had left and drawing that conclusion that it was Mr Lehrmann, what other enquiry did you make about this in preparation for any media enquiry?---Well, look, at the particular time, as I said, Brittany was quite upset – or appeared to be quite upset from what I could see and I didn't really think it was appropriate to press her for details; it was quite a sensitive issue. I just wanted to support her as best as we could  
20 and it seemed to become clear a couple of days later – so I spoke to Linda's media advisor – that there hadn't been any follow up, so - - -

25 So what did you do?---Well, basically we just kept an eye out to see if there was any, but - - -

There was no media follow up you mean?---Well, no, there's no media follow up so I didn't – my understanding from – I suppose initially was they weren't planning to say anything, but that was really a matter for them.

30 So the media problem has gone away. Can we just talk about the - - -

MS MUSGROVE: I object to that. That is not what the evidence was of the witness, not that the media problem has gone away. It was about a media enquiry.

35 MR DRUMGOLD: I will rephrase the question.

So that is the end of the media enquiry?---The first conversation, yes.

40 I want to turn to your considerations around welfare, what you – what did you do about that?---Look, I think I checked on Brittany a couple of times over the next couple of days so – to make sure she was okay. I think she mentioned around that time that she had engaged with the Employee Assistance Program at some – at some point in time. And, look, I didn't want  
45 this to be an issue that I suppose was constantly brought up if Brittany didn't want it constantly brought up, but she knew that I – that she could always talk to me about it.

So you checked up with her how many times over what period?---Look, I couldn't recall. As I said, I think at least a couple of times over the next couple of days but, yes, I don't know the exact number.

5

So I will move on from October 2019?---Yes.

Between October 2019 and when you received her resignation of 29 January 2021, that is a year and three months or thereabouts - - -?---Yes.

10

- - - was there any follow up done with Ms Higgins? With regard to welfare particularly?---Look, I mean I think I was always checking on staff welfare. And, look, I didn't think – necessarily think this particular issue over that particular period of time – because it had seemed to have gone quiet for a while. The only thing I can really think of in 2020 when Brittany brought this up again – I think she mentioned at some point in 2020 – I don't know when the exact month was, but she said that she had seen Bruce in Canberra or seen him in Canberra on social media, I can't remember the exact circumstances, and then she wondered – wondered if he had a parliamentary pass, because she said she didn't want to see him in the building. I made an enquiry and found out that she didn't have a – that he didn't have a parliamentary pass.

15

20

And when was this conversation?---Some time in 2020. I think it was mid-2020.

25

Did you ask her why she was concerned about?---Well, I obviously knew – well, I assumed it had related to the earlier incident from October 2019. Even though I didn't know the exact nature of the incident in October 2019, I knew it was clearly a sensitive matter and he'd been the other person involved, so I didn't think it was an unreasonable request.

30

Okay. I just want to ask in what he had been – this is mid-2020, she has made an enquiry of you as to whether Mr – seeing Mr Lehrmann in town, asking you whether or not – and you said he had been the other person involved. As of this point in what?---I don't think - - -

35

What to your mind?---I don't think she said that at the time, but – in 2020. I don't think she went into any detail at all about the original matter. But from my understanding in October 2019 he had been the other staff member involved, he was – it was described to me as the other staff member who had since left the building, which I took to mean Bruce.

40

So she asked you – she said she'd seen him in town and asked whether he had a parliamentary pass?---Yes.

45

Did you make an enquiry?---Yes.

5 Walk us through that?---I called centre president's office and asked them essentially about – 'I need to make an enquiry about an individual'. I think I mentioned this related to a security incident, which I thought they might potentially know about given they were the president's office and they're in charge of Parliament House. They said they would find out for me and I think a few days later they came back and said that he didn't have a pass.

10 So what was your purpose for doing that? I am just – Brittany Higgins has asked you to check that he hasn't got a parliamentary pass?---Yes.

15 And you enquired. Was the motive for – protective with regard to Brittany Higgins, or to make sure there was not a security issue?---No, it was Brittany had come to me and she said this was a concern, she asked me if I could help and I tried to help her as best as possible. It wasn't – I didn't – that was all I was trying to do.

20 Sure. Did she say why it was a concern?---Well, she said she didn't want to see him in the building. I didn't ask her any questions about, you know, what the particular circumstances were. As I said, I assumed it related to the original incident I heard about in October 2019.

25 Which you understood to be a security breach?---Well, some sort of security incident. But, again, the details were quite unclear.

Did you want to know the details?---Well, I didn't think it was appropriate to press Brittany for the details. It was obviously a situation that upset her.

30 Sorry, that was not the question. Did you want to know the details?---Well, it's not a situation of wanting to know the details, it is what is appropriate. I wasn't going around asking questions about the details. All I wanted to do was try to help my staff member as best as possible.

35 And did you think to ask Senator Reynolds about the detail?---I didn't think that would be appropriate, no.

Why?---Well, this was an issue that happened in her office. If Brittany wanted to tell me the detail she always knew that I was there to listen to her.

40 Sorry, I am confused about the link because you then went to act on her request to make sure that he didn't have a parliamentary pass?---It wasn't to make sure he didn't have a pass. It was just enquiring whether he had one or not. If he had a pass I don't know if there is a lot I really could have done about it. I just asked if he had one.

45 Right. And did you convey that back to Brittany Higgins - - ?---That he didn't have a pass?

- - - that he didn't have a pass?---Yes.

Right. But you made - - -?---And - - -

5

- - - no enquiry of Senator Cash of the basis for – Senator Reynolds of the basis for all of this?---Well, I mean Senator Reynolds was the previous employer. I didn't know what her knowledge of – was at the time.

10

Did you want to know?

MS MUSGROVE: Objection. How is it relevant whether or not this witness wanted to know?

15

MR DRUMGOLD: I think it is obviously relevant, your Honour.

HER HONOUR: It is obvious, but in the current rubric probably not permissible. Are you seeking leave?

20

MR DRUMGOLD: Not at this stage. I haven't quite gone over that.

HER HONOUR: Well, in that event I don't think you can ask the question.

25

MR DRUMGOLD: So, beyond this second event, the pass event in mid-2020, was there any further discussion with Brittany Higgins about the event in March of 2019?---So, after 2020, I think the next time it was brought up as in January 2021. So, this – look, I'm not sure if it was brought up between then in a small way, I really couldn't be a hundred per cent sure, but from memory, the next time she brought it up was in January 2021, so it would have been 28 January when she came into my office. And, in this particular conversation she said she was again concerned about this particular incident from when she worked for Linda. And she mentioned a few different things. I mean this particular conversation really did come out of the blue really. It was sort of – you don't - - -

35

Sorry, can we just set the context. Where are you?---I'm in my Parliament House office.

And how did the conversation commence?---Brittany - - -

40

Did Brittany come to you?---Brittany walked into my office, yes.

45

And in as much detail, she said/you said, she said/you said, can you tell us that conversation?---Look, from memory, I think she came into my office and she was talking about something else at first. And then brought up this particular issue. I don't remember every word she said. I mean I understand this one has been recorded but, you know, I don't – I haven't got a copy of

that so I don't know the exact words to and from. But in this particular instance I think her main concern was that she didn't want to take calls from – I think it was the Canberra Times journalist who had initially made the inquiry in October 2019 – and she asked me whether I could find out who that journalist was. I think that was the overall part of the conversation. I know during the conversation she mentioned this incident was upsetting her again. I think she said she had been to a psychologist the day before, or earlier that week, I'm not sure. I think she told the office manager she was going to a psychologist the day before. And, in this particular circumstance, I was actually, you know, quite surprised that she was so upset. I mean she – yes, she appeared to be very upset, that she was crying. I don't think I'd ever seen Brittany cry so much before. But look, I wasn't fully aware of what she was trying to say but I was just doing my best to comfort her.

Okay. Did you find out any more details about the events of March of 2019 at this meeting?--Look, not from memory. I don't think she went into details about what actually happened in this particular event but – for that particular event.

Right. And sorry, just so I have got the date clear, that was 28 January 2021?--I believe so, yes.

Did it come to pass that she resigned?--Yes, on 29 January. So, she asked - -

The day after this conversation?--Yes, that was – yes, I think it was the day after, yes. I'm pretty sure. But anyway, because she'd asked me to find out the name of this journalist, I found out overnight the journalist, the name of the journalist. I called her into the office to say, 'Hey, this is the journalist.' I thought she might want to talk some more about this particular matter and it was then that she gave me her resignation letter and she also emailed it to me at the same time.

Had there been conversations about potential resignation prior to 29 January 2021?--No, this was – well, from my perspective, this was completely unexpected. I was very surprised.

Yes. Excuse me a moment. I do make the application under sub-section (1), your Honour, purely relating to October 2019.

HER HONOUR: Any objection?

MS MUSGROVE: No, your Honour.

HER HONOUR: Yes, Mr Crown.

MR DRUMGOLD: And credit – and in sub-section (4).

Sir, I am going to suggest to you that in October 2019, you had a lot more detail about what occurred in March of 2019?---That's not true.

5 I'm going to suggest to you that one of your roles as Chief of Staff is to protect against any political fallout of such an event?---Well, this was an event I didn't have any knowledge of prior to that time.

And I want to - - -

10 HER HONOUR: I am sorry, I don't think that answers the question. Do you accept that that was part of your role, to protect against political fallout?---Well, but I mean - - -

15 Leaving aside this particular information?---Well, that had to - to protect an event you don't know about.

Pardon, sorry?---I said when you can't protect an event - - -

20 MR DRUMGOLD: Let us put the event aside?---Yes.

Part of your role as Chief of Staff is to protect against events that could have a negative political impact, could reflect on you - on the politician negativity? That's part of your role as the Chief of Staff, isn't it?---Well I suppose in a general sense, yes.

25

To protect against anything from which there could be political fallout?---That's one of the many aspects, absolutely.

30 And I'm suggesting to you that in October 2019, when there was a media inquiry, your dominant concern was potential political fallout?---That's not true at all. I was worried about Brittany.

I'm suggesting that Minister Reynolds gave you all of the detail about the events of the early morning of 23 March 2019 in her office?---Not true.

35

And your role thereafter was to protect Senator Cash from any political fallout from that moment?---That's not true.

40 Thank you, sir.

HER HONOUR: Yes, Ms Musgrove.

45 MS MUSGROVE: I have no questions, thank you.

HER HONOUR: Mr Try, thank you for attending to give evidence. You are excused.

<WITNESS WITHDREW [12.06 pm]

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END OF EXTRACT [12.06 pm]

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START OF EXTRACT [12.07 pm]

██████████, Sworn: [12.07 pm]

15

<EXAMINATION-IN-CHIEF BY DRUMGOLD

MR DRUMGOLD: Thank you, your Honour.

20

Sir, can you please state your name?---██████████.

And what's your occupation, sir?---I'm a member of the Queensland Parliament for the Electorate of Bonney on the Gold Coast here.

25

Thank you. And when were you elected as Member of Bonney?---November 2017.

Now, do you know Brittany Higgins?---Yes.

30

When did you first meet Ms Higgins?---It would have been early 2018.

35

Now, in what capacity did you meet Ms Higgins?---Well, she actually lived a street away from me here on the Gold Coast but we first got in touch through our then opposition leader's office, and she was also a student at Griffith University and I think she joined the Party around that time too, so she would come and sort of volunteer for things around our local office here.

40

Now, we've heard evidence that in late 2018, Ms Higgins left the Gold Coast and came to Canberra to work for Minister Ciobo?---I thought it was earlier than that, but yes, it was a few months after we sort of knew each other, but yes, that was correct.

45

And did you play any role in the facilitation of that job?---I think I might have been a reference but by that point we were sort of friends. She was only a few years younger than me in age, so we, I guess, connected quite well on that basis.

Now, we've heard evidence that on the – that Minister Ciobo effectively stood down as Minister for Defence Industries and Senator Reynolds, Senator Linda Reynolds, was sworn in on 2 March of 2019. Did you know that event occurred?---Yes.

5

Okay. How did you find that out?---I guess publicly or talking to Brittany, but I guess publicly, when everyone else did.

Did you know Brittany was going – or Ms Higgins was going to apply for a job with Senator Reynolds?---Yes.

10

And, did she tell you that?---I believe so. Because, we were discussing, sort of – as, sort of, friends do, I guess – we were discussing whether she would remain in the same team, or – or what her options might be for other ministers. But: yes.

15

And what was mood like about that job?---Fairly positive. I mean, she – this – this was her dream; this was – this was what she loved doing. Asking – she got very into the whole – the whole Canberra thing, and that – that intense place that it is down there, and – and I – I think very positive, yeah.

20

Now, did you become aware of an event that occurred in the early hours of the morning in Senator Reynolds office?---Yes.

25

Okay. How did you become aware of that?---On checking my text messages, Brittany had alluded to it but not disclosed it in – towards the very end of March – 2019? And then, we had discussed it over the phone, and she described it as a – “a super fucked up” thing that happened, and – and we discussed it over the phone in mid-to-late April 2019. And then, on many occasions after that.

30

Okay. If we could go back to “alluded to it” at the “end of March 2019”. Can you walk us through that; unpack that; what you mean by that?---I – I believe the words were something like – she was asking me to let her know if I'd heard anything about her and – and had – that Team Reynolds was a – a controversial topic or something, and – and had just – just wondered if she'd – she'd heard anything going around about her.

35

And, what was the nature of that exchange; was it in-person, over phone, text; how was that exchange; how did that discussion happen?---Oh, over – over text message. Obviously, I'm – I'm based on the Gold Coast, and – and we would, you know, see each other in-person very infrequently at the time.

40

Thank you. And, you said there was a phone conversation mid-to-late-April; is that correct?---Yes.

45



Was there any conversation between that text message at the end of March 2019 and this phone conversation in mid-to-late April of 2019?---There might've been other text messages alluding to it, but I don't think so. I think there was a text in – in April, that I said, 'Would you prefer I call?', and – and that's when we discussed it over the phone.

Okay. Can you walk us through, in as much detail as you can, that conversation; just to be clear, this is the mid-to-late April phone conversation; who called who, to start with?---Yes. I think it was 19 April. And, I – I'm not sure who – who would've called who. But, she had indicated that she wanted to talk about it over the phone. And, it was that she had been out drinking, with other staffers, at a bar; I wasn't sure where; I don't really know Canberra that well. But then, at the end of the night, she had got a lift home with another staffer from the office. I do recall – I still can't remember his name but I remember there was another Queenslander from Peter Dutton's office that I – I had known when I was previously a staffer, who was there, and that – that was context in my mind. But, this – another person, who I later – she later told me was – was Bruce – and I remember that because she said that he was, I think, from Toowoomba and had previously worked for George Brandon. But he had given her a lift home, and – and said he needed to – to drop by the office, and that's where – she was pretty hazy on the details but she had, by that point, remembered that he – he had raped her in the minister's office.

Okay. So, this was 19 April 2019, was it, this conversation?---Yes. Based on my – my text message records. That's what I – I could determine, yes.

Okay. Do you know where she was geographically located at this time; whereabouts in the country she was?---It might've been WA for the Federal campaign. I'd – I'd have to check my other records, but I remember she had gone over there for the Federal campaign.

Okay. Did she tell you who else knew about this?---No, not that I recall.

Okay. When was the next conversation you had with her?---We talked pretty regularly. So, I don't know recall specifically. But we talked fairly regularly and this and above all this matter she was dealing with, and then figuring out how to deal with it.

In this conversation of 19 April 2019, what was her emotional state?---Pretty upset; and, I remember, being very angry about it as well. But, yes, certainly upset.

Did you ever have a conversation with her about police?---Yes. I – I don't recall exactly when, but I do remember her talking about – and – and obviously I – I encouraged her to as well, but I do remember talking about starting that process and – and figuring out what that would involve and –

and she was – she was particularly worried about it all becoming public and – and how that would impact on her.

5 In what aspect of her was she worried that it – did she say?---She – I definitely remember her being concerned that this – this would define her; that – that she would be known for this, instead of being good at her job. And – and then, the second part of that was the impact that it would have on her job and – and her working in politics.

10 Now, we've heard evidence that she subsequently ceased work for Minister Reynolds, and, on 8 June 2019, commenced employment with Senator Cash. Did you know; did she talk to you about that event?---Yes. Because, I remember she was tossing up where to go work, and I – I had also put a reference in to her – in – in for her, to my – my local Federal MP, 15 who's Stuart Robert, and I think that had offered her a role. So, she – she, I think, declined that one, to go work for Minister Cash.

20 Did you have any conversations with her about what she said she had told Senator Cash?---The main one - - -

MS MUSGROVE: I object to that.

HER HONOUR: Just don't answer that for a minute, [REDACTED].

25 MS MUSGROVE: Sorry; I object to the question.

HER HONOUR: Sorry, Ms Musgrove, I was speaking to the witness so I didn't hear what you said. Just one person at a time, please.

30 MS MUSGROVE: I object to the question because this line of questioning wasn't put to Ms Higgins, about any conversations she may've had with this witness about conversations with Cash.

35 HER HONOUR: Yes. And, I'm not sure, Mr Prosecutor, how relevant it is, beyond the first conversation, for the purpose for which it's admitted.

40 MR DRUMGOLD: With regard to the first objection, it was put, in some detail; at the end of her first evidence-in-chief interview, it was asked who she told, and this is one witness. What she'd told - - -

HER HONOUR: One of the people she told.

45 MR DRUMGOLD: But, I do take the point that that does not appear to have been challenged.

HER HONOUR: Yes. Yes, all right.

MR DRUMGOLD: So, I – compartmentalising that, I accept that this only goes to credit.

HER HONOUR: So, is there anything further?

5

MR DRUMGOLD: No, no, there's nothing further. Excuse me a moment.

HER HONOUR: Ms Musgrove?

10

MS MUSGROVE: No, I have no questions, thank you.

