

Subpoena 2023/S/0017
Schedule of Questions for Statement
Ms Rachel Fisher
Background and Professional History

1. What is your current occupation?

Solicitor

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

Bachelor of Laws, University of Canberra, 2020

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

Graduate Diploma in Legal Practice, 2020

4. What year were you admitted as a lawyer?

2020

5. Outline your work experience since admission as a lawyer.

*August 2020 – October 2020; Associate to her Honour Magistrate Louise Taylor,
October 2020 – current; Solicitor at Kamy Saeedi Law.*

6. Outline your current occupation, when you commenced in this occupation and the job description for your current occupation (if applicable).

Solicitor.

I commenced with my current employer Kamy Saeedi Law in October 2020.

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

No.

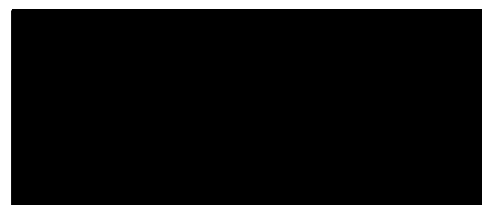
Prior Experience in Sexual Offence Prosecutions

8. State the number (an estimate) of prosecutions related to sex offences as a defence lawyer you have had primary carriage of or assisted with within the ACT jurisdiction to date and the years in which those prosecutions occurred (roughly).

13 matters 2 of which I had primary carriage of (including Lehrmann).

Service of Briefs for a Sexual Assault Matter

9. Outline the usual process of receiving a brief of evidence in relation to a sexual assault matter in the ACT jurisdiction. Provide details as to the general nature of the documents provided (including the categories of documents and what information is redacted) and by whom a brief of evidence is



usually served.

A brief of evidence is uploaded onto the Director of Public Prosecutions SharePoint (or equivalent) network. Our firm gets a notification of its upload and instructions to download it. Occasionally, if something is too voluminous, arrangements are made for a USB or a Hard Drive to be collected from the ODPP reception. Documents vary significantly in briefs of evidence but they include Police Statements, Copies of Police Notebook Entries, Civilian witness statements, CCTV (if applicable), medical/forensic documentation (if applicable), Photographs, Evidence in Chief Interviews (transcripts), Records of Conversation, Records of Interview, Celebrities/Phone Data.

Generally personal information such as addresses, other contact details are redacted along with components of Celebrities/Phone data if they are deemed 'irrelevant' this may include data being outside the dates relevant to the offence, or personal in nature such as intimate images/content.

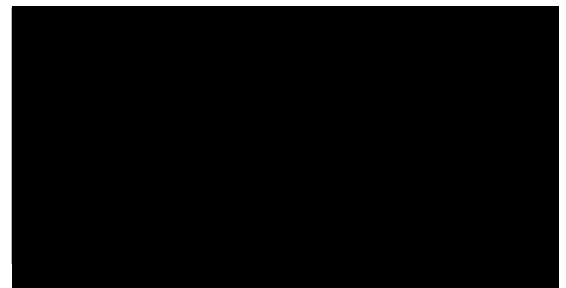
Prior Interactions with Australian Federal Police/ACT Police

10. Describe your relationship generally, and the extent of your dealings (if any), prior to your involvement in *R v Lehrmann*, with the Australian Federal Police (AFP)/ACT Policing officers who were involved in the investigation of Ms Brittany Higgins' allegation of sexual assault against Mr Bruce Lehrmann (**Investigation**), including but not limited to:

- (a) Detective Superintendent Scott Moller;
- (b) Detective Inspector Marcus Boorman;
- (c) Detective Sergeant Gareth Saunders;
- (d) Detective Sergeant Jason McDevitt;
- (e) Detective Sergeant Robert Rose;
- (f) Detective Sergeant David Fleming;
- (g) Detective Inspector Callum Hughes;
- (h) Commander Joanne Cameron;
- (i) Acting Commander Hall O'Meagher;
- (j) Acting Sergeant James Brown;
- (k) Detective Leading Senior Constable Trent Madders; and
- (l) Senior Constable Emma Frizzell.

I do not recall any prior dealings with any of those officers named above. However it is possible that some of them had involvement in other matters in which I had been involved however, dealings with Police are usually limited to reading statements in briefs of evidence, seeing them give evidence at court and occasionally, talking to them via phone when they are executing search warrants or seeking to arrest and or interview clients who have indicated to police that I am their legal representative. In such dealings Police were polite and courteous.

11. Prior to your first involvement in the matter of *R v Lehrmann*, describe your views, if any, in relation to the conduct of the AFP/ACT Policing officers' investigations of sexual assault offences. Include information about the quality of the investigations, and the reasons for your views. Include examples where possible.



