

**FW: Operation Covina (R v Bruce Lehrmann) [AFP-L.FID44314]
[SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]**

From: "Frizzell, Emma" [REDACTED]
To: "Fleming, David" [REDACTED]
Date: Tue, 12 Apr 2022 11:25:28 +1000
Attachments: scan_afp18974_2021-06-09-13-33-49.pdf (4.11 MB); Identified discrepancies.docx (26.18 kB); Review Doc.docx (25.44 kB); DPP Copy - Disclosure Statement as at 28Feb22.pdf (13.31 MB); Defence Copy - Disclosure Statement as at 28Feb22.pdf (11.67 MB)

D/Sgt Fleming,

As discussed, please see below advice from AFP legal in relation to the attached documents and how we address these in regards to our disclosure obligations. I did submit on the disclosure statements the category, as suggested below, 'Administrative documents and results in relation to the request and response of external enquiries in relation to both Mr Lehrmann and Ms Higgins.' however the commentary is non-specific and would not accurately reflect the attachments.

As a result, and based on AFP legal advice stating that if I and/or DPP consider the attachments disclosable, I noted on the disclosure statement that we request a meeting with DPP, specifically to consult as to whether the documents are:

- > Specified clearly on the disclosure statements as per the table below; or
- > The documents are served on Defence by DPP.

Description of item	Comment
Administrative correspondence and documentation in relation to Mr Lehrmann and Ms Higgins	Internal briefing and investigative material inclusive of situation, evidentiary reviews, enquiries and identified issues and/or discrepancies.

Could I please request that the above query be considered and DPP consulted.

Kind regards,
Em

SENIOR CONSTABLE EMMA FRIZZELL
 CRIMINAL INVESTIGATIONS - SACAT TEAM 1
 ACT POLICING

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From: [REDACTED] Stephanie [REDACTED]
Sent: Tuesday, 1 March 2022 12:09 PM

To: Frizzell, Emma [REDACTED]
 Cc: Hughes, Callum [REDACTED] Madders, Trent [REDACTED] Shelley [REDACTED]
 James [REDACTED] Andrew [REDACTED]
 Subject: RE: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege] [AFP-L.FID44314]
 ~

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Legal privilege

Hi Emma

Kind regards
 Steph

STEPHANIE [REDACTED]
 LAWYER - AFP LEGAL
 CHIEF LEGAL COUNSEL

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~
 From: Frizzell, Emma [REDACTED]
 Sent: Tuesday, 1 March 2022 11:17 AM
 To: McKenzie, Stephanie [REDACTED]
 Cc: Hughes, Callum [REDACTED] Madders, Trent [REDACTED] Shelley [REDACTED]
 James [REDACTED]
 Subject: RE: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
 ~

Hi Stephanie,

~
 Thank you for your advice – it's greatly appreciated.

~
 In regards to the internal briefing documentation, does this sit under Schedule 1 or 3 in the disclosure certificate?

~
 Kind regards,
 Em

~
SENIOR CONSTABLE EMMA FRIZZELL
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From: [REDACTED] Stephanie [REDACTED]
Sent: Monday, 28 February 2022 1:56 PM
To: Frizzell, Emma [REDACTED]
Cc: Hughes, Callum [REDACTED] Madders, Trent [REDACTED] Shelley [REDACTED] James [REDACTED]
Subject: RE: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Legal privilege

THIS ADVICE IS SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE AND SHOULD NOT BE FURTHER DISCLOSED WITHOUT PRIOR CONSULTATION WITH THE AFP

Dear Emma

Thank you for your request for advice on the draft disclosure certificate for Operation Covina (*R v Bruce Lehmann*). We understand that you are going to provide the final disclosure certificate on Monday, 28 February 2022 and have sought legal advice about whether the attached documents should be disclosed.

For ease of reference, I have copied the paragraphs 4.1 and 4.2 of the DPP Guidelines below:

4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

- *to be relevant or possibly relevant to an issue in the case*
- *to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use, or*
- *to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.*

4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness (see ACT Guidelines for examples)

Internal briefing material

You have provided us with the following internal briefing documents:

- Executive Briefing: Seeking direction in relation to Operation COVINA – alleged sexual intercourse without consent, Australian Parliament House 23rd March 2019
 - Annexure A media plan/options for your decision/direction
 - Attachment A: Radio Transcript – Adam Shirley Interviews ACT Policing DC Gaughan
 - Attachment B: New South Wales Police press release, re Christian Porter.
- Minute: Op Covina Direction / Decision – Alleged sexual Assault Australian Parliament House 23 March 2019

We confirm that internal briefing documents would not typically be subject to disclosure due to their administrative nature. However, where briefing documents' contents run counter to the prosecution case or raise issues of witness credibility they would be prima facie disclosable pursuant to paragraph 4.2 of the policy. In the briefing documents you have

provided, there are various references to inconsistencies which would seemingly be of assistance to the accused's case, including:

- information about the complainant's decision to withhold her mobile phone from police, preventing examination
- inferences that an injury to the complainant's right leg may have been caused by a fall, rather than during the alleged assault, and
- references to claims by the complainant that she received medical attention and took the morning after pill following the alleged assault, which has not been corroborated.