HER HONOUR: All right. Mr O'Connor, I have to ask, are you the youngest member of parliament?---Oh. I'm – there's two younger than me now.

15

Ah, well?---We just had one elected – elected.

Thank you. Thank you for making yourself available to give evidence. You're excused?---Thank you.

20

**<WITNESS WITHDREW [12.18 pm]**

25

**END OF EXTRACT [12.18 pm]**

30

**START OF EXTRACT [2.48 pm]**

**<LINDA KAREN REYNOLDS, Sworn: [2.48 pm]**

35

**<EXAMINATION-IN-CHIEF BY MR DRUMGOLD**

HER HONOUR: Senator, please take a seat?---Thank you.

40

Yes, Mr Prosecutor.

MR DRUMGOLD: Can you please state your full name?---Linda Karen Reynolds.

45

And you are currently a senator for Western Australia?---I am.

In the Federal Parliament. Is that correct?---I am.

When were you first elected as a senator for Western Australia?---I was elected first in 2013 and I took office in 2014.

5

Thank you. Now, in around January of 2019 I think you were Assistant Minister for Home Affairs. Is that correct?---I was, yes.

And Minister Ciobo was the Minister for Defence Industries?---He was.

10

We have heard that Minister Ciobo announced that he would not contest the 2019 election?---Yes.

And on 2 March of 2019 you were sworn in as Defence Industries Minister. Is that correct?---That is correct.

15

As Defence Industries Minister - when you were sworn in as Defence Industries Minister you effectively geographically moved into Minister Ciobo's office. Into the office that he formerly occupied?---I did.

20

We have heard some evidence of the process that happens with staff when such an event occurs with deferment, et cetera. You effectively - as you moved in, you, in the short-term, inherited a number of Minister Ciobo's former staff. Correct?---Sort of, yes.

25

Sorry, please correct me?---So, how the process works is that for MP staff - for ministerial staff, their term goes - starts and finishes with - in their contract with the minister. So, as soon as Minister Ciobo resigned and I was sworn in, technically, all of his staff lost their job and the same thing with my staff as well because I was no longer the Assistant Minister for Home Affairs. So there is that deferral period because it is quite brutal for staff, so that staff can stay in the office if the new minister so chooses and either negotiate a job with the new minister, get a job with another minister or leave. But it's that time for both lots of staff to go through that process.

30

Yes, thank you for that. So when you were sworn in and you moved into Minister Ciobo's office, Brittany Higgins, at that time, worked for Minister Ciobo prior to you?---Yes, she did.

35

And you kept her on. Is that correct?---I did.

There is effectively - what actually has to happen is she has to apply for the job and get a job with you. Is that correct?---That is right. It wasn't just Ms Higgins. It's all - so my previous staff and the staff of the outgoing minister all have to determine whether they want to work for the new minister, whether they want to go and do something else. So they have got that option

40

45

and, obviously, I couldn't keep on - I didn't have enough staff places to keep on all of - both ministerial staff.

5 Now, Bruce Lehrmann worked for you when you were the Assistant Minister for Home Affairs. Is that correct?---He did, yes.

He effectively came across with you to the - well, initially through that deferment period that you spoke about?---He was - he did.

10 And Brittany Higgins remained in the office on that deferral period?---Yes.

Subsequently, you re-employed Ms Higgins. Is that correct?---That's correct.

15 And you did not re-employ Mr Lehrmann?---I did not.

No. Thank you for that. Now, we have heard - at that time your chief of staff was Fiona Brown?---Incoming chief of staff, yes.

20 Incoming?---Yes, she hadn't - she wasn't working for me as an Assistant Minister.

Thank you. We have heard Ms Brown give evidence that there was a security incident with regard to Mr Lehrmann?---Yes, there was.

25 And then there was a second incident that you became aware of where Mr Lehrmann and Ms Higgins entered Parliament House in the middle of the night. Correct?---That's correct.

30 When did you first become aware of the events of 22 March 2019? I am talking - we will unpack, but when did you - no, I withdraw that. Let's break it down. When did you first become aware that Ms Higgins and Mr Lehrmann entered the office?---I first became aware - it was a Tuesday because I was up in Brisbane. I was attending - I remember it very well because it was my very first cabinet meeting as a cabinet minister, so I recall  
35 that I received a call from Ms Brown advising me that she had been advised of a very serious security breach by two staff members.

Ms Brown was in Canberra at that stage?---She was in Canberra, yes.

40 And she phoned you?---Yes.

What did you say?---I recall being very shocked because it was a very serious  
- - -

45 HER HONOUR: I am sorry to interrupt you, Senator. Please don't give what you were feeling. Just what you said.

MR DRUMGOLD: What did you say?---I can't recall my exact words but I was certainly surprised and shocked.

5 You don't recall what you said?---I don't recall what I said on that - that phone call.

You can qualify it by saying 'something like'?---Yes. So something like surprise, something like shock.

10 What you said?---And I obviously - or not obviously, sorry. I asked for further information.

Who did you ask for that further information?---From Ms Brown.

15 Did she provide further information?---She did. We had a series of phone calls.

Are we still on Tuesday the 26th?---We are, yes.

20 Okay. What did she - what further information did she provide to you?---I - between that day and the following day, because there was a number of phone calls, I can't be precise exactly which phone call and what discussion we had, but I certainly asked for more information and I recall that she did talk to the Department of Finance who we go to for employment information and also to the Prime Minister's office because it was also clearly a breach of  
25 ministerial standards.

30 Did she provide that information to you that she had been to the Department of Finance?---She did, but I can't recall whether it was via phone that day or the following morning because then I flew - after the cabinet meeting I flew back to Canberra.

So that would be Wednesday the 27th?---That's correct.

35 You came back to Canberra on Wednesday the 27th?---No, I came back on the Tuesday night.

Tuesday the 26th?---I believe so, yes.

40 So let's walk into Wednesday the 27th. Walk us through what engagement you had with this event on that date?---It was a fairly normal ministerial day in terms of somebody who has just, you know, come into the cabinet, so I - there was a number of meetings. In relation to this incident, I recall having a number of conversations with Ms Brown again just clarifying further of what  
45 information we had and [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

10 Right. So, as of Wednesday the 27th what did - you had a number of conversations with Ms Brown [REDACTED]. What did you know about the incident of the previous Saturday?---Very little. Just that two - it was reported that two staff had entered the office out of hours which is highly unusual and very inappropriate. It is certainly appropriate if the - - -

15 HER HONOUR: Senator, could I just ask you please not to make commentary on what you are saying. Just what you knew or what you said or what you heard or what you saw?---Yes, so - yes, your Honour.

20 So you said two staff had entered the office after hours?---So there had been a - - -

Did you know anything else?---Yes, your Honour. So there had been a security breach and two staff had come into my ministerial office after hours. In the early hours of Saturday morning.

25 MR DRUMGOLD: If we could just distinguish between two terms. If we could distinguish between the term 'ministerial suite' which involves everywhere including staff are and if we could define ministerial office to being your office and if you accept for the moment that we have photos of your office, what was the nature of the information? That they entered the  
30 suite or they had entered your office?---My suite.

Your suite?---Yes.

35 So, did you have any information that they had actually entered your office at this stage?---No.

So this is Wednesday. And who told you that?---Fiona Brown and [REDACTED]  
[REDACTED]

■ [REDACTED]

So this is Wednesday the 27th?---Yes.

45 That's the conclusion of that day?---Yes.

Can we move through to Thursday the 28th? Did you have any more engagement with the subject?---I flew back to Perth because I had two days of ministerial engagements in Perth.

5 When did you fly back to Perth?---I think I flew back on the Wednesday night on the direct flight and then I had two days in Perth.

Which was Thursday the 28th - - -?---Thursday and the Friday.

10 - - - and Friday the 29th?---Yes.

Okay. Thank you. Did you have any engagement with Ms Brown during that period?---I did.

15 Can you walk us through that? What day and what was said?---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.

20 This was Thursday the 28th she told you that?---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.

25 And what was your response?---Strongly supportive.

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

30 That she was distressed and she wanted to go to the doctor?---Yes.

35 Did Ms Brown say that she had had a meeting with Ms Higgins as of that stage?---Yes. I believe by that stage she'd had two meetings with Ms Higgins.

40 Did Ms Brown convey to you what Ms Higgins said to her during those meetings?---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.

45 So Ms Brown at that stage had not told you anything that Ms Higgins had told her about the events of the previous Saturday?---Not specifically, no.



In general?---Just that she was concerned that she was upset.

Distressed and wanted to see the doctor?---Yes.

5 When was the next conversation you had with Ms Brown?---We had a series,  
we – of discussions. So I – we checked in and I can't recall whether  
Ms Brown contacted me or I did her on the Friday and also the Saturday and  
Ms Brown was still concerned so I said, 'Look, I'm back in the office on' – 'in  
10 Canberra on Monday. Why don't we have a meeting with Ms Higgins and' –  
because I hadn't had the opportunity to talk to her about that. So my  
understanding is Ms Brown texted – I don't think she rung her, I think she  
texted Ms Higgins whether she could come in for the meeting on Monday  
with me. We had been concerned, you know, whether she was on her own,  
15 but Ms – I recall that she told Ms Brown that her father was coming down,  
and this was probably the Friday, and so I invited – I asked Ms Brown to  
invite her father to the meeting on Monday if he wanted to come.

And what was the basis for that concern that you had?---Well, I have a staff  
20 member who was upset and, you know, my chief of staff was concerned  
about her and so that made me concerned.

On the basis that she was upset?---Yes.

25 That was your concern?---Yes, absolutely.

At that stage in organising the meeting on the Monday, 1 April, what was  
your intention to discuss at that meeting?---To discuss the incident and to  
hear from her about – because, again, in my mind this was still a security  
30 incident.

Did you ask Ms Brown for any further information about their – her  
exchanges with Ms Higgins?---Not that I recall. I didn't see a need to. I'd  
been told that she was upset.

35 But did you enquire why she might be upset?---Well, my working  
assumption at the time was that there was a serious security incident and she  
was upset about that.

40 About a security incident?---Yes.

But she was the one that was the subject of the security incident, wasn't  
she?---She and – well, both were. And Mr Lehrmann – we'd asked  
Mr Lehrmann to leave the office because that was his second security breach,  
so that's why I wanted to talk to her on the Monday.

45 Can we go to the Monday?---Yes.

5 Walk us through that meeting?---I was in – I was in my office and – so my recollection is that Fiona and Brittany came into the office, they sat down and we started to have a discussion. I said to her it was about the security, you know, incident and I wanted to know, you know, from her perspective what happened.

10 Can I just pause there. Prior to that meeting had you had any one-on-one conversations with Fiona Brown in preparation for it?---We would – I don't recall specifically that I did, but we would have, yes.

15 Okay. As part of those conversations did you query why she was upset of Ms Brown?---No.

15 Did Ms Brown offer it?---No.

15 I am just sort of trying to get the – sorry, there is no trick questions here?---No.

20 I am just trying to get the dynamic that took us into that meeting. At this stage, on your evidence, you knew nothing about the subsequent allegations on the 22nd of – it was just a security breach?---A serious security breach, yes.

25 A serious security breach. What – how do you define a serious security breach?---A serious security breach is where, for example, in the Minister for Defence Industries' office which has highly classified material, commercial-in-confidence material, you have very clear security requirements in terms of clean desk, document handling, document security and also access issues in the office, so any breach of those security requirements is serious.

35 There would – it would not be possible to have a non-serious security breach by entering your office as Defence Industries minister in the middle of the night? A suite, I am sorry?---No, not unless authorised and not unless there for a highly important work reason.

40 Okay, so I am just – the element that made it a serious security breach was the fact that it was your suite?---Well it would have been the same for any minister but particularly for a minister in the Defence portfolio, cabinet minister. We have highly classified documents that we work with as a matter of routine and you expect the highest standards which is why there is a ministerial code of conduct in any office but I think particular in portfolios like Defence.

45 I was just trying to unpack why the insertion of the adjective 'serious' before the 'breach'. Okay, so there was some conversation between yourself and Fiona Brown prior to the meeting with Ms Higgins but you still do not recall

Ms Brown offering you any of the detail of Saturday – of the previous Saturday, of the Saturday week before?---No.

5 You did not inquire any further about why she was upset?---I – at that point I had no need because in my mind it was a security breach.

10 What was your concern at this stage?---My concern was to find out from her perspective why they were there, why they did what they did and also why she was upset, so she was upset to the point that Fiona was concerned.

You had not asked Ms Brown whether she had made those inquiries prior to this meeting?---I knew that she had talked to Ms Higgins, absolutely.

15 But you did not ask her what she – what was said?---I don't recall specifically asking her that because at that time it was a security breach.

20 Okay, so take us into the meeting of Monday, 1 April. In as much detail as you can, please qualify it by 'I can't remember verbatim but – about this' but can you walk through what – who said what and in what sequence?---I – look, I don't have recollection sort of three years later of word for word. However, I did start the conversation by explaining what the meeting was about.

25 Which was what?---About the security breach, and so I asked Ms Higgins about the incident and she was very apologetic, she was embarrassed and she did apologise because she knew it was the wrong thing - - -

30 HER HONOUR: Please, senator, just do not look into her mind. Just the words said, thanks?---Okay, so she - - -

MR DRUMGOLD: She said, 'Sorry'?---She apologised, yes.

You said, 'This is about a security breach'?---Yes.

35 She said, 'Sorry'?---Yes.

Okay, what was said next?---She also indicated that she knew that it was not the right thing to do and that she didn't want to lose her job.

40 Was her job at risk at this stage?---No.

Did you – what leads you to say that?---Well she had raised the issue that she didn't want to lose her job.

45 But was it – I am just sort of trying to find out how she might have thought that. Had you instructed Ms – do you know if Ms Brown had conveyed to her that her job was at risk, or?---I don't believe she did, no.

Ordinarily would her job have been at risk for one security breach like this?---No.

5 No? Okay. So you conveyed that to her?---Yes.

And what happened next?---She explained in a little bit more detail over the course of the discussion that they – she was very drunk and she couldn't remember what had happened that night. But in the course of saying that she did mention to me that she woke up the next morning and got – I can't remember the exact words, but mentioned that she got dressed. And it was at that point – she was also a little more distressed and it was at that point that I thought, 'I'm not the right person to be talking' – you know, if you've got somebody who can't remember what happened and she was getting dressed and she's distressed – so that's when I said to her that, you know, as her boss – and I'm not a trained counsellor and I'm not the person to be having this conversation with. So I suggested to her that I knew we had AFP in the building and that here in the ACT they're community policing, so I suggested to her that she might rather have this conversation with somebody more qualified and that she should talk to the AFP, and I said that we'd be happy to facilitate that if she wanted to. My recollection is she didn't say yes straight away, but she did a bit later. I think she – I don't think she approached me, she approached Fiona and – who took her to meet with the AFP. So that was on the Monday.

25 The same day she went to see them?---Same day, yes.

Now, it came to pass that on 11 April the Prime Minister called a recollection?---Yes.

30 You recall that?---I do.

Were you aware that that was imminent at this stage?---Absolutely, yes.

35 Did you know the date that that would happen at this stage?---I think the Prime Minister is the only one who knows the date, but it was – certainly we knew that it was imminent.

40 Did you know when there was – when the election was – the election day was likely to be?---I think it was very clear that it would be shortly after the Budget.

Well, let me ask it this way. The election was held on 18 May?---Yes.

45 Were you aware that that was the weekend of the election as of this stage?---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.

I will probably make the application at this stage, your Honour.

5

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 - - -

10

HER HONOUR: I think the same position as before.

MR WHYBROW: Yes.

15

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

MR WHYBROW: I am not opposing it.

20

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

MR WHYBROW: Yes, your Honour.

25

MR DRUMGOLD: It is 1AN(4) again, your Honour.

HER HONOUR: Sorry?

MR DRUMGOLD: It is 1AN(4) again.

30

HER HONOUR: Yes. I grant leave.

MR DRUMGOLD: Thank you, your Honour.

35

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.

40

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?---I was not.

45

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.

Do you know what Ms Higgins says occurred on 1 April sitting here today?---I – not in any detail, no, but I have seen some of the media reporting.

5

Well, have you sought that information?---Sorry, please clarify, which information?

10

Have you attempted to inform yourself of the evidence of Ms Higgins in this trial?---Only what I have seen in the media.

Listen to the question. Have you attempted to obtain the evidence of Ms Higgins in this trial?---No. Do you mean recently?

15

Recently?---I just need it to be a bit clearer, I'm sorry.

Well, let me ask it this way. You have sought the transcripts of Ms Higgins's evidence in this trial, haven't you?---Yes.

20

Why?---Because I was – I was curious to know what had been said but I was advised by my lawyer that that wasn't appropriate.

You arranged for your husband to sit in the back of the court, didn't you?---No, he's not my husband, but my partner has been here in the court, yes.

25

And he's been talking to you about the evidence that Ms Higgins gave, hasn't he?---No, he has not. My lawyer was very – my lawyer was very clear and I have been in Rwanda for the last week. I came back early to testify today.

30

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?---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.

35

And you're saying that your partner has sat in the back of the court through Ms Higgins's evidence and you've not once asked him about Ms Higgins' evidence?---He has been very clear. My lawyer was very clear with him not to discuss it with me. Yes.

40

So what would be the point of him sitting in the back of the court? I mean, he lives in Perth with you, doesn't he?

45

MR WHYBROW: Well, I object, your Honour. Your Honour, this is getting well beyond any rational unfavourable evidence.

HER HONOUR: It is. I am aware of the test and I am going to extend the leave.

MR WHYBROW: As your Honour please.

5

MR DRUMGOLD: Thank you, your Honour.

Your partner lives in Perth?---He does.

10

And during Ms Higgins's evidence, you're in Rwanda?---Yes.

And your partner lives in Perth?---Yes.