Prior to this matter I had not had substantive interactions with police officers in respect of sexual assault offences. My views are based on the nature of the brief material presented and the evidence given in court in earlier matters. I found police to have presented competent briefs of evidence that reflected an investigation of the matter including both exculpatory and inculpatory evidence.

Prior Interactions with ACT ODPP/DPP

12. Describe your relationship generally, and the extent of your dealings (if any), prior to the matter of *R v Lehrmann*, with the ACT Office of the Director of Public Prosecutions (**ODPP**) and/or the Director of Public Prosecutions, Mr Shane Drumgold SC (**DPP**). Provide examples where possible.

I dealt with the ODPP on a daily basis in Court and in relation to the majority of criminal matters with which I work. My relationship with the ODPP was professional and cordial. I did not have any in-depth dealings with the DPP himself prior to this matter. I had also dealt with members of the ODPP in my time as an Associate at the ACT Magistrates Court.

Routine contact with ODPP staff included requesting materials relevant to cases, making representations in relation to disposition of criminal proceedings and/or communicating in respect of the conduct of matters including such things as whether bail is opposed, which witnesses are to be called at a hearing, the particulars of matters and whether there is agreement about documents being tendered in a proceeding and the like.

Prior Interactions with the Victims of Crime Commissioner

13. Prior to the matter of *R v Lehrmann* had you been involved in any sexual offence matters where the ACT Victims of Crime Commissioner (or her staff) had provided services or support to a complainant. If so, provide details of the services and/or support provided and case names.

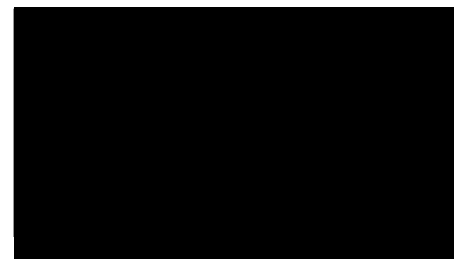
I am not aware whether the Victim of Crime Commissioner or her staff provided services or support to a complainant in any sexual offence matters I have been involved in prior to this matter. I did not have any substantive interaction with the Victim of Crime Commissioner or her staff.

First Involvement in the Matter of R v Lehrmann

14. On what date did you first become engaged as a defence solicitor in the matter of *R v Lehrmann*? Include details of the nature of your engagement and how the engagement came about.

In or around 26 May 2022 I was advised we had accepted the matter by named Partner Kamy Saeedi and that we would be acting for him in relation to the criminal charge.

15. On what date did your law firm receive a brief of evidence in the matter of *R v Lehrmann*? Provide details about who provided the brief of evidence and in what format. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. To the extent those communications were verbal outline the parties to the communications and the effect of the words spoken (the **usual particulars**).



I received the Statement of Facts on 26 May 2022 via email from Mr Lehrmann's previous firm Korn Tlais Defence Lawyers. The email also indicated a Brief of Evidence was being prepared and would be available via Dropbox soon. I believe that the Legal Aid office also obtained a Brief of Evidence on a USB at about this time. The Legal Aid office then provided us with that USB. On 3 June 2022, Erin Priestly of the ODPP sent an email to my paralegal with a link to the Brief of Evidence which was uploaded onto SharePoint; the online file sharing service utilised at that time by the DPP for the disclosure of brief material to defence lawyers. After some back and forth in relation to password protections being applied to some of the documents, we were successfully able to access and collate the Brief of Evidence. The DPP then also provided USB's containing the Brief of Evidence for Counsel as they had been contacted separately by Steven Whybrow and Katrina Musgrove requesting the Brief of Evidence. On 6 June 2022, the DPP requested the USB Legal Aid provided us be returned to the DPP so that they could place additional materials on the USB. It was then returned to our office shortly thereafter.

Pre-trial

Counselling notes

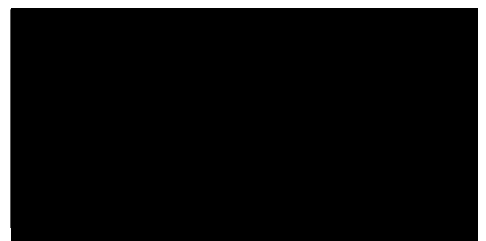
16. At any stage from your first involvement in the matter of *R v Lehrmann* until the discontinuance of the proceedings, outline whether you had any discussions or correspondence with the DPP or ODPP staff regarding Ms Higgins' counselling notes contained in the brief of evidence. Include details of the relevant dates, what was discussed, with whom the discussions took place and your impressions of those discussions. **Attach** copies of relevant communications and documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I had no discussions with the DPP or ODPP staff regarding Ms Higgins' counselling notes.