An argument may be made that these credibility issues are best disclosed in the form of primary evidence which the defence can review (such as inconsistent statements and correspondence between the AFP and the complainant). However, we consider that the AFP's observations and investigative opinions in respect of the complainant may be independently relevant and their existence should at least be disclosed to the DPP for consideration as to whether they are disclosable.

Where an investigating agency casts doubt about the credibility or reliability of a witness based their interactions with the witness (which may not be apparent from diary notes or statements) we consider that any documents which record those opinions should be provided to the DPP (as part of the duty to reveal set out in the disclosure standard) to be considered for disclosure to the accused.

Some relevant examples in the briefing documents include:

- "*Throughout the investigation Ms Higgins has been evasive, uncooperative and manipulative...*" (p. 1 of the Executive Briefing, p. 3 of the PDF), and
- "*Investigators at this juncture have a number of concerns regarding inconsistencies in disclosures and other evidence obtained during the investigation*" (p. 1 of the Minute, p. 22 of the PDF)

Upon review of the annexures and attachment to the executive briefings, these documents do not appear to be independently disclosable. However, the annexures/attachments may be considered disclosable because they form part of the executive briefing.

We recommend that all of the briefing documents (and annexures/attachments) are provided to the DPP (as part of the duty to reveal set out in the disclosure standard) to be considered for disclosure to the accused.

Once provided to the DPP we would be happy to engage with them about whether these documents are disclosable, or whether the primary evidence would be sufficient to satisfy the duty of disclosure.

Legal professional privilege

On page 1 of the Minute it states "*The content of this report should be read in conjunction with the contents of the electronic preliminary brief of evidence for the purposes of a review or legal opinion if deemed necessary*".

To determine whether LPP can be claimed over the briefing documents the 'dominant purpose' test needs to be considered. The dominant purpose test provides that, where a communication is produced or brought into existence with the dominant purpose of using it or its contents to obtain legal advice or to conduct or prepare for litigation, the document will attract LPP. Where the document was made for a dual purpose, the purpose of obtaining the legal advice must dominate the other purpose.

It appears that the briefing was not created for the dominant purpose of obtaining legal advice (as it should only be reviewed by legal if "deemed necessary"). If the briefing would have been created irrespective of an intention to consult AFP Legal or the CDPP, it is unlikely to attract LPP (see *Sparnon & Ors v Apand Pty Ltd & Ors* [1996] 684 FCA 1).

Evidence review documents

You have provided AFP Legal with two documents which appear to review discrepancies between the evidence provided by the complainant and material gathered during the course of the investigation ("Identified discrepancies" and "Review Doc").

We anticipate that you may be concerned with disclosing these documents to the accused, as to do so would essentially provide an overview of the weaknesses in the prosecution's case. However, we again consider that these documents may be prima facie disclosable because their contents could be seen to provide information which runs counter to the prosecution case, might reasonably be expected to assist the accused to advance their defence and undermine the credibility of a material prosecution witness.

Once provided to the DPP we would be happy to engage with them about whether these documents are disclosable, or whether the primary evidence would be sufficient to satisfy the duty of disclosure.

Disclosure Certificate

We have inserted some minor comments into the disclosure certificate. Once the comments are considered and any necessary changes made, we consider that the certificate can be provided to the CDPP.

We trust this advice is of assistance. If you have any questions, please do not hesitate to contact me or Shelley [REDACTED] Deputy General Counsel (Coordinator) Information Law, who has second counselled this advice.

Kind regards

~
James

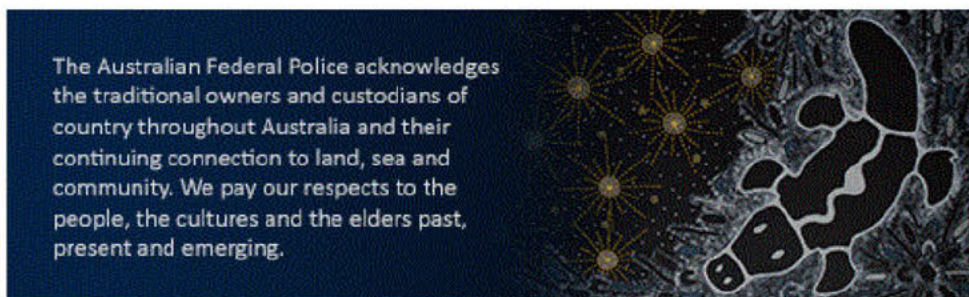
JAMES [REDACTED]
LAWYER (INFORMATION LAW)
CHIEF LEGAL COUNSEL

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From: Frizzell, Emma [REDACTED]
Sent: Saturday, 19 February 2022 6:01 PM
To: [REDACTED] James [REDACTED]
Cc: Hughes, Callum <Callum.Hughes@afp.gov.au>; Madders, Trent [REDACTED]
Subject: RE: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