15

And your partner finds himself in the back of the court listening to Ms Higgins' evidence. Correct?---Yes, although we do have a house here in Canberra and he has been here in Canberra for most of the last month.

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

20

Can I ask, did you have private text messages between Ms Higgins and Nicole Hamer?---No.

25

**<WITNESS STOOD DOWN** [3.18 pm]

30

**END OF EXTRACT** [3.18 pm]

**START OF EXTRACT** [3.29 pm]

35

**<LINDA KAREN REYNOLDS, Recalled:** [3.29 pm]

**<EXAMINATION BY MR DRUMGOLD CONTINUED**

40

...(inaudible)... [3.28.39 please check witness stage in banner] HER HONOUR: Senator, thank you for your patience?---Thank you.

45

I just remind you that when you went into the witness box, you took an oath and you remain bound by that oath in your further evidence, do you understand?---Yes, your Honour.

Yes, Mr Prosecutor.

5 MR DRUMGOLD: Thank you, your Honour. So, Senator, I'm going to put this to you directly that at our time 4.27 pm on Thursday, 6 October, you were aware that Ms Higgins had just started her cross-examination. Were you aware of that?---I can't be - I haven't got any sort of records in front of me, but which day was that?

10 Well?---The 6th. Sorry, I just don't have - - -

That's okay. I will give you a term - I will give you a point of reference?---Thank you.

15 At 4.27 pm on Thursday, 6 October, you sent a text - - -?---Yes.

- - - to the defence lawyer saying, 'Hi, do you have the daily transcripts? If so, are you able to provide my lawyer'?---Yes.

20 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?---Yes, I did ask for them. But, again, it was explained to me that it wasn't appropriate to make that request - - -

25 Okay, I'm - - -?--- - - - so they were not sent.

No, no?---Yes. That's correct.

30 No one is suggesting that they were sent. My next question is you were aware that that was two hours into Brittany Higgins' cross-examination?---I couldn't tell you the exact time, but if - - -

Okay?---As I said, because I wasn't here. But it could well be the case, yes.

35 Moving back - - -?---Yes.

40 - - - you were aware that Brittany Higgins' cross-examination had just commenced when you sent that text?---I - well, I was aware that it had commenced, yes. It was well reported.

Then you sent a text one minute later, 'Also, if you have text messages between Brittany and Nicky, they may be revealing'?---Yes.

45 Now, you were referring to Brittany Higgins and Nicky Hamer?---I was, yes.

Now, you had those texts - did you have those texts?---No, I did not.



5 Then what is your source of information to think that those texts might be revealing?---Because I had previously met not just with yourself but with the defence counsel, who had asked for information relevant to the case, and I knew that Brittany and Nicky were friends and I thought they might be able to shed some light on the matter. But had I seen them? No, I had not.

What is your motive for attempting to coach the cross-examination?---That's not what I was seeking to do.

10 Well, what were you trying to do then? You're instructing the defence lawyer two hours into the cross-examination - - -?---Yes.

- - - of Ms Higgins, 'If you have text messages' - - -

15 MR WHYBROW: I object to the phrase 'instructing', your Honour.

MR DRUMGOLD: Well, I withdraw that.

20 You are alerting the defence lawyer two hours into the cross-examination of Brittany Higgins, 'If you have text messages between Brittany and Hickey' – 'Brittany and Nicky, they may be revealing'?---Yes.

25 So you are injecting yourself by trying to assist him in his cross-examination?---I – as I said, I haven't been through this process before and I've talked to both you and to the defence, which I understood was appropriate because both of you have talked to me about my statement, and going through this mentally – I've done nothing but for the last 18 months go through – go through all of this and it seemed – it seemed appropriate.

30 So I am suggesting that on this basis you are clearly - - -?---Yes.

- - - politically invested in the outcome of this trial, aren't you?---No. What's – sorry, I don't understand the nexus between the two.

35 You are in Rwanda, you are in a conference and you are texting defence lawyer, giving him ideas on what he might cross-examine about. You've not got better things to do in Rwanda?---Well, as a witness in this case and as somebody, like many others, who have thought deeply about this case for 18 months, absolutely I was interested in the case.

40 So as a prosecution witness you think it is appropriate to give the defence lawyer cross-examination tips?---Well, with respect, I've met with you and you'd be aware that I have met with the defence counsel and both of you have asked me questions and there was never any suggestion that it was  
45 inappropriate to talk to either of you.

So I am going to suggest this. This is where we're going to. If you are politically invested enough in this case to text defence lawyer from Rwanda - - -

5 MR WHYBROW: Your Honour, she has first of all rejected that and, secondly, I am not sure it has been established she was in Rwanda on the Thursday, 6 October.

MR DRUMGOLD: Were you in Rwanda - - -

10 HER HONOUR: I thought - - -

MR DRUMGOLD: - - - on 6 October?---I'd have to go and check the dates, but I left Friday week and I got back yesterday afternoon.

15 HER HONOUR: It is the Thursday before she left.

MR DRUMGOLD: Okay. So where were you at that stage?---I'd have to check my - I haven't got my diary here with me, but I was in Perth and I went from Perth to Rwanda. And I've come back from Rwanda two days early and I was asked to come back early.

20 And why was your partner in Canberra?---Because he was working here up until May and then with the change of government he lost his job. So, he's been here in Canberra.

25 So, the proposition I'm advancing?---Yes.

30 If you're invested enough to text my friend from Perth and we're not in an election. We don't have an election pending, I'm suggesting that back on 1 April 2019 when you're meeting with Brittany Higgins, you're very politically invested in what's happening in that room, aren't you?---Absolutely not. I categorically reject that assertion.

35 Are you aware that Brittany Higgins gave evidence that you effectively were saying going to the police had a - - -

40 HER HONOUR: I'm sorry Mr Prosecutor, I'm going to reject the question already because the process of putting someone's else's evidence to a witness is not permitted.

MR DRUMGOLD: Yes, indeed.

45 So, if we could go back to 1 April?---Yes.

2019. At the conclusion of that meeting what did you know of the early hours of Saturday, 23 March 2019?---I knew a little more than I'd gone in

5 knowing. Because as I said, I went in knowing that it was a serious security  
breach by two staff members. And I knew that Ms Higgins was upset and  
had said that she was going to go to the doctor on the Thursday. And my  
understanding from Fiona Brown is that she had gone to the doctor and that  
10 she had her father there with her over the weekend. Her father was invited to  
come to the meeting, I understand by Ms Brown, he didn't. So, I learnt about  
the security breach but also that Ms Higgins was – I could see that she was  
upset and that she acknowledged that she had been in – into the office. That  
she was very drunk. That she couldn't remember but she did say that she  
15 remembered getting dressed and leaving. So, it was at that point – so that  
was the most significant additional piece of information that I had which is  
why I immediately said that I wasn't the right person for her to talk to that  
she should talk to the AFP.

15 So, at that point, on your evidence?---Yes.

You became alert that there might have been something of a sexual nature.  
Am I understanding you correctly?---Yes. Yes.

20 And what was your response to that?---I immediately said to her I wasn't the  
right person to talk to that she should talk to the AFP.

Was she upset at this meeting?---Yes.

25 So, she was upset and had revealed to you enough information to allow you  
to draw a conclusion that she was saying that something of a sexual nature  
happened?---She didn't say that.

30 No?---But what – it was clear to me is that she couldn't remember at that  
point sort of what had happened but she did remember waking up and she  
was obviously undressed to some degree because she said that she got  
dressed and then left. So, at that point it became clear to me that this was not  
something I was capable or qualified to deal with. Which is why I  
recommended and – that she go to the AFP which is what she did.

35 And did you become aware of the complaint that she made to the AFP?---I  
was aware of – so when she came back that afternoon, I recall having a short  
conversation with her and I said, "Look, you know, how did it go?" and she  
said, 'Well ...' words to the effect that, 'It was helpful' but she wasn't going  
40 to proceed with any matter. So, I can't remember exactly what I said but you  
know, it was – whatever it was her decision. And that was sort of the extent  
of the conversation on that day.

45 Now you're aware that if you take it that it's common ground that 10 day's  
later the Prime Minister, the then Prime Minister called an election?---Yes.

Did you have any exchanges with Ms Higgins in that 10 day period?---I don't recall that I did but I did with the Assistant Commissioner of the AFP.

Leanne Close is that - - - ?---Leanne Close, correct.

5

And that was about this subject matter?---It was. So, she made an appointment to see me. Obviously it was budget week so she made a - - -

10

We'll just have to go careful because Ms Close is not part of the evidence and I want to lead any - - - ?---Okay - - -

- - - any hearsay?---I will take my lead obviously what's - - -

15

Thank you. In any event, on Thursday, 11 April 2019 the Prime Minister called an election?---Correct.

And you went into election mode, is that correct?---That's correct.

20

He called an election for 18 May 2019 and because you are a senator for Western Australia you and a large number of your staff – well you and a number of your staff went to Western Australia for the election campaign, is that correct?---That's correct, yes.

25

What would – well I withdraw that. Did staff have to go to Perth?---They didn't but it was my preference. So I discussed it with my chief of staff, Fiona Brown, and we worked out who we would need in Canberra because obviously still the business of the ministry goes on, it's much reduced but it does still go on, so we agreed that she would stay in – so be the foot on the ground in the Canberra office - - -

30

She being?---Fiona Brown.

35

Fiona Brown, thank you?---Yes, and then we discussed what other staff would do. My preference was, as is the normal course of events, for staff to come to wherever the minister is home based and work from there and as I was a candidate, campaign as well.

40

Sure. Now with regard to Ms Higgins, was it decided that Ms Higgins should go to Perth?---We discussed what Ms Higgins would like to do. By that point, assistant – sorry, the assistant commissioner had advised me that Ms Higgins was taking – making a complaint and was taking the matter further so I discussed with Ms Brown about how best to support Ms Higgins and so from recollection she had three options, come to Perth with majority of the staff and campaign. We could have made it work if she wanted to stay in Canberra at her home base and work remotely from there but we also did give her the option of, if she wanted to, relocate to Brisbane for the duration of the campaign to be with her family.

45

Can I ask, back to my question, before 1 April, were you concerned at all that this would come out in the middle of an election campaign?---No.

5 HER HONOUR: Mr Prosecutor, your – moved away from the microphone.

MR DRUMGOLD: Sorry.

10 HER HONOUR: It has suddenly gone very quiet.

MR DRUMGOLD: Sorry, your Honour. Were you at all concerned that this would come out during an election campaign?---No.

15 It was decided that Ms Higgins would travel to Perth?---In consultation with her, yes.

Now you were in Perth with her between – I think you left – well her evidence is that she left here on Sunday, 14 April?---Yes.

20 She remained in Perth until the Sunday, 19 May. I think there was a brief removal back for work reasons but she was there between effectively, with a two day hiatus, between Sunday, 14 April and Sunday, 19 May after the election?---That's correct. I don't know the exact day but staff – all staff, because it's such a long period of time, have to break that time and come back  
25 to reset their travel allowance.

Sure, and it sounds correct that Saturday, the 4th and Sunday, 5 May she came back to - - -?---It sounds correct, yes.

30 Thank you. Now the coalition won the election?---We did.

You retained – you effectively eventually became the Defence minister, is that correct?---I did, that's correct.

35 Is that immediately following the election?---It was.

Okay, so you stepped up from Defence Industries to Defence?---I did.

40 Now did you have a conversation with Ms Higgins about her staying on with you?---I did.

45 What was that conversation?---I offered her a job. She'd indicated that she wanted to go into – become an assistant media adviser so I offered a job. She thanked me but said that she'd already had a couple of other job offers and she was going to take the job with Michaelia Cash.

We have heard evidence that on Saturday, 8 June effectively was her first day with Minister Cash?---It would have been around that, yes.

With Senator Cash. Now this – we are in June?---Yes.

5

In October of that year you received a media inquiry about an event in your office?---I did.

10

Can you walk us through that?---I can. I got the call – I was made aware of it by my media adviser and my new chief of staff and had said that they'd had this – described it as some sort of a weird request from The Canberra Times and it related a security breach, an incident in my office earlier in the year and my recollection is that they did have Brittany's name so when they said that to me I was quite concerned because the worst thing for Brittany would be is to actually have seen that for the first time in the paper the following day so we had a bit of a discussion about - – I didn't tell my staff, from recollection, all the details of what had occurred but I just said that it involved in the incident, there had been a police inquiry into it. I didn't know what the status of it was at that point, so I thought the best thing to do was - I knew Daniel Try, who is Michaelia - Minister Cash's chief of staff, so I thought the best thing to do was to raise the issue with him without telling him what it related to but just that there was a good change that it would in the Canberra Times the next day and that I wanted my - I think it was my chief of staff. My new chief of staff to have a talk to her so that she was prepared in case the story did break.

15

20

25

So who did you send to talk - you sent somebody to talk to Ms Higgins?---I did. I think it was my chief of staff.

30

Who was your chief of staff at that point?---A lady called [REDACTED] but I - unfortunately I don't have any contemporaneous records, but it was my recollection that it was my chief of staff.

35

How long had she been your chief of staff at that stage?---Since I became the Minister for Defence.

So, since around May?---Yes. She had been a few months.

40

So for around four, five months she had been your chief of staff?---Yes.

45

Do you know chiefs of staff interact with each other? Minister's chiefs of staff interact with each other?---They do very regularly. So, the chiefs of staff have a very strong network with the Prime Minister's chief of staff and with each other because that's how we get a lot of the - you know, business of government done.

So your chief of staff went and spoke to - - -?---I believe it was my chief of staff but yes.

5 Did you give her any instruction on what to talk to Brittany about or to talk Ms Higgins about?---No. Just to let her know that - because I knew Brittany would know what the issue was because it was about the incident in my office. So I just asked her to go and talk to Brittany and let her know that it's possible that that would come up in the media the next day.

10 And did the person who you thought was your chief of staff report back to you?---Yes.

15 What did that person say to you?---That they had had the conversation and that Brittany was aware that - of the circumstance that Canberra Times had raised it with me and it may appear in the paper the following day.

So the purpose of that discussion was just to alert her that there may be some media article?---Absolutely, yes.

20 So there is no exchange of information it was just, 'By the way, we've had an inquiry. Heads up there might be some media - - -?---Yes.

- - - on this issue?---Yes.

25 And that was the last engagement you had with Ms Higgins?---I believe so. I have - I certainly saw her around the building occasionally, as you do, sort of in the building but I - yes, I believe so.

30 And you became aware that this became public in around February of 2021?---Yes.

35 I don't know that I have done this pursuant to the leave but just to go back by way of puttage, I am suggesting to you that when you had a meeting with Ms Higgins on 1 April that your dominant concern was that this would harm the pending election?---I categorically and utterly reject that assertion. It's not true.

40 And I am suggesting that you adopted an approach of the less you knew about this, the better?---Absolutely not.

Thank you, madam.

HER HONOUR: Mr Whybrow, how long will you be? Can we - - -

45 MR WHYBROW: I should finish by 4.00 or not long afterwards if it's possible to finish the witness.

HER HONOUR: Yes. I will just ask.

Senator, if we go a few minutes past 4.00, is that - - -?---Absolutely fine, your Honour.

5

I assume you would rather that than come back tomorrow?---I am very - I'm in your hands, your Honour, but very happy to stay.

10

Members of the jury, is there anyone who is inconvenienced if we sit a few minutes beyond 4.00? No, all right. Thank you.

Yes, Mr Whybrow?

15

**<CROSS-EXAMINATION BY MR WHYBROW**

**[3.49 pm]**

20

MR WHYBROW: Senator Reynolds, when you were just asked at the end about a story breaking in February 2021. Do you recall that and all of the things that came out of that or at least the nature of the things?---Vividly.

Do you recall that that included allegations as to what had occurred in the meeting in your office on 1 April 2019?---I do.

25

In that sense, I think you have given evidence that you didn't find out other than what you have read in the media what Ms Higgins said in court in this case about that meeting, but is it the case that you already had a lot of information as to what she had said in the media about that meeting?---In terms of - - -

30

Of what she has alleged - - -?--- - - - in February - - -

35

- - - that you knew on 1 April 2019?---There has been – yes, there's been a lot since the story broke in February last year. I was – I learnt a lot of information about that because I previously hadn't had any information about what had happened in my office. You know, [REDACTED], et cetera, so all of that was new information to me when, you know, the story came out in the Samantha Maiden story and in The Project.

40

Okay?---So most of that was new information to me, yes.

And you are not able to say in relation to the information you read in the media about [REDACTED], et cetera, whether it was accurate or not?---No, because that was the first time I'd heard any of that.

45

Now, going back to the time when you were elevated to Defence – sorry, Defence Industry?---Yes.



Mr Lehrmann had been a member of your staff for some period in your old portfolio of Home Affairs?---Around about six months I believe, yes.

5 And had he indicated to you or through other members of your staff that he did not wish to stay on in Defence Industry?---Not that I recall.

10 So as of the date of these events is it the case that you weren't aware if he was going to reapply to work with you or stay or go?---I don't believe so because I learnt about the other security incident after.

15 And when you say security incident you are not referring to having been provided any information that some sort of non-consensual activity had occurred. Is that correct?---That's correct. I'm referring to the security incident in relation to a secure document.

20 Sorry, there was – in relation to Mr Lehrmann the week before you were advised that he had had an incident where he'd left a classified document facedown on a table briefly and had been dealt with – or disciplined in relation to that?---That's correct.

And the security incident on the night of 22 March - - -?---Yes.

25 - - - from your understanding was two staffers had accessed your suite - - -?---Yes.

- - - in the early hours of the morning and the reports were they'd been drinking, or intoxicated?---Yes.

30 Had you been advised that one of them had slept overnight in the suite, or in the office?---No.

35 You have given evidence that after the meeting on 1 April you had a meeting with Deputy Commissioner ████████ of the Australian Federal Police?---Yes.