17. At any stage in your involvement in the matter of *R v Lehrmann* did you become aware that Ms Higgins' counselling notes had been reviewed by the DPP and/or ODPP staff. If so, please provide details of how you became aware, what you became aware of and any steps you took in relation to this awareness. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

On 8 June 2022, Mr Whybrow informed me that he had a conversation with the DPP at the bar table where the DPP stated that Ms Higgins counselling notes had been reviewed by the DPP and/or ODPP staff. I became aware of this via verbal communication with Mr Whybrow outside of Court and he subsequently sent an email appearing as a file note later that morning.

18. Prior to the matter of *R v Lehrmann*, state whether you have been involved in a matter where counselling records of a complainant or accused have been:
(a) listed in the brief of evidence (specifically, as privileged documents); or
(b) reviewed by the Prosecution (whether or not the counselling records were ultimately admitted as evidence). If so, provide details.



I have not previously been involved in a matter where Counselling notes have been listed in a brief of evidence. I am unaware of whether in any prior matter such notes have been reviewed by the Prosecution.

19. The ODPP obtained various statements from AFP/ACT Policing officers in relation to the disclosure of Ms Higgins' counselling records. What was your understanding regarding the purpose/utility of these statements in the context of the trial in the matter of *R v Lehrmann*?

None of the evidence contained in those statements were led in the trial. I understood these statements to be directed at explaining why/how the disclosure had occurred as this material is not something which is ordinarily disclosable without leave of the Court pursuant to provisions of the Evidence (Miscellaneous Provisions) Act.

Disclosure certificate

20. Disclosure certificates were prepared for the matter of *R v Lehrmann* (**Disclosure Certificate**). During your involvement in the matter did it come to your attention that the legal representatives for Mr Lehrmann had been provided two different versions of the Disclosure Certificate? If so, when and how did this come to your attention?

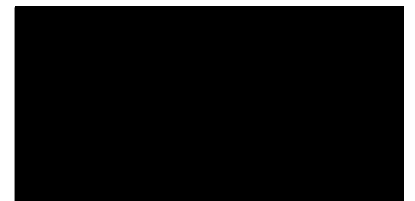
Named partner Kamy Saeedi was provided with paperwork and Brief of Evidence material from Legal Aid when we took the matter over. This included a Disclosure Certificate. It was reviewed and documents of interest in the document were highlighted. When we were provided with the Brief of Evidence by the DPP, it included a Disclosure Certificate which did not match the Disclosure Certificate obtained by Legal Aid. This occurred quite early in my involvement. It prompted me to write to the DPP and request a copy of the 'latest' Disclosure Certificate which was subsequently produced to me by Erin Priestly via email. A copy of that correspondence and the two versions of the Disclosure Certificate is attached.

21. In chronological order outline your actions and interactions with the DPP, ODPP Staff and AFP/ACT Policing officers to clarify the discrepancies in the Disclosure Certificates and to obtain copies of the documents identified on the Disclosure Certificate as "investigative review documents". Include information about:

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

The interactions of the discrepancies in relation to the 'investigative review document' was undertaken through written correspondence with the ODPP staff. This correspondence is attached to my affidavit dated 7 September 2022.

- (g) your impressions of the discussions;
- (h) whether after the communication, you discussed the contents of the communication with any other persons not in attendance;



The content of these communications was discussed with Counsel involved in the matter of R v Lehrmann. The nature and manner of the conversation was reported to Mr Lehrmann.

- (i) what, if anything, the DPP, ODPP and/or AFP/ACT Police said to you about particular documents listed on the Disclosure Certificates (for example whether particular documents were subject to legal professional privilege and the basis for this);
- (j) what, if any, explanation the DPP, ODPP and/or AFP/ACT Police provided for the discrepancies in the Disclosure Certificates; and
- (k) what, if any, explanation was provided for the changes in position in relation to provision of the Investigative Review Documents to the legal representatives for Mr Lehrmann (that is, why the documents could ultimately be disclosed to the legal representatives for Mr Lehrmann despite the ODPP and AFP/ACT Policing previously taking a position that these documents could not be disclosed).

There was no change in position. The ODPP had not disclosed on the basis of legal professional privilege being asserted over the documents. A subpoena was issued by me to the AFP. The AFP produced most of the documents in respect of the subpoena. The details of the items produced were set out in a letter I received. There was no communication by the AFP or ODPP explaining the difference in these positions.