~
Good afternoon James,

~
I have reviewed the brief of evidence and the investigation teams holdings and have finalised the draft disclosure statement (attached). Could I please request that the document be reviewed and advice provided?

~
In conducting a review of all the investigation teams holdings, I have identified a number of documents that I wish to seek AFP Legal advice on as to whether they remain to be undisclosed holdings or whether they are required to be disclosed, and if so, under which schedule. The documents are as follows:

- ~
- ~ Undisclosed holdings – Spreadsheet containing a list of documents that have not been provided as part of the brief of evidence or within the disclosure statement. I have previously received advice from Adam [REDACTED] (attached to my last correspondence) in regards to documentation such as internal briefing documents and internal investigative documentation ie. investigation plans not generally being disclosable however in a recent meeting with AFP Legal the advice appeared to differ. I am therefore seeking your advice into the specific documents outlined in the spreadsheet;
 - ~ PDF document 'Seeking direction re: Operation COVINA' – Internal Executive Briefing;
 - ~ Identified discrepancies – Internal document identifying discrepancies of evidence obtained; and
 - ~ Review doc – Internal document identifying discrepancies of evidence obtained.

~
I will be on an RDO on Monday and interstate for this matter Tuesday-Thursday. I can be contacted via email or mobile on [REDACTED]

~
Kind regards,
Em

SENIOR CONSTABLE EMMA FRIZZELL
CRIMINAL INVESTIGATIONS - SACAT TEAM 1
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From: Frizzell, Emma
Sent: Wednesday, 16 February 2022 1:24 PM
To: [REDACTED] James [REDACTED]
Cc: Hughes, Callum [REDACTED]
Subject: RE: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

~
 Good afternoon James,

~
 Thank you for touching base. I am currently re-drafting the disclosure statement and hope to provide a copy of this to you over the weekend for review and advice if required. I envisage that there will be a number of queries in relation to some specific internal briefing documents noting that Adam has previously provided generalised advice (attached).

~
 Of note, I intend to submit the disclosure statement to DPP on 28 February 2022.

~
 Kind regards,
 Em

~

SENIOR CONSTABLE EMMA FRIZZELL
 CRIMINAL INVESTIGATIONS - SACAT TEAM 1
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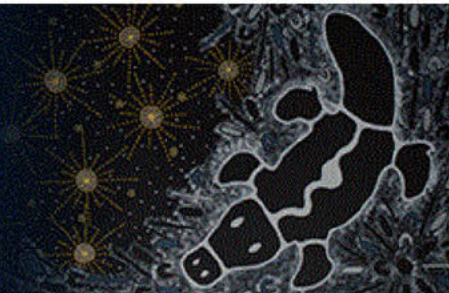
[REDACTED]
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From: [REDACTED] James [REDACTED]
Sent: Wednesday, 16 February 2022 11:57 AM
To: Frizzell, Emma [REDACTED]
Subject: Operation Covina (R v Bruce Lehmann) [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

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Dear Emma

I understand you have been dealing with Hailee [REDACTED] in relation to Op Covina.

I confirm that I will be the point of contact for AFP Legal in relation to this matter going forward.

If you have any questions, please do not hesitate to contact me.

Kind regards

James

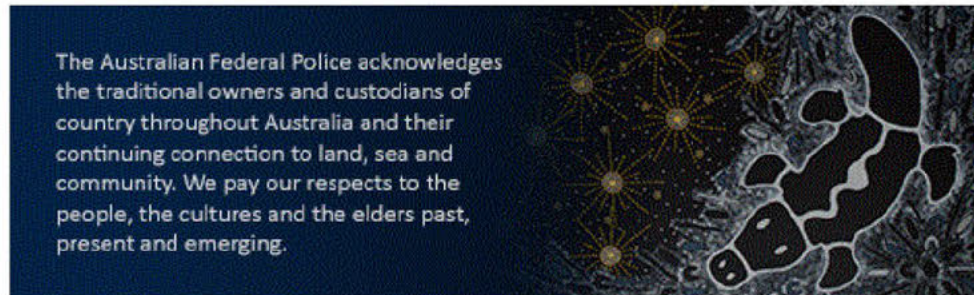
JAMES [REDACTED]
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