40 And I think, if I got it right, your evidence was that you understood that Ms Higgins had by then initiated a complaint to the police?---That's correct. So the assistant commissioner sought a meeting with me. She described it as a courtesy call to let me know that Ms Higgins had changed her mind and did want to make a complaint.

45 And had you at any stage either before that meeting or after that meeting ever said or done anything to discourage Ms Higgins from maintaining a complaint?---Absolutely not.

And am I correct in saying that as of October 2019 when an enquiry came in from The Canberra Times, as you understood it, that you did not know one

5 way or the other whether or not – or what the status was of any complaint  
that Ms Higgins had made to the Australian Federal Police?---I didn't and I  
made a point of not asking because when I talked to the assistant  
commissioner, Fiona Brown, my chief of staff, was in the room as well and  
so we asked what the – we asked the commissioner – assistant commissioner  
how we should deal with the situation and she said, 'You take your lead from  
Ms Higgins and if she wants us to know things, or she needs things, she will  
ask us', and – or she would tell us. But she said, 'You always take' – 'It's their  
10 story, their circumstance that you take your lead from her', which is what we  
both endeavoured to do.

As in you and Ms Brown?---Yes.

15 Did you yourself or did you through your chief of staff ever indicate to  
Ms Higgins that her job was at risk - - -?---No.

- - - if she went to the police?---No.

20 Did you ever indicate to her job was at risk if she decided to work from the  
Gold Coast during the election campaign?---No.

25 And at the time that Ms Higgins left your office did you have any discussions  
with her as to whether – about other opportunities or in other offices  
yourself?---I hadn't beforehand because I did offer her – we were in Canberra  
so I've offered her a job and that's when, as I've said, she said that she'd  
already talked to other MPs, other ministers, and she decided to take the job  
with Minister Cash.

30 From your perspective was there any ill-will or any – well any animus  
between you and Ms Higgins?---No. In fact, on that last day before she  
moved offices she actually came and she gave me a lovely big bunch of  
flowers and thanked me.

35 Could I please have the witness – last thing, your Honour.

HER HONOUR: Sorry, what do you - - -

40 MR WHYBROW: I want the witness to be shown an exhibit. It is the  
photograph with Ms Higgins and this witness in Perth. Exhibit 2, thank you.  
I am showing - - -

HER HONOUR: Which exhibit is it?

45 MR WHYBROW: Exhibit 2, your Honour.

HER HONOUR: Two.

MR WHYBROW: Do you recognise that photograph?---I do.

5 When was that photograph taken?---That photograph was taken the night before the election. I think it was the – actually it was the 15th. I think it was the – after sort of the party before the election. So it's a tradition to have – to get all your staff together before election day, before everybody goes, and it was also the day before my birthday so I got everyone together and I paid for a thank you – sort of like a thank you dinner for staff.

10 Okay, and at that day you will notice in that photograph Ms Higgins seems to be sitting next to you at the time that photograph is taken?---She is.

15 Do you recall whether that is where she was seated during the course of the evening, or?---Certainly for most of the evening. I sat down next to her and we may have got up sort of towards the end of the night and sort of moved around as people went to the bathroom and things but I was certainly there for the majority of the night.

20 During the course of that election campaign, did you regard Brittany Higgins as some sort of liability or toxic to be seen with?---No, not at all. She was a very effective campaigner.

Yes, thank you. Nothing further, your Honour.

25 HER HONOUR: Any re-examination, Mr Prosecutor?

MR DRUMGOLD: I have nothing – no re-examine, your Honour.

30 HER HONOUR: Senator, thank you for attending to give evidence?---Thank you.

You are free to leave, you are excused?---Thanks, your Honour.

35 <WITNESS WITHDREW [3.57 pm]

END OF EXTRACT [3.57 pm]

40

45

## **WITNESS LIST**

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**From:** Frizzell, Emma  
**Sent:** Tue, 4 Oct 2022 16:55:43 +1100  
**To:** Greig, Mitchell  
**Cc:** Madders, Trent; **REDA** Adam; Pitney, Sarah; SVC\_DPPCases  
**Subject:** RE: Request from Defence (202113941) [SEC=OFFICIAL]

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## OFFICIAL

Hi Mitchell,

I can confirm I am not communicating with Mr Whybrow outside of your advice to respond to him, nor do I intend to.

Kind regards,  
Em

**SENIOR CONSTABLE EMMA FRIZZELL**  
CRIMINAL INVESTIGATIONS - UNSOLVED HOMICIDE  
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**From:** Greig, Mitchell <**REDACTED**@act.gov.au>  
**Sent:** Tuesday, 4 October 2022 4:51 PM  
**To:** Frizzell, Emma <Emma.Frizzell@afp.gov.au>  
**Cc:** Madders, Trent <Trent.Madders@afp.gov.au>; **REDA** Adam <**REDACTED**@afp.gov.au>; Pitney, Sarah <**REDACTED**@act.gov.au>; SVC\_DPPCases <SVC\_DPPCases@act.gov.au>  
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We haven't informed him, and there is no need for you to either.

Kind regards,



**Mitchell Greig**  
 Prosecutor Associate  
 Office of the Director of Public Prosecutions (ACT)  
 GPO Box 595, Canberra ACT 2601 (DX 5725)  
 T: **REDACTED**  
 W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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**From:** Frizzell, Emma <[Emma.Frizzell@afp.gov.au](mailto:Emma.Frizzell@afp.gov.au)>  
**Sent:** Tuesday, 4 October 2022 9:22 AM  
**To:** Greig, Mitchell <**REDACTED**@act.gov.au>  
**Cc:** Madders, Trent <[Trent.Madders@afp.gov.au](mailto:Trent.Madders@afp.gov.au)>; **REDA** Adam <**REDACTED**@afp.gov.au>;  
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Good morning Mitchell,

As per the initial email yesterday, defence were also seeking clarification as to whether a particular person they've identified, Alex Woods, was ever spoken to by anyone. I'm not sure this fits into the 1a) aspect of the response received.

Regardless, can your office please advise Mr Whybrow that Alex Woods was not identified, nor spoken to by Police. Can you please confirm the advice has been provided.

Kind regards,  
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**From:** Greig, Mitchell <REDACTED@act.gov.au>

**Sent:** Monday, 3 October 2022 3:59 PM

**To:** Frizzell, Emma <Emma.Frizzell@afp.gov.au>

**Cc:** Madders, Trent <Trent.Madders@afp.gov.au>; REDA, Adam <REDACTED@afp.gov.au>; Pitney, Sarah <REDACTED@act.gov.au>

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Hi Mitchell,

No worries - will DPP notify defence or do you want us to?

---

**From:** Greig, Mitchell <[REDACTED@act.gov.au](mailto:REDACTED@act.gov.au)>  
**Date:** 3 October 2022 at 12:47:35 pm AEDT  
**To:** Frizzell, Emma <[Emma.Frizzell@afp.gov.au](mailto:Emma.Frizzell@afp.gov.au)>  
**Cc:** Madders, Trent <[Trent.Madders@afp.gov.au](mailto:Trent.Madders@afp.gov.au)>; REDACTED Adam <[REDACTED@afp.gov.au](mailto:REDACTED@afp.gov.au)>;  
Pitney, Sarah <[REDACTED@act.gov.au](mailto:REDACTED@act.gov.au)>  
**Subject:** Re: Request from Defence [SEC=OFFICIAL]

**OFFICIAL**

Hi Em,

The DPPs position is that this is part of the application, ground 1a) which is being dealt with by Keegan Lee. Any request for redacted information from the Cellebrite report/data should be requested through him as part of the application.

It should not be going through you, the AFP.

Kind regards,  
Mitchell

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**From:** Frizzell, Emma <[Emma.Frizzell@afp.gov.au](mailto:Emma.Frizzell@afp.gov.au)>  
**Sent:** Monday, October 3, 2022 9:47:11 AM  
**To:** Greig, Mitchell <[REDACTED@act.gov.au](mailto:REDACTED@act.gov.au)>  
**Cc:** Madders, Trent <[Trent.Madders@afp.gov.au](mailto:Trent.Madders@afp.gov.au)>; REDACTED Adam <[REDACTED@afp.gov.au](mailto:REDACTED@afp.gov.au)>  
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Hi Mitchell,

I've received a request from Mr Whybrow as follows, for your attention:

- trying to get a hold of contact ID of various numbers in Ms Higgins CCR;
- seems she has deleted every text from her phone the night but they show up in the CCR as numbers;
- query if can give us numbers and get the ID would be helpful, noting beyond privacy issues when it's people she contacted and then deleted texts.

Please note that we won't be providing any information directly to Defence and will require DPP to confirm this information is required. If so, we'll provide to you to convey across to their office.

I responded to the initial query and advised I was passing the request on. Mr Whybrow has since responded and advised they've ID'd a number in particular as Alex Wood, and asked if they've been spoken to. Haven't yet responded.

Kind regards,  
Em

\*\*\*\*\*  
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**To:** Greig, Mitchell  
**Cc:** Madders, Trent; **REDA** Adam; Pitney, Sarah; SVC\_DPPCases  
**Subject:** RE: Request from Defence (202113941) [SEC=OFFICIAL]

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**Date:** 3 October 2022 at 12:47:35 pm AEDT  
**To:** Frizzell, Emma [REDACTED]@afp.gov.au>  
**Cc:** Madders, Trent [REDACTED]@afp.gov.au>; REDACTED Adam <[REDACTED]@afp.gov.au>;  
Pitney, Sarah <[REDACTED]@act.gov.au>  
**Subject:** Re: Request from Defence [SEC=OFFICIAL]

**OFFICIAL**

Hi Em,

The DPPs position is that this is part of the application, ground 1a) which is being dealt with by Keegan Lee. Any request for redacted information from the Cellebrite report/data should be requested through him as part of the application.

It should not be going through you, the AFP.

Kind regards,  
Mitchell

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**From:** Frizzell, Emma [REDACTED]@afp.gov.au>  
**Sent:** Monday, October 3, 2022 9:47:11 AM  
**To:** Greig, Mitchell <[REDACTED]@act.gov.au>  
**Cc:** Madders, Trent [REDACTED]@afp.gov.au>; REDACTED Adam <[REDACTED]@afp.gov.au>  
**Subject:** Request from Defence [SEC=OFFICIAL]

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Hi Mitchell,

I've received a request from Mr Whybrow as follows, for your attention:

- trying to get a hold of contact ID of various numbers in Ms Higgins CCR;
- seems she has deleted every text from her phone the night but they show up in the CCR as numbers;
- query if can give us numbers and get the ID would be helpful, noting beyond privacy issues when it's people she contacted and then deleted texts.

Please note that we won't be providing any information directly to Defence and will require DPP to confirm this information is required. If so, we'll provide to you to convey across to their office.

I responded to the initial query and advised I was passing the request on. Mr Whybrow has since responded and advised they've ID'd a number in particular as Alex Wood, and asked if they've been spoken to. Haven't yet responded.

Kind regards,  
Em

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**From:** Greig, Mitchell  
**Sent:** Thu, 15 Dec 2022 15:04:10 +1100  
**To:** Drumgold, Shane  
**Subject:** FW: Defence request to speak with me [SEC=OFFICIAL]  
**Importance:** High

OFFICIAL

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**From:** Frizzell, Emma [REDACTED]@afp.gov.au>  
**Sent:** Wednesday, 12 October 2022 12:10 PM  
**To:** Greig, Mitchell <[REDACTED]@act.gov.au>  
**Subject:** Defence request to speak with me [SEC=OFFICIAL]  
**Importance:** High

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OFFICIAL

Hi Mitchell,

Further to my last request to speak to DPP re: my evidence, I have received a query from Mr Whybrow as to whether I would be prepared to speak with them this afternoon about some matters re: my evidence. I am content to meet with defence as requested however require the ok from DPP. Can you please advise if this request is supported by DPP and if so, would someone from DPP wish to be present?

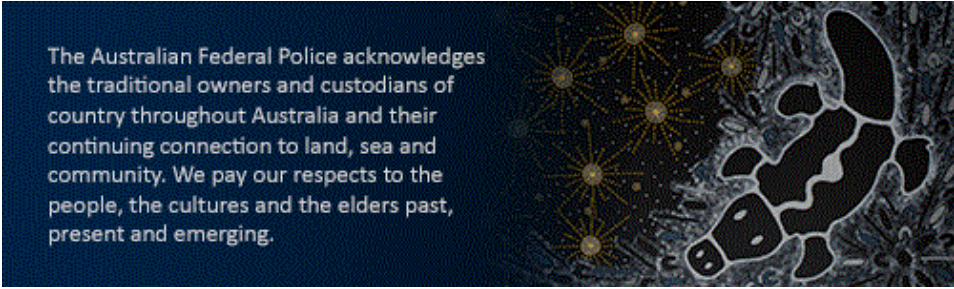
If you could please advise asap (I have another appointment this afternoon too so ideally would like to sort soon) that would be greatly appreciated.

Kind regards,  
Em

**SENIOR CONSTABLE EMMA FRIZZELL**  
CRIMINAL INVESTIGATIONS - UNSOLVED HOMICIDE  
ACT POLICING  
[REDACTED]  
[www.afp.gov.au](http://www.afp.gov.au)



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**From:** Frizzell, Emma  
**Sent:** Thu, 13 Oct 2022 14:37:57 +1100  
**To:** Jerome, Skye; Greig, Mitchell  
**Cc:** Gilliland, Lauren; Madders, Trent  
**Subject:** Enquiry - Phillip Medical Centre [SEC=OFFICIAL]

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## OFFICIAL

Skye/Mitchell,

Following on from our conversation this morning, I have contacted the Phillip Medical Centre on 61127000 and provide the following information:

- I queried if a patient was to make a booking and subsequently cancel or not attend, is that booking recorded, to which I was advised it was;
- I requested information pertaining to any appointments made by Ms Higgins in 2019. I was provided the same information as previously requested, that Ms Higgins attended an appointment on 28 February 2019;
- I queried if Ms Higgins made an appointment and subsequently cancelled or didn't attend. I was advised by the call taker they were unsure as to whether the system captured that information in 2019;
- I was asked to narrow the time frame and provided 1 March-30 April 2019 to which they advised Ms Higgins "Hasn't booked it" and noted there was nothing online between 1 January – 31 December 2019;
- It was confirmed that if an appointment is cancelled, it is usually recorded.

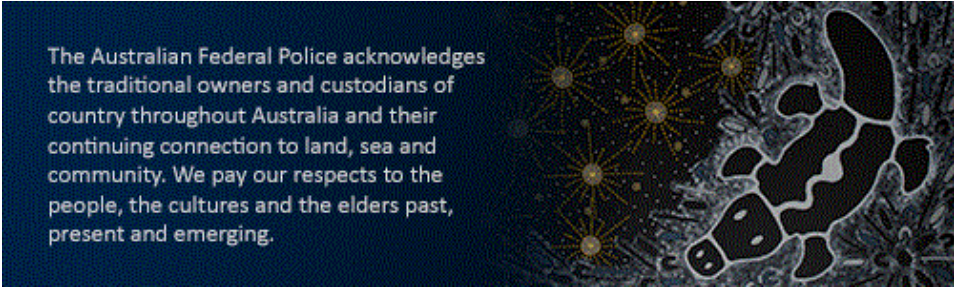
For your information.

Kind regards,  
Em

**SENIOR CONSTABLE EMMA FRIZZELL**  
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**From:** Madders, Trent  
**Sent:** Fri, 14 Oct 2022 14:53:38 +1100  
**To:** Greig, Mitchell; Pitney, Sarah  
**Cc:** Frizzell, Emma  
**Subject:** Daily update [SEC=OFFICIAL]

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**OFFICIAL**

Afternoon Mitchell and Sarah,

I'm just seeking the usual afternoon update including which witnesses will be next week.

I have also attached the email that Em sent yesterday regarding the Phillip Medical Centre enquiries. The bosses just want to confirm it has been seen and passed onto defence.

Cheers,  
Trent

**DLSC TRENT MADDERS**  
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**From:** Madders, Trent  
**Sent:** Fri, 14 Oct 2022 14:59:58 +1100  
**To:** Greig, Mitchell; Pitney, Sarah  
**Cc:** Frizzell, Emma  
**Subject:** Recall: Daily update [SEC=OFFICIAL]

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Madders, Trent would like to recall the message, "Daily update [SEC=OFFICIAL]".  
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**From:** Madders, Trent  
**Sent:** Fri, 14 Oct 2022 15:10:03 +1100  
**To:** Greig, Mitchell; Pitney, Sarah  
**Cc:** Frizzell, Emma  
**Subject:** Daily update [SEC=OFFICIAL]  
**Attachments:** Enquiry - Phillip Medical Centre [SEC=OFFICIAL].eml.eml

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**OFFICIAL**

Afternoon Mitchell and Sarah,

Could I get the usual daily update and indication of any high profile witnesses for next week.

I have attached the email Em sent yesterday regarding Phillip Medical Centre. I'm just checking that it was received and passed onto defence.

Regards,  
Trent

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**SUPREME COURT OF  
THE AUSTRALIAN CAPITAL TERRITORY****THE HONOURABLE CHIEF JUSTICE MCCALLUM  
AND A JURY OF TWELVE****SCC 264 of 2021****DAY 18****DIRECTOR OF PUBLIC PROSECUTIONS  
and  
BRUCE LEHRMANN****CANBERRA****9.54 AM, THURSDAY, 27 OCTOBER 2022**

MS S. JEROME appeared on behalf of the Office of the Director of Public Prosecutions.

MR S. WHYBROW with MS K. MUSGROVE and MR B. JULLIENNE appeared on behalf of the Accused.

**Suppression Order - Protected identity information is in this transcript. Any enquiry concerning those details must be directed to the court.**

---

5 HER HONOUR: There has been a development in this trial. I have received information suggesting the possibility of misconduct on the part of a juror which I need to investigate. To protect their anonymity, I propose to do that in closed court, including exclusion of the media. I do not anticipate that the court will be closed for long. I would ask now all members of the public to leave for a short period and we will reconvene shortly. It includes the media.