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

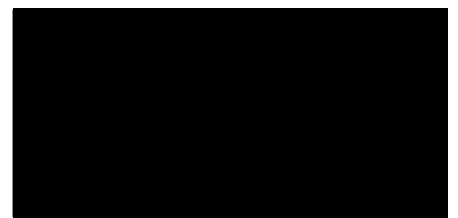
Cellebrite records

22. State the nature of the Cellebrite phone records of the complainant and accused (**Cellebrite Records**) you received in your brief of evidence including the format of the records, whether these records were searchable and whether the records included redactions or were incomplete. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes.

The Cellebrites of both the complainant and Mr Lehrmann were redacted and provided as PDF's. I was able to search Mr Lehrmann's Cellebrite however, I was not able to search the complainant's Cellebrite using the search function of the pdf viewer, the hyperlinks which appeared to be in the document did not function and the complainant's Cellebrite was more heavily redacted than Mr Lehrmann's.

23. To the extent not addressed above, based on your experience, outline the form of Cellebrite Records from witnesses and/or complainants that is usually seen in matters involving allegations of sexual assault, whether the records you received in the matter of *R v Lehrmann* were different to what is usually seen, and if so, how they were different.

Cellebrite records had not previously been relevant or disclosed in matters of sexual assault for which I have been involved. I had understood in those cases this was because records of that type did not provide relevant evidence in those cases.



24. State whether you were involved in any communication with the DPP, ODPP staff or AFP/ACT Policing officers in relation to the disclosure to defence lawyers of parts of the Cellebrite Records that had been redacted/not disclosed to defence lawyers. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of the communications. Include information about:

(a) whether you sought the removal of redactions contained in the Cellebrite Records and upon what basis you sought the removal;

(b) outline any correspondence or discussions with the DPP, ODPP or AFP relating to redactions of Cellebrite Records, including any correspondence which sets out the basis for any redactions made; and

(c) outline arrangements involving a review by an independent counsel of the Cellebrite Records and redactions.

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

My communications in respect of Cellebrite records is outlined in an affidavit dated 7 September 2022. Following that application coming before the Court, Barrister Keegan Lee was instructed by ODPP, and agreement was reached in respect of further disclosure related to the Cellebrite documents and thereafter, a police officer by the name of [REDACTED] facilitated our access in accordance with the agreement.

25. To the extent not addressed in response to the above paragraphs, outline your interactions with the ODPP and/or AFP/ACT Policing relating to the provision of Cellebrite Records by the ODPP to the defence team. Include details as to when text searchable Cellebrite Records were provided by the ODPP to the defence team (if at all).

My recollection is text searchable Cellebrite was provided however I cannot recall the time at which this was provided.

Pre-Trial Dealings with AFP/ACT Policing

26. In chronological order, from the time of your first involvement in the matter of *R v Lehrmann* until the commencement of the trial, to the extent not detailed in response to the above paragraphs, outline the meetings, discussions and/or communications you were involved in, or had, with AFP/ACT Policing officers in relation to the matter. Include information about:

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

(b) the purpose of the meeting/discussion/communication;

(c) where the meeting/discussion/communication took place (i.e in-person, telephone or email);

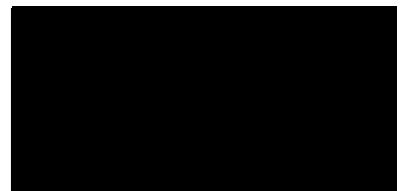
(d) the people in attendance;

(e) if there were dominant speakers, who they were, what they said and the basis of that view;

(f) the nature of the meeting/discussion/communication;

(g) your impressions of the discussions; and

(h) whether you, after the meeting/discussion/communication discussed the contents of the meeting/discussion/communication with any other persons not in attendance.



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

The only substantive interaction with Police prior to the trial was on 29 September 2022 when Steven Whybrow SC and myself attended the Winchester Police Station to watch the complainant's Evidence in Chief Interviews. This was arranged through the ODPP via email. Constable Frizzell met myself and Mr Whybrow and escorted us to an interview room which was set up with a computer. I recall pleasantries being exchanged and Constable Frizzell leaving the room. We watched the two interviews. We then were escorted out of the Police station by Constable Frizzell.

Pre-Trial Conduct of the AFP/ACT Policing Officers

27. Outline your views and experience regarding the conduct of the AFP/ACT Policing officers before the trial of *R v Lehrmann* including:

- (a) in their dealings with the DPP/ODPP;
- (b) in their dealings with defence lawyers; and
- (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

Provide details of the relevant officers' names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

I have no views nor experience concerning the dealings between the DPP or ODPP and the AFP/ACT Policing.

I have found AFP/ACT Police cordial and professional in relation to their dealings with defence lawyers. These dealings were limited.

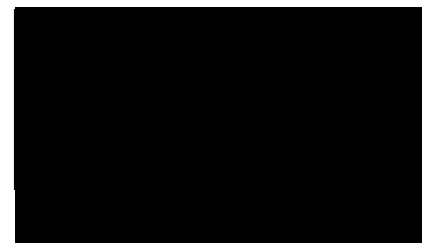
*The only other pre-trial engagement was following the resolution of an application relating to the disclosure of Cellebrite records an officer [REDACTED] who I understand to be otherwise not involved in the *R v Lehrmann* matter was assigned as a point of contact to access and provide Defence with the material. This was arranged via Barrister Keegan Lee who had been instructed on that application by ODPP.*

Pre-Trial Conduct of the DPP/ODPP

28. Outline your views and experience regarding the conduct of the DPP/ODPP staff before the trial of *R v Lehrmann* including:

- (a) in their dealings with the AFP/ACT Policing;

I am aware that ODPP liaised with AFP/ACT Policing in relation to the facilitation of the EICI viewing



as discussed at 26 and 27 above.

(b) in their dealings with defence lawyers; and

Dealings with the DPP/ODPP prior to the trial were almost exclusively via email or letter. The ODPP was being facilitative and helpful in terms of providing the Brief of Evidence and assisting us to access material to get across the case noting my firm had only taken instructions after the matter had already been listed for trial. The only issues related to the disclosure and or provision of the Investigative Review Document and Cellebrite records as discussed above.

(c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

I didn't have any dealings and was not aware of their provision of information to other persons.

Provide details of the relevant ODPP staff names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

The Trial

Arrangements in relation to Mr Lehrmann

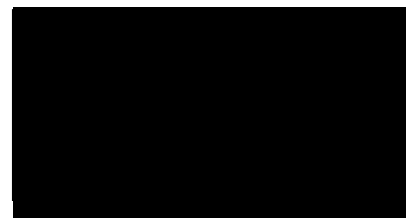
29. State whether there were any special arrangements requested or made in relation to Mr Lehrmann's attendance at court (such as in relation to entering/exiting court, making available particular rooms at the court for Mr Lehrmann etc) and if so, detail any such arrangements. Were such arrangements unusual or uncommon?

There were no special arrangements requested nor made in relation to Mr Lehrmann's attendance at Court. Prior to the trial, we arranged for our client to come to the Supreme Court to view the Court room and be provided with advice as to where he was to sit etc. At that time, we sought one of the Court's public meeting rooms be set aside generally during the course of the trial to ensure there was always a private meeting space without the necessity to return my law firm or Counsel's Chambers noting the high level of media interest outside the Court was anticipated and did eventuate. This media interest made remaining within the Court precincts desirable for our client. In my experience with other trials, it is not uncommon for meeting rooms to be reserved or commandeered for this purpose.

Recording of evidence

30. On what date did you become aware that evidence given by Ms Higgins in court was to be, or was, recorded? Provide details and **attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

The date of the jury discharge, I was on leave interstate. I recall Mr Whybrow SC calling me and advising that the Associate had indicated to him in Court that the complainant's evidence had been



recorded. This was the first time I had heard that the evidence given by the complainant was recorded. I recall Mr Whybrow stating he had made a comment that as the complainant had given evidence in the Court room if there were to be a retrial, she would be required to be recalled. Mr Whybrow then told me he then confirmed with her Honour's Associate that the complainant's evidence was not recorded to which he was advised it was. I recall saying to Mr Whybrow that I did not understand how that could have happened as I wasn't aware of any capacity in which the Court could have recorded the evidence from the witness box in the way it was usually captured in the remote witness rooms. I drew on my own experience as an Associate to her Honour Magistrate Louise Taylor whereby the system recorded the evidence given in Remote Suites. This was arranged and facilitated by the ACT Government Staff associated with the Remote Suites. I was not aware of any capacity for evidence to be recorded in the ACT Magistrates Court if the witness was in the Court room. Having said that, I do not recall any witness who had an entitlement to appear remotely having chosen to appear in person in the Court room during my time as an Associate. My own experiences in respect of a lack of recording of witnesses giving evidence live in court contributed to my surprise when I learnt it had been recorded.

31. After it came to your attention that Ms Higgins' evidence would be/was recorded, outline any discussions or correspondence you had in relation to the recording of Ms Higgins evidence including discussions or correspondence with the court, ODPP or AFP. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

[REDACTED]

Fiona Brown

32. Outline when and how it first came to your attention that Ms Fiona Brown had sent an email and made a telephone call to the ODPP indicating that she perceived there to be misrepresentations in evidence during the trial which she requested be corrected by the ODPP before the court or put to recall her to give evidence on these matters in court (**Fiona Brown Correspondence**).