10 (IN CAMERA HEARING FOLLOWS)

**PROCEEDINGS IN CAMERA:**

5 HER HONOUR: So the informant might be allowed to stay.

MR WHYBROW: Yes, I - - -

HER HONOUR: The informant is a party.

10 MR WHYBROW: Yes, I have no difficulties, your Honour.

HER HONOUR: The informants can stay.

15 I ask the Sheriff's Officer to bring in juror number ...[redacted]... I ask the transcript reporters not to record that jury number that I just said.

Take a set please, sir.

20 I propose to begin by calling evidence from the Sheriff's Officer. And just to explain to the juror who is now in court, I have received information which I wish to investigate.

JUROR: Yes.

25

**<SHERIFF'S OFFICER, Sworn:**

**[9.57 am]**

30 HER HONOUR: Thank you, take a seat please. Yesterday after the completion of the proceedings in court and after the departure of the jury, did you and two other Sheriff's Officers go into the jury room in accordance with your duties to tidy the room?---Yes, that's correct.

35 And what happened when you were in the room?---While tidying up the room, I had accidentally knocked a folder off a chair. While going to pick up that folder off the floor to put it back onto the chair, I had noticed that there was a document inside one of the clear folders that we give the jurors at the beginning of the trial. A document – and at the top, I noticed that it wasn't part of the exhibits. As part of the jury, we are the exhibit keepers, so we are  
40 meant to know all the exhibits that go through to the jury and I had not recognised that document. I then informed the other two Sheriff's Officers that were with me and they agreed that it wasn't part of the exhibits. I then radioed my boss who was the Acting Sheriff at the time yesterday and notified him of what I've discovered.

45

And did you and the Acting Sheriff then come to see me?---That's correct.

And did you show me the box, unopened, but with the top of the document visible?---Correct.

5

And did you then take the box back into the jury room?---Correct.

Did you interfere with the box at any point?---At no stage did either myself or the other two Sheriffs or the Acting Sheriff open that box.

10

And you didn't see me open in it your presence?---I did not see you open it.

Anything either of you want to add?

MS JEROME: No, thank you.

15

HER HONOUR: Thank you. You can go back to your seat?---Thank you.

**<SHERIFF'S OFFICER WITHDREW**

**[9.59 am]**

20

HER HONOUR: ...[redacted]... I need to ask you some questions about that document and for that purpose I would ask that you take an oath or an affirmation to tell the truth. You can remain where you are – or go into the witness box, is probably more appropriate.

25

**<A JUROR, Sworn:**

**[9.59 am]**

30

HER HONOUR: Take seat please?---Here, or?

Wherever you prefer. I just ask you please to look at this document?---Thank you.

35

That's not from your jury paper box. That's a document that my associates identified. Did you – have you seen that document before?---I – it looks like a document that I have, yes.

40

And did you have that document in the jury room during your deliberations?---I did.

45

Do you know whether any other juror saw it?---No. We discussed – we discussed that I – that I had – I wanted to clarify a point for myself. I brought it in to show where the clarification came from and we agreed that it shouldn't be – because it was research that it shouldn't be discussed and I didn't – we have not discussed it.

All right. Do either of you want to raise anything?

MR WHYBROW: No, your Honour.

5 MS JEROME: No, thank you.

HER HONOUR: Could I have the document back please, and that will be marked MFI 26.

10

**##\*EXHIBIT 26 - DOCUMENT TAKEN INTO THE JURY ROOM**

15 HER HONOUR: Unfortunately, notwithstanding the discussion that you had, the fact that you had had access to material that was not part of the evidence and that is has been in the jury room means that I will have to discharge you - - -?---That's all right.

20 And I do propose also to discharge the whole of the jury at this point. I want to protect your anonymity so I propose to do that in a way that does not identify you as the juror that was questioned. What I have asked the Sheriff's Officers to do is to take you back through that door but to keep you separate from the rest of the jury?---I understand.

25 I will open the court. I will call the jury and I will discharge the whole jury?---M'mm. Can I say I give you my sincere apologies. I wasn't aware that - that - that doing this was - was in any sense a wrongdoing. I was just purely doing - finding out what it meant, certain words, and in case I mentioned it to the jury, I want to make sure that I wasn't inventing anything.  
30 I - and we all agreed, no, that's not - and because we're not allowed to - I didn't want to throw anything in the bin, I kept everything in the folder. No-one has read it, no-one knows anything about it. I just thought I would mention that.

35 Thank you for explaining that, and thank you for apologising. Unfortunately it is a risk that I am unable to take - - -?---I understand.

- - - to keep the deliberations going?---I am deeply sorry for this.

40 But thank you for your explanation?---M'mm.

So if you would please go with the Sheriffs and just remain - - -?---Do you want me to wait outside or come back in?

45 If you just wait with the Sheriff in that corner and then I will open the court and then bring the whole jury back in. Thank you?---Thank you. Including me?



5 Yes. The reason for that, just to explain, is that so if the jury was brought in without you, it would be very easy to identify you as the person that had been excused?---I'm willing to take the responsibility for that, your Honour, if you feel that that's appropriate.

10 Well, that's a matter for you. But I do remind you that it is an offence to disclose your deliberations. So I would prefer to preserve your anonymity?---Okay, thank you very much.

Thank you.

15 <A JUROR WITHDREW [10.03 am]

HER HONOUR: Madam Prosecutor, do you want to say anything?

20 MS JEROME: No, thank you, your Honour.

HER HONOUR: Mr Whybrow, do you want to say anything?

MR WHYBROW: No, your Honour.

25 HER HONOUR: Do you both agree that I must discharge the juror and the jury?

MS JEROME: Yes.

30 MR WHYBROW: Absolutely, in these circumstances, your Honour. That has to happen.

HER HONOUR: Yes, all right. I will open the court again.

35

- - -

UPON RESUMING IN OPEN COURT:

5 HER HONOUR: Yes, could we have the jury please.

**JURY RETURNED**

**[10.05 am]**

10 HER HONOUR: Members of the jury, it has come to my attention that one  
of you has, contrary to directions I have given, undertaken research in  
relation to issues in the case and that material has entered the jury which  
ought not to have. I have heard an explanation and it may be that no harm  
15 has been done, but that is not a risk I can take. And in the circumstances, I  
have discharged that juror and I have to discharge you all.

I appreciate that this may come as a frustration to you, after the hard work  
that you have all done and I want to convey to you my extreme gratitude for  
your attention and care in this case. I don't want you to leave the court  
20 thinking that this has been a waste of time. These things happen in jury trials  
and with the best will in the world, sometimes there is a mishap which  
necessarily results in the miscarriage of a trial.

25 That is what has happened here. It is unfortunate, but could I please convey  
to you my sincerest gratitude for the hard work that you have all done during  
this trial, the attention you have paid to the evidence and your participation in  
the civic duty of sitting as a member of a jury in judgment of a fellow citizen.

30 With those remarks, you are discharged and you are free to leave – sorry,  
there was one thing I did mean to say before you go. I do need to remind you  
all that it is an offence under the Juries Act to disclose your deliberations in a  
way that might result in their being published. You are protected in that by  
the fact that it is also an offence for any person to solicit information about  
35 your deliberations. That is not to say that you can't debrief with a counsellor  
or a trusted confidante but you must not disclose the details of your  
deliberations in a way that might result in their being published and if you do,  
you will be committing an offence.

40 With that reminder, and again a reiteration of my sincerest thanks, you are  
free to leave.

**JURY DISCHARGED**

**[10.08 am]**

45 HER HONOUR: I am just going to publish my reasons for discharging the  
juror and the jury.

5 After a trial that ran for 12 days and following five days of deliberation by the jury, it has regrettably been necessary to discharge, first, one of the jurors and then the balance of the jury. Contrary to what may have been anticipated, this is not due to an inability on their part to reach a unanimous verdict. At the time they were discharged, the jury was still deliberating following my giving them a Black direction on Monday afternoon. Instead, the jury has been discharged because I have received cogent evidence that at least one juror has had access to research material that was not provided to the jury during the trial.

10 Before outlining the circumstances in which this matter was drawn to my attention, I wish to record my gratitude for the courage, integrity and good sense displayed by the Sheriff's Officers who inadvertently made this discovery. The conduct of the Sheriff's Officers involved in this trial has been exemplary. They have worked in difficult circumstances. The court is fortunate indeed to be so well served.

20 I have heard evidence this morning that during routine tidying of the jury room by three Sheriff's Officers after the conclusion of proceedings yesterday, one of the officers accidentally bumped one of the juror's document folders onto the floor. Those document folders are plastic boxes with a clear front. When the officer picked up the box to replace it on the chair from which it fell, he noticed that part of the title page of an academic research – sorry, he noticed part of the title page of an academic research paper, the source of which suggested that the topic of the paper might be sexual assault.

30 The matter was promptly brought to my attention. By searching the date and publisher of the paper, my associates were able to identify what appeared to be the article in question. The identity of the paper found by my associates has been confirmed in evidence this morning by the juror in question. The subject matter of the paper is indeed sexual assault. Specifically, it is a discussion of the unhelpfulness of attempting to quantify the prevalence of false complaints and a deeper analysis of the reason for both false complaints and scepticism in the face of true complaints.

40 It is neither possible nor helpful to speculate as to the use to which this information might have been put, if any. The juror in question this morning gave an explanation suggesting that the document had not been used or relied upon by any juror. However, in the circumstances it is appropriate to regard that evidence with some scepticism.

45 During the course of the trial, on my calculation, I must have given the jury at least 17 and possibly considerably more, warnings and directions as to the prohibition on undertaking any research inquiries of their own. In my opening remarks I said to the jury:

5 Sometimes it happens in jury trials that jurors become curious about a matter. They might think that they might learn more if they went to visit the place where something is alleged to have happened, or consider, sometime jurors have been reported to have tried to re-enact various things to see if something could happen the way someone said.

10 And you will appreciate from what I have said to you that that is absolutely forbidden, members of the jury. You mustn't try to undertake your own inquiries or try to re-enact any aspect of the offence or consider any external evidence about the consumption of alcohol or about any matter that might arise during the trial. You must rest exclusively on the evidence you hear in this court room.

15 A good way of testing that is if you are learning something about this trial and I am not there, then you should not be doing it. You should only be learning about this trial in this room in my presence. So if you find yourself getting curious and undertaking internet research or talking to people about their areas of expertise, think to yourself, 'Well, Chief Justice McCallum isn't here so I probably shouldn't be doing this.'

20 That is not a bad way of testing what you should hear in this trial. You should only hear the evidence in this trial in my presence when it comes before you in this court room. I hope that makes sense.

25 Subsequently, each day of the trial when I allowed the jury to go home I said words along the following lines, and these are the words I said the first day I let them go home:

30 It is extremely important that you not undertake any inquiries of your own in relation to these proceedings and you will have heard by now that there has been a lot of media attention to the case. Please don't go Googling Brittany Higgins or Bruce Lehrmann or any of the other people you have heard mentioned. Please don't seek out publicity in relation to this case. For the reasons I explained before, it would be very unfair to the accused if you sought information outside what you are you going to hear in evidence in these proceedings.

35 My recollection is that I said words to that effect each day, and my associates have confirmed by a brief search that I did use the word 'undertake' at the conclusion of each day, suggesting that I repeated the warning not to undertake inquiries.

45

5 In any event, it is now beyond dispute that the research article made its way into the jury room. A review of the article reveals that it could sensibly be deployed on either side of the central issue in this case, which was whether an act of sexual intercourse was proved beyond reasonable doubt. The discovery of the article and the fact that it was brought into the jury room, of itself, necessitated the discharge of the jury.

10 In New South Wales this conduct would amount to an offence. Section 68C of the Jury Act provides:

15 (1) A juror for the trial of any criminal proceedings must not make an inquiry for the purpose of obtaining information about the accused, or any matters relevant to the trial, except in the proper exercise of his or her functions as a juror.

20 There is no such offence in the Australian Capital Territory, but it is beyond question that the conduct of the juror is such as to abort the trial. Both counsel for the prosecutor and for the accused agreed with my decision in that respect.

25 It should go without saying that this is both an unexpected and unfortunate outcome in this trial. Before leaving this topic, I want to record my gratitude to all counsel who appeared in the matter, for the exemplary way in which they conducted themselves.

30 The role of counsel and perhaps particularly defence counsel in criminal trials is sometimes poorly understood. In this trial, all counsel have conducted themselves with the utmost integrity, fairness, honesty and perhaps most importantly, fearlessness. They are to be commended, not criticised, for doing so.

For those reasons, the orders I have made this morning are to discharge the individual juror and to discharge the balance of the jury.

35 MR WHYBROW: As the court pleases.

MS JEROME:: May it please the court.

40 HER HONOUR: Ms Prosecutor, what is the position in relation to bail?

45 MS JEROME: Your Honour, I ask that the conditions not to contact Ms Brittany Mae Higgins, David Sharaz, Kelly Higgins and Matthew Higgins. A second condition that Mr Lehrmann advise the AFP, and that could be the informants, Detective Sergeant Trent Madders and Senior Constable Emma Frizzell of his residential address any change to that, and I also ask a third condition that Mr Lehrmann surrender his passport.

HER HONOUR: As to the first condition, I don't imagine he has any intention of contacting any of those people but it is a usual condition. Is it opposed, Mr Whybrow?

5 MR WHYBROW: No, the first two conditions are the usual.

HER HONOUR: You don't oppose the second condition?

10 MR WHYBROW: The condition about notifying change of address, nor the non-contact, they are the orthodox conditions in a matter like this, your Honour.

HER HONOUR: All right. You oppose the condition about the passport?

15 MR WHYBROW: Yes, your Honour. To date, there has not even bail, let alone any of the conditions. It may have been overlooked. There has been no suggestion; we have spoken with the Australian Federal Police. They have no concern at all about Mr Lehrmann being a flight risk. As your Honour would have heard in the trial, even attending a mental health facility he was filmed.

20 He is entitled to try and have a break before any new trial if there is one, and that will be very difficult for him to do, potentially, by travelling anywhere here. He can – we can certainly have a condition if, and no objection if he does intend to travel overseas, to notify the Australian Federal Police of departure and return, but there has been no such restriction at all until now, and it just doesn't seem to meet any of the criteria under section 22 of the Bail Act to seek that condition at this stage, your Honour. And so we submit that it is neither appropriate nor necessary in this case to impose that condition.

25 May it please the court.

35 HER HONOUR: Madam Prosecutor.

MS JEROME: Thank you, your Honour. This offence is a schedule 1 offence of the Bail Act, so bail is not presumed for an offence of this kind.

40 HER HONOUR: So there is neither presumption for nor against?

MS JEROME: That is so, yes.

HER HONOUR: Yes.

45 MS JEROME: And the passport condition is requested to ensure his attendance on the next occasion. If your Honour is not minded to impose

surrendering passport, I ask that your Honour consider the alternative proffered by my learned friend that he advise the AFP.

5 HER HONOUR: One thing that is worrying me, Mr Whybrow, is that you have indicated that he may intend to travel overseas.

MR WHYBROW: Well, I have not taken any instructions on that. It's just a matter that – sorry.

10 HER HONOUR: Well, I was just going to say that I have in mind to relist this trial for 20 February next year. It is not long from now, and one thing that would worry me is if he did travel overseas, whether he would be unable to return even if he was willing to return, for reasons of COVID restrictions. I mean, I suppose that might be protected by requiring him to submit any  
15 itinerary to the AFP two weeks in advance of any travel.

MR WHYBROW: Yes, and your Honour, this has been a difficult experience for everybody in this case and - - -

20 HER HONOUR: I understand that, Mr Whybrow.

MR WHYBROW: And in light of the fact that is has not been a condition at all for the last 18 months - - -

25 HER HONOUR: Mr Whybrow, I have just indicated to you that I am not talking about flight risk. I am talking about other risks. But I think it will be addressed if he is required to provide any itinerary to the AFP two weeks in advance, and that gives them time if they have concerns as to the place and date of the travel to make an application.

30 MR WHYBROW: That is without objection, your Honour.

HER HONOUR: All right. So I will grant bail to the accused on the following conditions – sorry, does 20 February suit you both?

35 MS JEROME: Yes, your Honour.

HER HONOUR: (1), that he appear for trial, if the trial is to proceed, on 40 20 February 2023. (2) – what are the conditions, Madam Crown, I am sorry I have forgotten them already.

MS JEROME: Not to contact - - -

45 HER HONOUR: (2), not to contact Ms Brittany Higgins, Mr David Sharaz, Ms Kelly Higgins and Mr Matthew Higgins.

MS JEROME: Yes.

HER HONOUR: So it is presumably Ms Kelly Higgins and Mr Matthew Higgins.

5 MS JEROME: Yes.

HER HONOUR: (3) - - -

10 MS JEROME: To advise Detective Sergeant Trent Madders and Senior Constable Emma Frizzell of his residential address - - -

HER HONOUR: Can it be 'or' rather than 'and,' just tell one of them?

15 MS JEROME: 'Or,' yes.

HER HONOUR: Of his residential address and notify any change 48 hours before the change occurs.

20 MS JEROME: Yes.

HER HONOUR: And (4), if he proposes to leave Australia to provide his proposed itinerary to either of those police officers no later than two weeks before the proposed departure date.

25 MS JEROME: Thank you, your Honour.

30 HER HONOUR: I will fix the trial for 20 February 2023. I want to give a very important reminder to members of the press who are present. There is no prohibition on reporting the outcome of the trial. However, it is now about four months before the resumption of the trial or the beginning of the new trial if there is to be one. As I have said in court many times and in a number of published judgments, the accused is just that he is a person who stands accused and not yet or maybe never convicted of a criminal offence, a serious criminal offence.