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

I first became aware of the Fiona Brown email when Mr Whybrow called me on or about 3 December 2022. He advised me that he had learnt that Fiona Brown had sent an email to the ODPP stating she was of the view some of the complainant's evidence which was given following her own evidence being completed was a misrepresentation and that she had evidence which would establish this and requested to be recalled. This prompted me to review my emails to ascertain whether that fact had been disclosed to me by the DPP. Upon completion of that review, I concluded I had not received such a disclosure. On 21 December 2022, Mr Whybrow sent me a forwarded email he received from Fiona Brown which contained her representation to the ODPP sent on 14 October 2022 and another email

[REDACTED]

with a letter sent by her lawyers. That is the first time I had seen Fiona Brown's email of 14 October 2022 to the ODPP. I do not recall ever being informed of/advised in relation to a phone call taking place in relation to the above.

33. Did the DPP or ODPP advise you of the Fiona Brown Correspondence during the trial or at any other time, if so, provide details as to when were you advised, the nature of any correspondence or discussions with the DPP or ODPP staff and your impressions. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Neither the DPP or the ODPP advised me of the Fiona Brown correspondence during the trial, or at any other time nor did I have any discussions with the DPP or ODPP about the Fiona Brown correspondence.

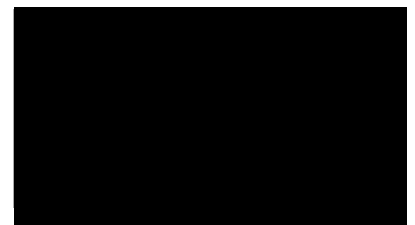
Dealings with AFP/ACT Policing during the trial

34. In chronological order, outline the meetings, discussions and/or communications you were involved in, or had, with AFP/ACT Policing officers in relation to the matter of *R v Lehrmann* during the trial. Include information about: (a) the person who initiated the meeting/discussion/communication; (b) the purpose of the meeting/discussion/communication; (c) where the meeting/discussion/communication took place (i.e. in-person, telephone or email); (d) the people in attendance; (e) if there were dominant speakers, who they were, what they said and the basis of that view; (f) the nature of the meeting/discussion/communication; (g) the material (if any) you were provided in relation to the meeting, discussion or communication; and (h) your impressions of the discussions; and (i) whether you, after the meeting/discussion/communication discussed the contents of the meeting/discussion/communication with any other persons not in attendance.

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

I was only involved in two meetings/discussions with AFP/ACT Policing during the trial. Both concerned witness proofing. The first was with Constable Frizzell and the second was with Peter Reid.

In respect of Constable Frizzell, the conference was conducted in a meeting room at Kamy Saeedi Law offices, Level 1, 1 University Avenue Canberra City. In attendance was Constable Frizzell and Steven Whybrow SC. Constable Frizzell was accompanied by another female Police Officer, I do not recall her name. The other officer was not a witness in the trial. The dominant speakers were Steven Whybrow SC and Constable Frizzell. Mr Whybrow asked her a number of questions in relation to matters canvassed in her statement and Frizzell answered those questions. The meeting proceeded as a normal witness proofing in question-and-answer format. Frizzell answered the questions as if she was in the witness box that is, she gave concise and very direct answers to the questions that were asked and I remember recalling that she appeared to expressly limit her answer to the question that was asked. I took a file note of this meeting [over which a claim of privilege is maintained]. Following the



meeting, contents of the discussion were communicated to junior Counsel, Katrina Musgrove, Ben Julienne and in a summary form to Mr Lehrmann. I cannot recall how this meeting was initiated.

In respect of Peter [REDACTED], there was a telephone communication. The phone call was made from our meeting room on speaker phone. I am not aware of where Constable [REDACTED] was when he took the phone call, nor who he was with. The dominant speakers were Steven Whybrow SC and Constable [REDACTED]. Constable [REDACTED] was an expert witness to be called by the Crown in respect of phone extractions specifically the Cellebrite reports produced. The question and answers were technical in nature and focused upon the presence or lack thereof of data that was of interest to defence and the processes or procedures utilised upon which his expert opinions were based. Following the meeting, Mr [REDACTED] sent an email with some further information as a result of our proofing/enquiry. Attached is a copy of that email.

Conduct of the AFP/ACT Police at the trial of R v Lehrmann

35. Outline your views and experience of the conduct of AFP/ACT Police officers during the trial of R v Lehrmann including:

(a) in their dealings with the ODPP;

I am not aware of the dealings the AFP had with the ODPP. During the course of the trial, I saw a number of police officers talk to the DPP and ODPP both inside and outside the Court room. I was not party to those conversations and was not aware of the content of those conversations.

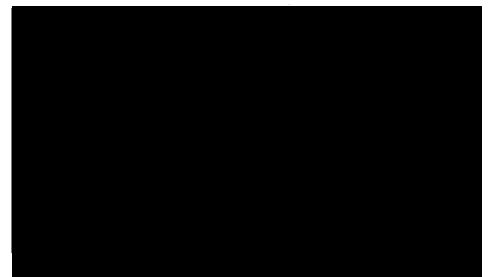
(b) in their dealings with defence lawyers;

I had limited interactions but specific dealings with Constable Frizzell and Constable [REDACTED] as described above. I saw multiple Police officers both inside and outside the Court. I do not recall any specific interactions with any police officers beyond the exchange of pleasantries around the Court precinct. As a result of these limited interactions, I hold no particular view in respect of their conduct.

(c) in their provision of information to any persons in relation to the matter of R v Lehrmann.

Aside from the emails arising from the proofing of [REDACTED], I did not receive any information from any police in respect of R v Lehrmann. There were issues raised in the course of the trial about lack of disclosure of specific material to defence [see my answers at 20-22]. It was not apparent to me whether that was a result of the AFP/ACT Police or the ODPP. Copies of correspondence in relation to disclosure issues are dealt with in other parts of this statement.

Provide details of the relevant AFP/ACT Police officer names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.



Conduct of the DPP/ODPP at the trial of R v Lehrmann

36. Outline your views and experience of the conduct of the DPP/ODPP staff during the trial of R v Lehrmann including:

(a) in their dealings with the AFP/ACT Policing;

I am not aware of the dealings the AFP had with the ODPP. During the course of the trial, I saw a number of police officers talk to the DPP and ODPP both inside and outside the Court room. I was not party to those conversations and was not aware of the content of those conversations.

(b) in their dealings with defence lawyers; and

I had extensive communication with ODPP staff, some of which was with the DPP. However, the majority of my engagement was with junior Counsel or instructors. The DPP was copied into some but not all of this correspondence. All of that correspondence is attached. Beyond the written correspondence, I also communicated with all of the ODPP staff who attended the trial including the DPP. The staff included Erin Priestly, Skye Jerome, Sarah Pitney, Mitchell Grieg and Shane Drumgold SC. Some exchanges involved simple pleasantries while other communications were related to the mechanics of the trial such as anticipated timing for the calling of witnesses and the like, and other communications were confirmatory on information being provided or when that might be expected. During the trial, the communication was mostly polite and professional. There were the occasional barbs exchanged between adversaries at the bar table.

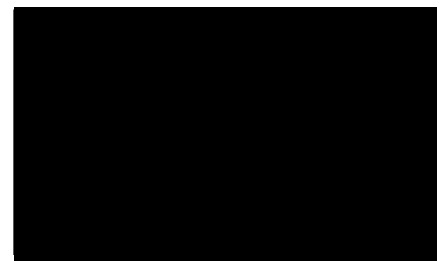
(c) in their provision of information to any persons in relation to the matter of R v Lehrmann.

Provide details of the relevant ODPP staff names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

The lack of provision of the material from the complainant's Cellebrite and the 'Investigative Review Document' which was the subject of correspondence and applications to the Court, was regrettable.

I am aware that the DPP sought to assert privilege of the investigative document and that was the explanation given for it not being provided. In respect of the Cellebrite, I understood the explanation of non-disclosure to be based on privacy. I am not aware whether those privacy concerns were raised by the ODPP and/or the AFP or by others.

I am of the view that there should have been full disclosure of the decision to record the complainant's evidence at the time of the decision and before the evidence was recorded by those who made that decision. It is still not clear to me whether the Director or ODPP was aware that the complainant's evidence was being recorded live in the court room.



37. Mr Drumgold made the following comment in court during the trial:

"Your Honour, there is nothing in the legislation – I accept a complaint about repetitive questioning, but there is nothing in the legislation that says that when a question is asked in an EICI that I can't elaborate on that question, and that's precisely what I'm doing. To do such would be to say that the evidence-in-chief, the quality of the evidence-in-chief is determined by the skillsets of those police officers asking questions in an EICI, which in this case was not high."

What is your understanding as to the basis of this comment and did you have discussions with police officers regarding this comment? **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

The first proposition that there is no legislative limitation was a restatement of the law. The second portion of the sentence was an opinion expressed by the DPP about the police officers conducting the EICI. I do not know on what basis upon which he formed the opinion. I did not have any discussion with any police officer regarding that comment.

Discharge of the Jury and the Retrial

Discharge of jury

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

At this time, I was on leave [REDACTED]. On the evening of 26 October 2022, I received a call from Steven Whybrow SC to advise me that the jury was going to be discharged on the basis of juror misconduct. He advised me that material was found in the jury room which was not in evidence. Steven Whybrow said that this information was not to be disclosed and that it was going to be announced the following morning. I then spoke to Mr Lehrmann for some time on a phone call following my conversation with Mr Whybrow in relation to the jury discharge and misconduct.