35 The fairness of his trial will undoubtedly be impaired or at risk if people continue to report about this case with the frequency that has occurred during this trial or at all. I would expect that after reporting the outcome of today that reporting of the matter should fall silent so that the accused can have a fair trial and so that Ms Higgins can have some respite from the intense glare of the media that has been pervasive throughout this trial. I also remind all members of the media that any reporting that prejudices the accused's right to a fair trial may amount to contempt of court. Is there anything else I need to say at this stage, Madam Prosecutor?

45 MS JEROME: No, your Honour.



MR WHYBROW: No, your Honour.

5 HER HONOUR: Before I conclude, I want to reiterate what I said in the  
judgment which will be published but I want to say it to you all personally, to  
the counsel in the trial, to thank you for the manner in which you have  
conducted this trial. You have all behaved in an exemplary way in  
accordance with the finest traditions of the Bar. As I said the role  
10 particularly of defence counsel is sometimes poorly understood and can visit  
great hardship counsel who are doing no more than upholding the finest  
traditions of the Bar in appearing for persons accused of serious offences and  
ensuring that they are well represented and receive a fair trial. Also to the  
prosecutors whose behaviour has been extremely fair.

15 Court will adjourn.

**ADJOURNED**

**[10.27 am]**



## ACT Office of the Director of Public Prosecutions

---

Our Reference: 202113941, 200928063  
Your Reference:

1 November 2022

Mr Niel Gaughan  
Chief Police Officer  
Australian Federal Police

Via email: [REDACTED]@afp.gov.au

Dear Chief Police Officer,

### **R v LEHRMANN – SCC 264 OF 2021**

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

I will first outline some historic context in this matter.

#### Investigation stage

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

corrected a number of misconceptions about the importance or otherwise of a number of pieces of evidence for police to take on board as part of what I understood was a continuing investigation.

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

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

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

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

*Ms Higgins creditability (sic) is the cornerstone of the prosecution case and given the above articulated issues and that there is limited corroborative evidence of sexual intercourse taking place or consent being withdrawn or not provided, investigators have **serious***

*concerns in relation to the strength and reliability of her evidence, but also more importantly her mental health and how any further prosecution may affect her wellbeing.*

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

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

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

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

#### Concerns relating to trial process

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

the entire trial, with him regularly seen conferencing with the defence team during the course of the entire trial.

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

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

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

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

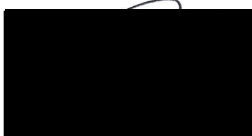
then during the conduct of this trial itself, and finally attempting to influence any decision on a retrial.

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

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

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

Yours faithfully,

A black rectangular redaction box covering the signature of Shane Drumgold.

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

**From:** Cameron, Joanne  
**Sent:** Wed, 12 Oct 2022 21:44:45 +1100  
**To:** Drumgold, Shane  
**Subject:** Approaches to ACT Policing witnesses by Defence [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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**OFFICIAL: Sensitive  
Legal privilege**

Director,

As discussed , I am concerned with respect to approaches being made to potential AFP witnesses in a current trial, by the Defence counsel.

I hold a view that such approaches are at the very least inappropriate from the perspective of effecting the prosecution of the matter and an attempt to influence the giving of any future evidence by my members, and even the sheer fact of the perception generated by the fact that Defence counsel and police are communicating, is not acceptable.

I have advised my staff that all potential , currently nominated or otherwise, witnesses avoid any communication with Defence counsel prior to the giving of their evidence in court or preferably , until the conclusion of the matter at court generally.

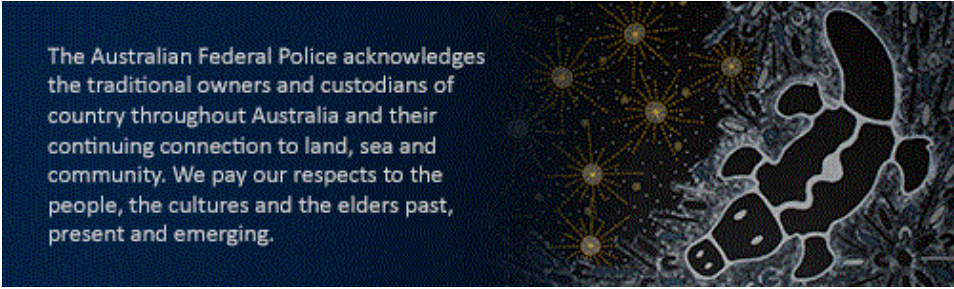
Any such requests will be directed to your office to facilitate any necessary communication.

Kind regards

**COMMANDER JOANNE CAMERON**  
INVESTIGATIONS  
ACT POLICING  
**REDACTED**  
[www.afp.gov.au](http://www.afp.gov.au)



POLICING FOR  
A SAFER AUSTRALIA



\*\*\*\*\*

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AFP Web site: <http://www.afp.gov.au>

\*\*\*\*\*



**DIRECTOR OF PUBLIC PROSECUTIONS ACT 1990  
SUB-SECTION 7(6)**



IN THE SUPREME COURT OF THE )  
 ) SCC 264 of 2021  
AUSTRALIAN CAPITAL TERRITORY )

THE DIRECTOR OF PUBLIC PROSECUTIONS

against

**BRUCE EMERY LEHRMANN**

**NOTICE DECLINING TO PROCEED FURTHER IN A PROSECUTION**

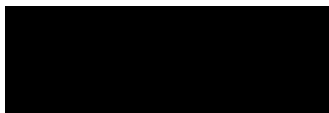
I, NEVILLE SHANE DRUMGOLD SC, Director of Public Prosecutions, pursuant to sub-section 7(6) of the Director of Public Prosecutions Act 1990, hereby decline to proceed further in the prosecution **BRUCE EMERY LEHRMANN** on a charge of contravening section 54 of the *Crimes Act 1900* (ACT) CC2021-8143 upon which he was committed for trial by Magistrate Cook on 05 November 2021.

DATED this first day of December 2022

NEVILLE SHANE DRUMGOLD SC  
Director of Public Prosecutions  
for the Australian Capital Territory

- 2 -

TO:



AND TO: The Registrar  
Supreme Court of the Australian Capital Territory  
CANBERRA ACT 2601

AND TO: The Deputy Registrar  
Magistrates Court  
CANBERRA ACT 2601

AND TO: Magistrate Cook  
Magistrates Court  
CANBERRA ACT 2601

AND TO: Chief Police Officer  
ACT Policing  
GPO Box 401  
Canberra City ACT 2601

AND TO: Kamy Saeedi Law  
GPO BOX 487  
CANBERRA ACT 2601

DPP v Lehrmann SCC 264 of 2021

1. I have a prepared statement in relation to the matter of *The Director of Public Prosecutions v Lehrmann* SCC 264 of 2021.
2. I will read the statement and will not be taking questions.
3. The principle considerations in whether or not to continue a prosecution are outlined at Section 2 of the ACT Prosecutions Policy.
4. Section 2.1 of the policy states – quote:  
*“The decision to prosecute should not be made lightly nor automatically but only after due consideration.”*
5. Broadly there are two considerations as outlined at section 2.4, which states – quote:  
*“The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?”*
6. A non-exhaustive list of considerations for the reasonable prospect of conviction test is found at section 2.7 of the Prosecution Policy, and for the public interest test at section 2.9 of the Prosecution Policy.
7. I closely considered the reasonable prospect of conviction test when I first examined the brief of evidence in the week of 21 June 2021, and I formed the clear view that there was a reasonable prospect of conviction. This is a view I still hold today.
8. The non-exhaustive list of public interest tests include section 2.9(p) being the actual or potential harm occasioned to any person as a result of the alleged offence, which in this context includes actual or potential harm occasioned by the ongoing prosecution of the alleged offence.

9. In short, I need to consider the harm that could be occasioned to a party, particularly a complainant, from an ongoing prosecution.
10. I have recently received compelling evidence from two independent medical experts, that the ongoing trauma associated with this prosecution presents a significant and unacceptable risk to the life of the complainant. The evidence makes clear that this is not limited to the harm of giving evidence in the witness box, rather applies whether or not the complainant is required to re-enter the witness box in the re-trial.
11. Whilst the pursuit of justice is essential for my office and the community, the safety of a complainant in a sexual assault matter, must be paramount.
12. In light of the compelling independent medical opinions, and balancing all factors, I have made the difficult decision, that it is no longer in the public interest to pursue a prosecution at the risk of the complainant's life.
13. This has left me no other options but to file a notice declining to proceed with the retrial of this matter, which I have done.
14. This brings this prosecution to an end.
15. Before concluding, during the investigation and trial, as a sexual assault complainant, Miss Higgins has faced a level of personal attack that I have not seen in over 20 years of doing this work. She has done so with bravery, grace and dignity, and I it is my hope that this will now stop, and Miss Higgins now be allowed to heal.

**From:** Leon Zwier  
**Sent:** Mon, 28 Nov 2022 15:57:45 +1100  
**To:** Drumgold, Shane  
**Subject:** Re: Strictly Private & Confidential | DPP v Bruce Lehrmann

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Dear Shane

Thank you for your email.

I am carefully seeking instructions and will revert.

Best regards  
Leon

Leon Zwier  
ABL  
Level 21  
333 Collins Street  
Melbourne 3000  
Australia

Office +REDACTED  
Mobile +REDACTED

On 27 Nov 2022, at 19:44, Drumgold, Shane <REDACTED@act.gov.au> wrote:

**OFFICIAL: Sensitive**

Dear Leon

In strictest confidence, were I to make the difficult decision to discontinue this prosecution, can you please get instructions on the following potential statement.

*I have a prepared statement in relation to the matter of The Director of Public Prosecutions v Lehrmann SCC 264 of 2021.*

*I will read the statement and will not be taking questions.*

*The principle considerations in whether or not to continue a prosecution are outlined at Section 2 of the published ACT Prosecutions Policy.*

*Section 2.1 of the policy states – quote – “The decision to prosecute should not be made lightly nor automatically but only after due consideration.”*

*Broadly there are two considerations as outlined at section 2.4, which states “The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?”*

*A non-exhaustive list of considerations for the reasonable prospect of conviction test is found at section 2.7 of the Prosecution Policy, and for the public interest test at section 2.9 of the Prosecution Policy.*

*I considered the reasonable prospect of conviction test when I first examined the brief of evidence in the week of 21 June 2021, and I formed the clear view that there was a reasonable prospect of conviction. This is a view I still hold today.*

*The non-exhaustive public interest tests include section 2.9(p) of the actual or potential harm occasioned to any person as a result of the alleged offence, which in this context includes actual or potential harm occasioned by the prosecution of the alleged offence. In short, I need to consider the harm that could be occasioned to a party, particularly a complainant, from an ongoing prosecution.*

*I have recently received compelling evidence from two independent experts, that the ongoing trauma associated with the prosecution presents an unacceptable and significant risk of harm to the complainant.*

*The safety of a complainant in a sexual assault matter, must be paramount.*

*I have therefor made the difficult decision, that balancing all factors, it is no longer in the public interest to pursue a prosecution at the risk of significant harm to the complainant, and I have filed a notice declining to proceed further.*

*This brings this prosecution to an end.*



**Shane Drumgold SC**

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: **REDACTED** (Direct line)

T: **REDACTED** Executive Officer Katie Cantwell)

M: **REDACTED**

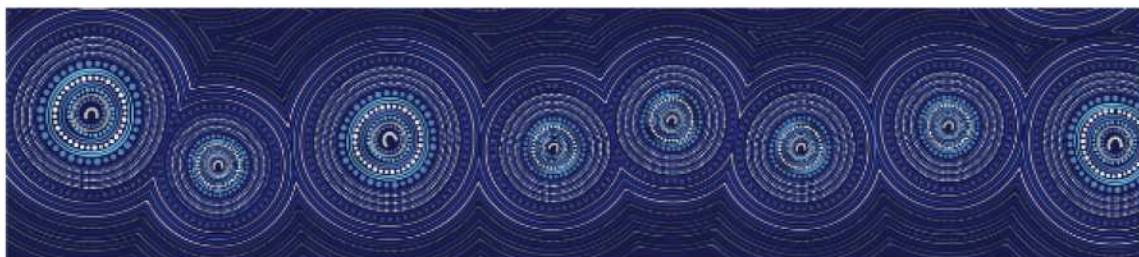
E: **REDACTED** @act.gov.au

E: **REDACTED** @act.gov.au (EO)

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

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

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**We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people  
We acknowledge and respect their continuing culture and the contribution they make  
to the life of this city and this region**

Artwork by Ngarrindjeri artist Jordan Lovegrove

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**From:** Nicole Flint <[REDACTED]@abl.com.au> **On Behalf Of** Leon Zwier  
**Sent:** Friday, 25 November 2022 11:37 AM  
**To:** Drumgold, Shane <[REDACTED]@act.gov.au>  
**Subject:** Strictly Private & Confidential | DPP v Bruce Lehrmann

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Please see **attached** letter and enclosures.

**Leon Zwier** | Partner

Arnold Bloch Leibler  
Level 21, 333 Collins Street, Melbourne Victoria 3000  
E: [REDACTED]@abl.com.au | T: [REDACTED] | M: [REDACTED] | [Vcard](#)

Wurundjeri Country

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**From:** Leon Zwier  
**Sent:** Tue, 29 Nov 2022 19:45:35 +1100  
**To:** Drumgold, Shane  
**Subject:** Re: Strictly Private & Confidential | DPP v Bruce Lehrmann

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Dear Shane,

Thanks very much for the amended working draft statement for your use, should you formally decide to discontinue the prosecution because of the risk to my client's life.

I expect that my client will consent to you making this amended statement which refers to some of her personal information. However I have suggested that she take a further 24 hours to carefully consider her position before reaching a concluded position.

There is a minor typo which I am sure you have already picked up, see below in CAPITALS and [deletion].

Many thanks for your timely consideration of this extremely difficult decision.

Regards,  
Leon

Leon Zwier  
Arnold Bloch Leibler  
21/333 Collins Street  
Melbourne 3000  
Australia

REDACTED@abl.com.au  
+REDACTED  
+

On 29 Nov 2022, at 00:19, Drumgold, Shane <REDACTED@act.gov.au> wrote:

**OFFICIAL: Sensitive**

Dear Leon

As outlined, I was deliberately circumspect in revealing Brittany's personal information, however further to our conversation, with her consent I would say the following:

*I have a prepared statement in relation to the matter of The Director of Public Prosecutions v Lehrmann SCC 264 of 2021.*

*I will read the statement and will not be taking questions.*

*The principle considerations in whether or not to continue a prosecution are outlined at Section 2 of the published ACT Prosecutions Policy.*

*Section 2.1 of the policy states – quote -“The decision to prosecute should not be made lightly nor automatically but only after due consideration.”*

*Broadly there are two considerations as outlined at section 2.4, which states – quote - “The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?”*

*A non-exhaustive list of considerations for the reasonable prospect of conviction test is found at section 2.7 of the Prosecution Policy, and for the public interest test at section 2.9 of the Prosecution Policy.*

*I considered the reasonable prospect of conviction test when I first examined the brief of evidence in the week of 21 June 2021, and I formed the clear view that there was a reasonable prospect of conviction. This is a view I still hold today.*

*The non-exhaustive public interest tests include section 2.9(p) of the actual or potential harm occasioned to any person, as a result of the alleged offence, which in this context includes actual or potential harm occasioned by the prosecution of the alleged offence. In short, I need to consider the harm that could be occasioned to a party, particularly a complainant, from an ongoing prosecution.*

*I have recently received compelling evidence from two independent medical experts, that the ongoing trauma associated with the prosecution, presents an unacceptable and significant risk to the life of the complainant.*

*Whilst the pursuit of justice is vital, the safety of a complainant in a sexual assault matter, must be paramount.*

*I have therefore made the difficult decision, that in light of the independent medical [option] OPINIONS, and balancing all factors, it is no longer in the public interest to pursue a prosecution at the risk of the complainant’s life, and I have filed a notice declining to proceed further.*

*This brings this prosecution to an end.*

*Before I conclude, I wish to raise one issue.*

*It is widely accepted, supported by reports such as the Jenkins Report, that there has been a longstanding workplace culture of bullying and sexual harassment in some of our apex institutions. This can only change with the bravery of people like Brittany Higgins, who unfortunately are often forced to sacrifice almost everything to shine a light on this issue. Brittany Higgins has faced a level of personal attack that I have not experienced with any other sexual assault trial in over 20 years of doing this work. She has done so with a grace and dignity, and it is my hope that she will now be allowed to heal.*



**Shane Drumgold SC**

Director

Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)

T: REDACTED (Direct line)

T: REDACTED (Executive Officer Katie Cantwell)

M:

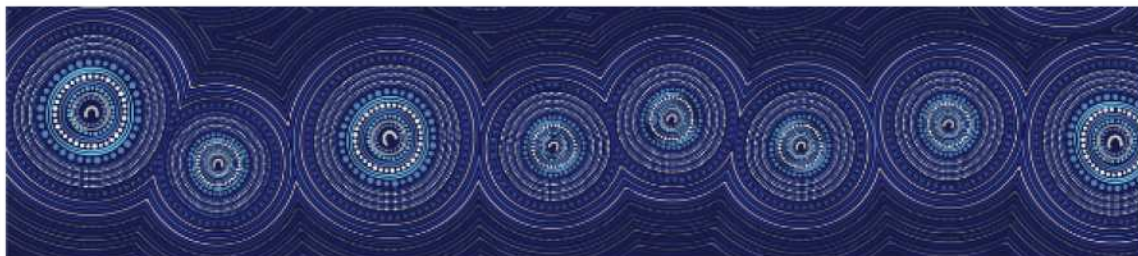
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**From:** Nicole Flint <REDACTED@abl.com.au> **On Behalf Of** Leon Zwier

**Sent:** Friday, 25 November 2022 11:37 AM

**To:** Drumgold, Shane <REDACTED@act.gov.au>

**Subject:** Strictly Private & Confidential | DPP v Bruce Lehrmann

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Please see **attached** letter and enclosures.

**Leon Zwier** | Partner

Arnold Bloch Leibler  
Level 21, 333 Collins Street, Melbourne Victoria 3000

REDACTED | [Vcard](#)

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**From:** Drumgold, Shane  
**Sent:** Wed, 30 Nov 2022 14:14:38 +1100  
**To:** Leon Zwier  
**Subject:** Final draft  
**Attachments:** Discontinuance announcement.docx

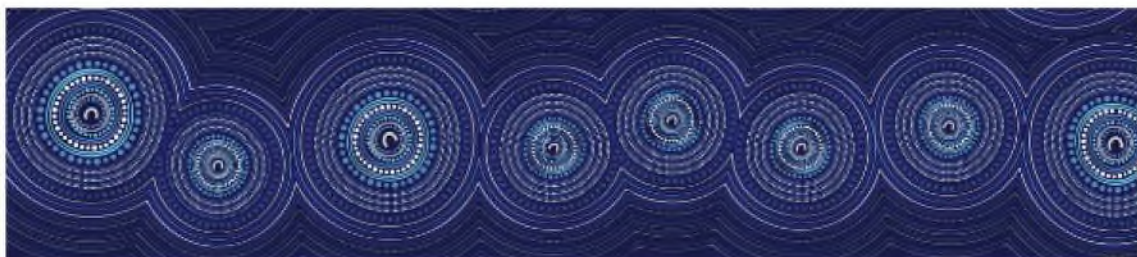
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**Shane Drumgold SC**  
Director  
Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)  
T: **REDACTED** (Direct line)  
T: **REDACTED** (Executive Officer Katie Cantwell)  
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Hi Shane ▾

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# Police doubted Brittany Higgins but case was 'political'



According to diary notes, the most senior police officer on the Brittany Higgins case believed there was insufficient evidence to prosecute Bruce Lehrmann but could not stop the ACT Director of Public Prosecutions from proceeding. Picture: NCA NewsWire / Gary Ramage

**EXCLUSIVE**

By **JANET ALBRECHTSEN**

COLUMNIST

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6:58AM DECEMBER 3, 2022

The most senior police officer on the Brittany Higgins case believed there was insufficient evidence to prosecute Bruce Lehrmann but could not stop the ACT

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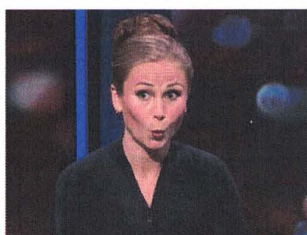
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Director of Public Prosecutions from proceeding because “there is too much political interference”, according to diary notes made by the ACT Police Manager of Criminal Investigations, Detective Superintendent Scott Moller.

In a separate executive briefing last year, Superintendent Moller advised that investigators “have serious concerns in relation to the strength and reliability of [Ms Higgins’] evidence but also more importantly her mental health and how any future prosecution may affect her wellbeing”.

On Friday the ACT DPP, Shane Drumgold SC, [withdrew the charges against Mr Lehrmann](#), citing concerns for Ms Higgins’ mental health, so his retrial – set down for February – will no longer proceed. The original trial was aborted in October due to juror misconduct.

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The executive briefing lists a series of concerns by senior police, including that Ms Higgins had - repeatedly refused to provide her original mobile phone; had deliberately deleted messages from a second phone; had lied about seeking medical attention after the incident; and had joked about wanting “a sex scandal” a month before the incident. Some became issues at the trial.



Bruce Lehrmann. Picture: NCA NewsWire / Gary Ramage



Higgins with her partner David Sharaz. Picture: NCA NewsWire / Gary Ramage

The briefing, dated June 9, 2021, states that “there is limited corroborative evidence of sexual intercourse taking place or consent being withdrawn or not provided”.

An attached minute signed by Detective Inspector Marcus Boorman, the investigation manager assigned to the case, states: “Investigators at this juncture have a number of concerns regarding inconsistencies in disclosures and other evidence obtained during the investigation. In light of the issues identified, serious concerns exist as to whether there is sufficient evidence to prove the alleged - offence.”

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The documents obtained by The Weekend Australian also reveal that Ms Higgins texted boyfriend David Sharaz in May last year saying: “F.k it, if they want to play hard ball I’ll cry on The Project again because of this sort of treatment.”

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None of the texts or the police doubts about the case were revealed to the jury.

Superintendent Moller made notes of a conversation with his boss, ACT Deputy Chief Police Officer Michael Chew, on June 17 last year while discussing Operation Covina – the Higgins/Lehrmann sexual assault case.

At that point in the investigation, The Weekend Australian understands, more than half of the witness list had yet to be interviewed by police, but it appears the DPP, led by Mr Drumgold, had already decided to prosecute.

In the diary note, Superintendent Moller wrote: "Insufficient evidence to proceed.

"DCPO [Mr Chew] advised he had a meeting with DPP who stated they will recommend prosecution. DCPO stated 'if it was my choice I wouldn't proceed. But it's not my choice. There is too much political interference'. I said: 'That's disappointing given I think there is insufficient evidence.'"

The following day Superintendent Moller forwarded a copy of the interim brief of evidence to Commander Andrew Smith to conduct an independent review of the investigation. The result of that review is not known.

---

The Australian's Legal Affairs Contributor Chris Merritt says the case of Bruce Lehrmann and Brittany Higgins being dropped means it will be "unresolved forever". ACT Director of Public Prosecutions Shane Drumgold on Friday announced it was "no longer in the public interest" to pursue a prosecution after medical ... [More](#)

Ms Higgins first spoke to police on April 1, 2019, a week after the events at Parliament House, but informed them two weeks later she did not wish to continue with the allegations. On February 5, 2021, she re-engaged with police, telling them she had been interviewed by the media and didn't want to do an evidence-in-chief interview until her interview with The Project host Lisa Wilkinson had aired on television.

The following day "police advised Ms Higgins the intended media events ... may jeopardise any subsequent criminal investigation; however Ms Higgins made it clear to police she was not willing to provide investigators with a formal statement in relation to the allegations until the media stories had been published. Ms Higgins stated that she wanted to ensure the sexual assault investigation was 'active' in anticipation of the media events."

The TV program aired on February 15 and Ms Higgins sat down with police for her evidence-in-chief interview nine days later.



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At that interview investigators reiterated to her the need to examine her mobile phone for potential evidence. "Ms Higgins refused to hand over her phone despite being explained the evidential value of the process," the police report says.

The AFP statement of facts prepared by Superintendent Moller reflects police frustration over difficulties in obtaining Ms Higgins' mobile phone after the interview to extract data.

On March 15, when police had arranged for a second time to meet Ms Higgins to obtain the phone, she failed to turn up or to respond to calls. "During the afternoon on the same date police observed Ms Higgins on commercial television at the March4Justice march at Parliament House," Superintendent Moller wrote.

The ACT Director of Public Prosecutions Shane Drumgold says the decision has been made to ensure the safety...

"She attended the location and gave a speech to the persons present."

On May 5, 2021, Superintendent Moller was informed that ACT Victims of Crime Commissioner Heidi Yates had advised that any contact with Ms Higgins was now to go to her rather than directly to Ms Higgins.

Three weeks later, Superintendent Moller and other detectives met Ms Higgins, who was accompanied by Ms Yates, at the Winchester Police Centre in Canberra, where she gave a second interview.

"During this conversation I stressed to Ms Higgins the importance of refraining from participating in any media interviews in relation to this matter," Superintendent Moller says in his police statement.

On this occasion Ms Higgins handed over a mobile phone.

Police recovered a text exchange between Ms Higgins and former boyfriend Ben - Dillaway dated February 7, 2019, six weeks before the alleged rape, in which the pair joked about wanting a political sex scandal.

"The bar for what counts as a political sex scandal nowadays is REALLY low," Ms Higgins wrote.

"I want a sex scandal I can be like whoa. Impressive. Didn't think he had it in him," Mr Dillaway wrote.

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"Exactly! A sex scandal the party can be proud of. Another Barnaby but without the baby haha," Ms Higgins responded.

On July 12 last year Superintendent Moller again met Ms Higgins and Ms Yates, this time at AFP headquarters in Brisbane to update her on the investigation.

"Ms Higgins advised that any photos taken on the night of the incident were saved on her Google drive attached to her iCloud but she could not recall taking any photos.

"Ms Higgins advised (of) the photo of an injury to her leg she took herself on WhatsApp during budget week, however she could not recall the exact date. Ms Higgins advised she shared this photo with The Project on 19 January 2021.

"Ms Higgins advised she had seven iPhones since 2019, most had been supplied by the government as part of her work and they had been returned when she changed jobs, however Ms Higgins was happy for police to take the old phones she had."

During the conversation Superintendent Moller showed Ms Higgins text messages - between herself and Mr Sharaz on May 21, 2021 about her sending him an audio file because she was "clearing out her phone ahead of the police".

"Ms Higgins told me that the files she had sent to David Sharaz and deleted from her phone related to taped conversations of her talking to various ministers and she was concerned she had committed an offence by taping the ministers so she didn't want the police to find them."

Ms Yates returned later that day and handed over two iPhones from Ms Higgins.

#### **JANET ALBRECHTSEN , COLUMNIST**

Janet Albrechtsen is an opinion columnist with The Australian. She has worked as a solicitor in commercial law, and attained a Doctorate of Juridical Studies from the University of Sydney. She has written for numer... [Read more](#)



#### **STEPHEN RICE , NSW EDITOR**

Stephen Rice started his newspaper career at The Sydney Morning Herald before moving into television, where he became executive producer of Nine's Business Sunday programs. He has worked as a senior investigative p... [Read more](#)



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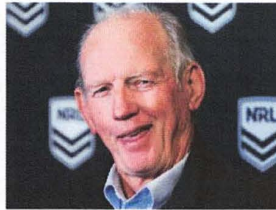
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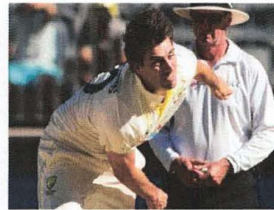
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**From:** Drumgold, Shane  
**Sent:** Sat, 3 Dec 2022 09:04:50 +1100  
**To:** Christopher Knaus  
**Subject:** Re: Media query: response to claims In the Australian

Dear Chris

I am greatly concerned that potentially legally protected material may have again been unlawfully distributed. Given myself and others have already raised concerns about matters that are currently under investigation, it would not be appropriate to comment further whilst investigations are underway.

Shane Drumgold SC  
Director  
Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)  
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**From:** Christopher Knaus <REDACTED@theguardian.com>  
**Sent:** Saturday, December 3, 2022 7:58:14 AM  
**To:** Drumgold, Shane <REDACTED@act.gov.au>  
**Subject:** Media query: response to claims In the Australian

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Hi Shane,

Hope you're well.

I'm seeking a response to allegations published in the Australian today about the Lehrmann matter. The paper has published leaked briefings and diary notes of AFP members in which they say there was insufficient evidence to proceed in the matter but that you pushed ahead regardless. They also expressed concern about political interference.

My questions are:

- what is your response to that allegation?
- is it appropriate for police officers to be leaking material of this kind? Why is it inappropriate in this case particularly?
- Do you have any understanding of why they have they leaked this material?

I was hoping for a response ASAP this morning.

Many thanks,

Christopher Knaus  
Reporter  
Guardian Australia  
**REDACTED**

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**From:** Gaughan, Neil  
**Sent:** Mon, 5 Dec 2022 08:07:10 +1100  
**To:** Drumgold, Shane  
**Subject:** RE: Media in The Australian [SEC=OFFICIAL:Sensitive]

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Thanks, Shane...I will see you tomorrow afternoon.

Rgds  
Neil

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**From:** Drumgold, Shane <REDACTED@act.gov.au>  
**Sent:** Saturday, 3 December 2022 10:32 AM  
**To:** Gaughan, Neil <REDACTED@afp.gov.au>  
REDACTED Sarah <REDACTED@afp.gov.au>  
**Subject:** Media in The Australian  
**Importance:** High

**OFFICIAL: Sensitive**

Dear Neil and Sarah

As a courtesy, I am advising you both that I have been asked for comment on a very disturbing story in the Australian this morning as follows:

*I'm seeking a response to allegations published in the Australian today about the Lehrmann matter. The paper has published leaked briefings and diary notes of AFP members in which they say there was insufficient evidence to proceed in the matter but that you pushed ahead regardless. They also expressed concern about political interference.*

*My questions are:*

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- Do you have any understanding of why they have they leaked this material?

*I was hoping for a response ASAP this morning.*

As a courtesy, my verbatim response is as follows:

*I am greatly concerned that potentially legally protected material may have again been unlawfully distributed. Given myself and others have already raised concerns about matters that are currently under investigation, it would not be appropriate to comment further whilst investigations are underway.*



**Shane Drumgold SC**

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

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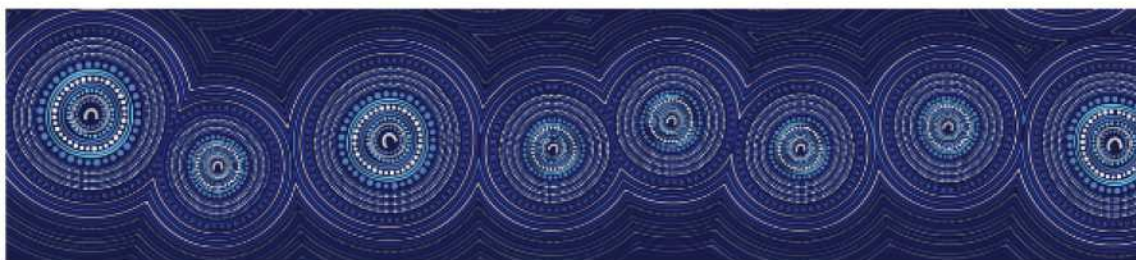
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**From:** [REDACTED], Sarah  
**Sent:** Mon, 5 Dec 2022 15:53:08 +1100  
**To:** Drumgold, Shane  
**Subject:** Re: Media in The Australian [SEC=OFFICIAL]

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Good afternoon Shane,

Thank you for your email below.

I agree the story was concerning we are reviewing all the media material from the weekend to determine what action should be taken.

Pls don't hesitate to contact me if you wish to discuss.

Regards

Sarah

---

**From:** Drumgold, Shane <[REDACTED]@act.gov.au>  
**Date:** 3 December 2022 at 10:32:50 am AEDT  
**To:** Gaughan, Neil <[REDACTED]@afp.gov.au>  
**Cc:** [REDACTED], Sarah <[REDACTED]@afp.gov.au>  
**Subject:** Media in The Australian  
**Importance:** High

OFFICIAL: Sensitive

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- Do you have any understanding of why they have they leaked this material?*

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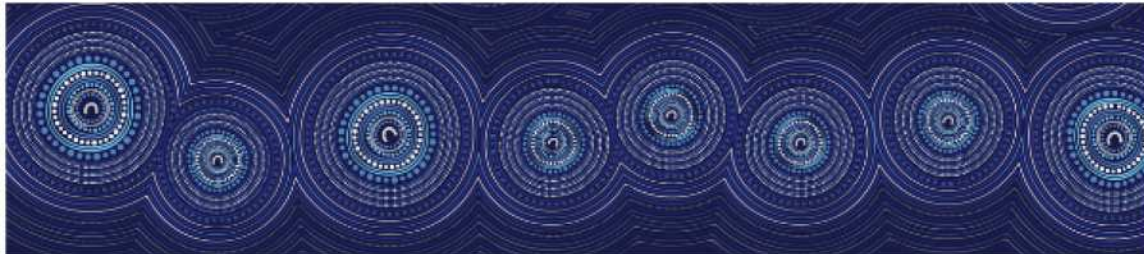
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to the life of this city and this region**

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AFP Web site: <http://www.afp.gov.au>

\*\*\*\*\*



Chief Police Officer for the ACT  
GPO Box 401 Canberra ACT 2601  
Telephone: [REDACTED]  
Email: [REDACTED]@afp.gov.au  
[www.afp.gov.au](http://www.afp.gov.au) ABN 17 864 931 143

Our reference: CMS 2022/2462

7 December 2022

Shane Drumgold SC  
Director  
ACT Director of Public Prosecutions

Via email: [REDACTED]@act.gov.au

Dear Shane

Thank you for your letter dated 1 November 2022.

As a result of the concerns you have raised in your letter, both in the investigation stage and the Trial process, I have referred the matter to our Professional Standards (PRS) command. PRS have accepted the matter for investigation and as such it is inappropriate for me to comment any further in relation to this aspect of your correspondence.

I acknowledge your comments regarding a public enquiry at the conclusion of the trial. ACT Policing supports a public inquiry in relation to conduct of all parties involved in the matter of R v Lehrmann. I look forward to further discussions in relation to any subsequent inquiry.

Yours sincerely

Deputy Commissioner Neil Gaughan APM  
Chief Police Officer for the ACT

**From:** DPP, FOI  
**Sent:** Wed, 7 Dec 2022 15:06:50 +1100  
**To:** Drumgold, Shane  
**Subject:** FW: FOI request for your consideration  
**Attachments:** 05-12-22 - Freedom of Information request - Christopher Knaus, the Guardian.pdf

**OFFICIAL**

Hi Shane,

See **attached** FOI.

Surely any document sent regarding this would be subject to legal/professional privilege?

Would you like me to put this through to Anthony/Verity to look at? Or are you happy to make the decision on release yourself?

Katie



**Katie Cantwell**  
Executive Officer  
Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)  
T: (02) 6207 5399 (Reception)  
E: [REDACTED@act.gov.au](mailto:REDACTED@act.gov.au)  
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**From:** Christopher Knaus <[REDACTED@theguardian.com](mailto:REDACTED@theguardian.com)>  
**Sent:** Monday, 5 December 2022 11:52 AM  
**To:** DPP, FOI <[DPPFOI@act.gov.au](mailto:DPPFOI@act.gov.au)>  
**Subject:** FOI request for your consideration

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Hi there,

Please find an FOI request attached for your consideration.

Many thanks,

-----

**Christopher Knaus**

Reporter

The Guardian | Australia

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REDACTED

REDACTED [@guardian.co.uk](mailto:REDACTED@guardian.co.uk)

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twitter: @knausc

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Level 3, 19 Foster St

Surry Hills NSW 2010

[theguardian.com/au](http://theguardian.com/au)

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**From:** Drumgold, Shane  
**Sent:** Wed, 7 Dec 2022 18:50:54 +1100  
**To:** Cantwell, Katie  
**Subject:** Re: Guardian FOI

OFFICIAL

I am happy for it to go out

Shane Drumgold SC  
 Director  
 Office of the Director of Public Prosecutions (ACT)  
 GPO Box 595, Canberra ACT 2601 (DX 5725)  
 T: REDACTED (Direct)  
 T: REDACTED (Executive Officer)  
 M: REDACTED  
 E: REDACTED@act.gov.au  
 W: www.dpp.act.gov.au

Sent from my iPad

**From:** Cantwell, Katie <REDACTED@act.gov.au>  
**Sent:** Wednesday, December 7, 2022 6:35:46 PM  
**To:** Drumgold, Shane <REDACTED@act.gov.au>  
**Subject:** Guardian FOI

OFFICIAL

Hi Shane,

Can I confirm that this is the letter you are happy for me to release under FOI to the guardian?

Katie



**Katie Cantwell**  
 Executive Officer  
 Office of the Director of Public Prosecutions (ACT)  
 GPO Box 595, Canberra ACT 2601 (DX 5725)  
 T: REDACTED  
 E: REDACTED@act.gov.au  
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**From:** Cantwell, Katie  
**Sent:** Wed, 7 Dec 2022 18:57:20 +1100  
**To:** Christopher Knaus  
**Subject:** Final decision - FOI application  
**Attachments:** Letter to CPO re. R v Lehmann - 01.11.2022.pdf, FOI Final Letter - Christopher Knaus - 07.12.2022.pdf

OFFICIAL

Good evening Ms Knaus,

Please find **attached** documents relating to your recent application under the *Freedom of Information Act 2016*.

Kind regards,



**Katie Cantwell**  
Executive Officer  
Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)  
T: (02) 6207 5399 (Reception)  
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**From:** Drumgold, Shane  
**Sent:** Thu, 8 Dec 2022 11:59:04 +1100  
**To:** Christopher Knaus  
**Subject:** RE: Urgent media query: DPP complaint to CPO over Lehrmann matter

**OFFICIAL**

Dear Chris

In relation to the following questions:

- \* Do you stand by the allegations detailed above? Do you maintain your call for a public inquiry?
- \* What response, if any, did you receive following this letter?
- \* This letter appears to show deep problems in the relationship between elements of the DPP and the AFP, do you have any comment on that observation?

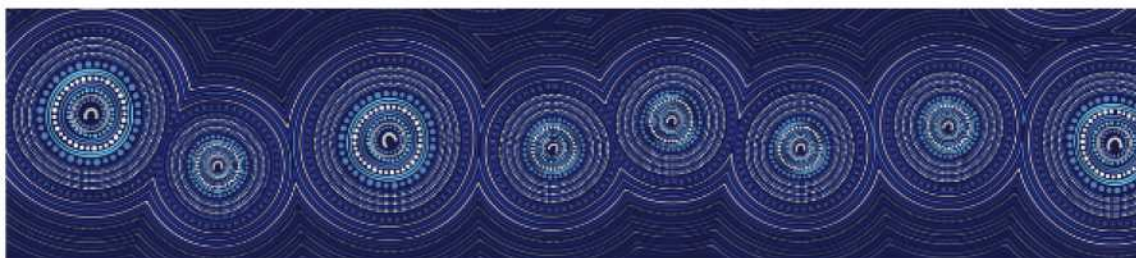
Thank you for your questions, I have no comment to make at this stage.



**Shane Drumgold SC**  
Director  
Office of the Director of Public Prosecutions (ACT)  
GPO Box 595, Canberra ACT 2601 (DX 5725)  
T: **REDACTED** (Direct line)  
T: **REDACTED** (Executive Officer Katie Cantwell)  
M: **REDACTED**  
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E: **REDACTED**@act.gov.au (EO)  
W: [www.dpp.act.gov.au](http://www.dpp.act.gov.au)

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

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We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people  
We acknowledge and respect their continuing culture and the contribution they make  
to the life of this city and this region

Artwork by Ngarrindjeri artist Jordan Lovegrove

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**From:** Christopher Knaus **REDACTED**@theguardian.com>  
**Sent:** Thursday, 8 December 2022 11:49 AM

To: Drumgold, Shane <REDACTED@act.gov.au>

Subject: Urgent media query: DPP complaint to CPO over Lehrmann matter

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Hi Shane,

I'm seeking a response to serious allegations made in a letter of complaint by yourself to CPO Neil Gaughan on 1 November, which I obtained through a freedom of information request to your office. The allegations concern the conduct of police in the Lehrmann matter.

The allegations made in the letter, as I understand them, are as follows:

- Drumgold alleges police officers engaged in "a very clear campaign to pressure me" not to prosecute the alleged rape of Brittany Higgins. He has alleged there was "inappropriate interference" and he felt that investigators were "clearly aligned with the successful defence of this matter".
- Drumgold alleges that he holds "serious concerns" over "what I perceive as some quite clear investigator interference in the criminal justice process" and alleged "key AFP members have had a strong desire for this matter not to proceed to charge". He says "Then when charges resulted, the [investigators'] interests have clearly aligned with the successful defence of this matter rather than its prosecution... As a corollary however, there has now been over one and a half years of consistent and inappropriate interference by investigators, firstly directed towards my independence with a very clear campaign to pressure me to agree with the investigators desire not to charge, then during the conduct of this trial itself, and finally attempting to influence any decision on a retrial."
- Drumgold details three meetings with investigators, including Detective Inspector Marcus Boorman and Detective Superintendent Scott Moller, held across March, April, and June. He said in the first meeting with Boorman and SACAT, investigators had used selective evidence and "loaded characterisations" in an attempt to persuade him to agree with their position, which was that charges should not be laid. In subsequent meetings in April and June last year, Drumgold alleged that investigators continued to use mischaracterisations, cherry-picked evidence, and inaccurate select summaries of evidence to suggest weaknesses in the case and convince him to support their view that the case should not proceed. In the final meeting in June, he alleges police presented him with a brief of evidence and a letter that purported to be a request for his advice on the case. Drumgold said the letter contained "further mischaracterisations and other inaccurate select summaries of evidence" and was used to advance a list of reasons why he should agree with the police position. He wrote: "This document contained blatant misrepresentations of evidence such as suggestions that key evidence was deliberately deleted by the complainant, a proposition not supported by the tested evidence at trial, as well as a list of evidence that is clearly inadmissible in trial. The letter concludes with a further overt attempt to apply pressure to the conclusion of my resulting advice."
- Drumgold uses the letter to call for a public inquiry into police conduct. "I am of the view that at the conclusion of the trial, there should be a public enquiry into both political and police conduct in this matter," he said. He also requested that police cease any involvement in the then looming retrial, save for their roles as witnesses.

- He accuses investigators of bullying Higgins and said she had to be insulated from contact with them. He complained that this affected the conduct of the trial. "The complainant has long expressed concerns that during the investigation stage, she also felt bullied by police who she felt were pressuring her into discontinuing the complaint. This is an observation corroborated by at least two of her support people. Although this is a matter for her to raise directly with the AFP, it is relevant for our purposes as it impacted the trial process, as she presented as highly anxious in dealing with either the police or by extension, the DPP."

- Higgins then communicated with police via victims of crime commissioner, Heidi Yates, according to the letter. He says police then sought to make Yates a witness by asking her "highly unusual" questions in a formal interview. "On 2 October 2021, I received a letter from yourself [Gaughan], stating that because she was now a witness, the AFP could no longer communicate through her. This was a highly unusual step as the complainant was also a witness, yet police still had extensive contact with her until she requested all contact be made through the Victim of Crime Commissioner."

- He also alleged investigators had direct contact with Lehrmann's defence team during the trial. He said police were regularly meeting with Lehrmann's defence team during breaks in proceedings, and that the defence team had been asking police directly to conduct further investigations into some issues. He said this was discovered when prosecutors received an unsolicited email from one of the investigators on 13 October 2022, outlining some additional points to their evidence. Another investigator followed up the email the next day, stating: "I have also attached the email... sent yesterday regarding the Phillip Medical Centre enquiries," the email said. "The bosses just want to confirm it has been seen and passed onto defence." About 16 minutes later, the sender attempted to recall the email and replace the words "The bosses just want to confirm" with "I'm just checking".

My questions are:

- do you stand by the allegations detailed above? Do you maintain your call for a public inquiry?
- what response, if any, did you receive following this letter?
- this letter appears to show deep problems in the relationship between elements of the DPP and the AFP, do you have any comment on that observation?

My hard deadline for this is 1.30pm today.

Many thanks,

-----

**Christopher Knaus**  
Reporter  
The Guardian | Australia

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REDACTED  
REDACTED @guardian.co.uk

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twitter: @knausc

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Surry Hills NSW 2010  
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**From:** Christopher Knaus  
**Sent:** Fri, 9 Dec 2022 11:27:00 +1100  
**To:** Cantwell, Katie  
**Subject:** Re: FOI application - redacted letter  
**Attachments:** image001.png

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Hi Katie,

Thanks very much for this.

I can tell you that I have not sent the unredacted document to anyone outside of my organisation. It has only been shared internally for the purposes of legal and editorial advice and I will advise those it was shared with not to circulate it any further.

Many thanks,

Christopher Knaus  
Reporter  
Guardian Australia

**REDACTED**

On Fri, 9 Dec 2022, 10:46 am Cantwell, Katie, <**REDACTED** [@act.gov.au](mailto:REDACTED@act.gov.au)> wrote:

**OFFICIAL**

Good morning Mr Knaus,

The DPP has sought further advice regarding your recent FOI application. Please see *attached* document with redactions. This document will support publication on the disclosure log and I am seeking your agreement to limit the circulation of the copy of the letter originally supplied to you.

Kind regards,



**Katie Cantwell**

Executive Officer  
Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

**T:** (02) 6207 5399 (Reception)

**E:** **REDACTED**@act.gov.au

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

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GPO Box 442 Canberra ACT  
Phone 02 5119 5518 • ombudsman.act.gov.au

Our reference: 2022-715237  
2022-113209

20 January 2023

Mr Shane Drumgold SC  
Director  
Office of the Director of Public Prosecutions (ACT)

By email only: **REDACTED** @act.gov.au

Dear Mr Drumgold

**ACT Ombudsman – finalisation of our investigation of the complaints from Troy [REDACTED] and Peter [REDACTED] – with comments and suggestions**

Thank you for your response to our enquiries about these complaints. Having considered all the relevant information, we have decided to finalise our investigation of these complaints. Although we have decided to finalise this complaint, we consider it appropriate to make the following comments under s 15(4) of the *Ombudsman Act 1989*.

Mr [REDACTED] of the Australian Federal Police Association, and Mr [REDACTED] Executive General Manager of ACT Policing, lodged complaints with the Office of the ACT Ombudsman (**the Office**) about the Office of the Director of Public Prosecutions' (**the DPP**) handling of a Freedom of Information (**FOI**) access application (**application**).

As these two complaints related to the same application and raised similar issues, the Office decided to investigate the complaints together.

**Background**

- |                 |  |
|-----------------|--|
| 5 December 2022 | The DPP received an application for access to a complaint made by the DPP about the conduct of police during the matter of R v Lehrmann.                   |
| 7 December 2022 | The relevant information was identified and released in full to the applicant.   |
| 8 December 2022 | Mr [REDACTED] became aware of the release and emailed the DPP to raise his concerns about a lack of consultation. The DPP did not respond to Mr [REDACTED] |
| 9 December 2022 | Mr [REDACTED] telephoned the DPP and spoke with a staff member but did not receive a response to his concerns.   |

The DPP identified that errors in processing the application had occurred and appeared to re-make the decision so that access to personal information within the document released was redacted. A revised copy of the letter was sent to the applicant.





	Mr [REDACTED] complained to the Office about the DPP's handling of the application.
12 December 2022	The revised decision with redactions applied to the document was published on the DPP's FOI Disclosure Log.
	The Office notified the DPP of the complaint from Mr [REDACTED]
14 December 2022	Mr [REDACTED] complained the Office about the DPP's handling of the application.
15 December 2022	The Office notified the DPP of the complaint from Mr [REDACTED]
20 December 2022	The DPP provided a response to the notifications of the complaints.
10 January 2023	The Office provided a preliminary view to the DPP, with suggested actions.
12 January 2023	The DPP advised the Office it accepted the preliminary view.
13 January 2023	The DPP issued an apology to Mr [REDACTED]

## Comments

### *Processing time*

The application was received by the DPP on 5 December 2022, with a decision made and information released on 7 December 2022. From the information you provided to us, however, it appears that the application was processed within only 1 working day.

The FOI Act allows an agency up to 20 working days<sup>1</sup> to decide access. Whilst the FOI Act states that access to government information should be facilitated promptly and at the lowest reasonable cost,<sup>2</sup> the time spent on this application indicates that the application may have been processed without proper consideration of the public interest test under s 17 of the FOI Act.

### *Internal communications*

After identifying information falling within the scope of the application, it appears a misunderstanding occurred where the information officer understood that you were happy for information to be released; however, your understanding was that the application would be processed in accordance with the requirements of the FOI Act, such as considering whether disclosure of the information would be in the public interest or whether consultation with third parties would be required.

Section 20 of the FOI Act provides that the principal officer of an agency may direct the information officer to release information. The communication between you and the information officer may be considered a direction to release information under this provision, and it was acted upon.

You acknowledged to our Office that your communication most likely caused the information officer to believe the letter could be released.

### *Consultation requirements*

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<sup>1</sup> Section 40 of the FOI Act.

<sup>2</sup> Section 6(f) of the FOI Act.

It is our view that the DPP did not comply with s 38 of the FOI Act.

The FOI Act sets out a number of circumstances in which the agency processing an application (**respondent**) must consult with a third party prior to making a decision. Before releasing information, which may reasonably be expected to be of concern to a relevant third party, s 38 of the FOI Act provides that the respondent must take reasonable steps to consult with the third party.

Such consultation processes are important as they ensure that third parties have an opportunity to express any concerns they may have about the disclosure of the information – that is, to explain why the information may in fact be contrary to the public interest information for reasons not otherwise apparent. These processes are designed to ensure the decision-maker balances the interests of the applicant with the rights of the third party. A third party consulted under s 38 also has review rights in respect of a decision adverse to their interests.

Guidance on when information may reasonably be considered to be of concern to a third party is provided in *Ombudsman Guideline 3 – Dealing with access applications*. Relevantly, if the third party is a government agency, information may reasonably be expected to be of concern if it concerns the affairs of the agency. Consultation will be required unless the decision-maker is aware the agency is not concerned by the possible release or has agreed that formal consultation is not required.

By not consulting with ACT Policing, they were denied an opportunity to explain why the information may have been contrary to the public interest information and to apply for Ombudsman review of the decision prior to release. This would have been a more appropriate pathway to rectify any concerns about the decision.

#### *Lack of response to ACT Policing's communication*

Mr [REDACTED] has advised that he made several unsuccessful attempts to discuss his concerns with the DPP following the release of the letter.

In our view, it was an error not to engage with Mr [REDACTED]. Whilst the information had already been released, this may have been an opportunity for the DPP to provide immediate redress to Mr [REDACTED] by way of acknowledgment and an apology. However, the DPP chose to not to respond or engage with Mr [REDACTED]'s reasonable attempts to discuss his concerns.

We appreciate the DPP has now issued an apology to Mr [REDACTED] regarding both the lack of consultation and engagement following the release of the information.

#### *Identification of errors and re-making of the decision*

You have acknowledged errors in processing the application were identified and steps were taken to rectify those errors. In particular, the DPP identified personal information in the letter that it considered should have been redacted. It appears that in attempting to rectify these errors the DPP effectively 're-made' the decision. The FOI Act does not provide for agencies to re-make decisions, other than in the case where additional government information is identified at a later time, and an additional decision relating to that information may be made under s 35 of the FOI Act.

Given that the information had already been released in full, it may have been more appropriate for the DPP to take steps to formally prevent any further distribution of the information, such as by seeking an injunction, rather than relying on the undertaking of the applicant to ask colleagues that the information not be shared further.

We note that although the DPP had identified that an error had been made and re-made the

decision, although there is no power to do so under the FOI Act, still no attempt was made to consider the public interest test under s 17 of the FOI Act, nor was any attempt made to consult with ACT Policing.

### Conclusion

We appreciate the DPP's assistance with our investigation of these complaints and the DPP's acceptance of our preliminary view and the suggestions the Office made in our letter of 10 January 2023. Thank you for providing the Office with a copy of an apology issued to Mr [REDACTED] on 13 January 2023.

We appreciate the DPP's information officer has already received additional training relating to the processing of FOI application and note that the DPP has reviewed its FOI policies and procedures to address the errors identified throughout this process.

If you have any questions about these comments, please contact Jennifer Furze, Assistant Director, on [REDACTED]. We are available to provide guidance on FOI matters at any stage if you or your staff have any questions. We have also published [Guidelines](#) on the FOI Act, which may be of interest.

Yours sincerely

[REDACTED]  
[REDACTED]  
Director  
ACT Reportable Conduct and FOI

13 Apr 2021 at 7:28 AM



Brittany Higgins signs major book deal after three-way auction



iMessage