[REDACTED]

39. Outline when and how you became aware that any persons, apart from the DPP and the legal representatives for Mr Lehrmann, had become aware of the circumstances giving rise to and/or the decision to discharge the jury. **Attach** copies of relevant communications or documents including but

[REDACTED]

not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I have no knowledge in relation to any persons, apart from the DPP and legal representatives for my client becoming aware of the circumstances giving rise to/and or the decision to discharge the jury.

Correspondence with DPP regarding Higgins statements and posts

40. Provide details in relation to any concerns, raised by Mr Lehrmann's legal representatives with the DPP/ODPP, regarding public statements and/or online posts made by Ms Higgins during the trial and/or after the announcement of the mistrial. Include details of any conversations or correspondence where these concerns were raised (including the 14 November 2022 letter sent by yourself to the DPP) and any response from/subsequent communications with, the DPP/ODPP in relation to the raising of any such concerns.

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

On 17 October 2022, there was an Instagram story posted by the complainant and reported upon by Sky News. This was raised with the DPP by Mr Steven Whybrow SC. This prompted the Director to email Sky News and request the article be removed. That email is attached.

On 27 October 2022, I was cc'd into an email sent by Mr Whybrow to the AFP making a complaint against the complainant regarding the public statement she made after the announcement of the mistrial.

[REDACTED]

Retrial

41. Outline any discussions or correspondence you had, with the DPP/ODPP staff or AFP/Act Policing, regarding the relisting of the trial following the discharge of the jury, including discussions or correspondence in relation to the DPP's decision to proceed with a retrial. If you have had any such discussions provide dates and details in relation to these discussions.

Attach copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

[REDACTED]

Bail

[REDACTED]

42. Outline any discussions you had with the AFP/ACT Policing, DPP or OPDD regarding bail conditions for Mr Lehrmann following the listing of the matter for retrial. Detail:

- (a) the person who initiated the meeting/discussion/communication;
- (b) the purpose of the meeting/discussion/communication;
- (c) where the meeting/discussion/communication took place (i.e. in-person, telephone or email);
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, what they said and the basis of that view;
- (f) the nature of the meeting/discussion/communication;
- (g) your impressions of the discussions;
- (h) whether you, after the meeting/discussion/communication discussed the contents of the meeting/discussion/communication with any other persons not in attendance; and
- (i) whether you consider it appropriate or unusual to have such discussions directly with the AFP/ACT Policing officers and why.

Attach copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, calendar invites/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I had no such discussions nor was I present when any such discussion was had. I was on leave during this time and therefore was not party to any discussion regarding Mr Lehrmann's bail conditions.

43. Outline your understanding of the basis for the bail conditions for Mr Lehrmann sought by the ODPP, your views as to the need for/appropriateness of the bail conditions sought by the ODPP and the basis of those views. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, calendar invites/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

As I was not party to these discussions, I had no awareness of the bail conditions or basis for them as sought by the ODPP at that time.

Discontinuance

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

I had no involvement in relation to the DPP's decision to discontinue the criminal proceedings against Mr Lehrmann.

[REDACTED]

[REDACTED]

[REDACTED]

45. Outline whether you had any discussions or correspondence with the ODDP/DPP regarding the discontinuance prior to the announcement of the decision to discontinue the criminal proceedings against Mr Lehrmann. If so, include information about:

- (a) the person who initiated the discussion;
- (b) the purpose of the discussion;
- (c) where the discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were and what they said;
- (f) the nature of the discussions;
- (g) your impressions of the discussions; and
- (h) whether you, after the discussion discussed the contents of the discussion with any other persons not in attendance.

Attach copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, calendar invites/appointments, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

On 1 December 2022, I attended a meeting in the ACT Supreme Court in a Boardroom located adjacent to the Judge's Chambers. This meeting was attended by myself, the DPP, Skye Jerome, Mr Whybrow SC and Chief Justice McCallum and her Associates. This meeting was the forum at which we were advised of the DPP's decision to discontinue the proceedings. The meeting was organised at the instigation by the DPP. The DPP was the dominant speaker. The nature of the discussion was the basis upon which the DPP stated he had made the decision to discontinue the prosecution and how he intended to announce it. It was a sombre meeting/discussion. Following the meeting, I discussed it with Mr Whybrow SC. I then discussed the content of the meeting with colleagues at Kamy Saeedi Law upon my return to my office. I called Mr Lehrmann to advise him of the decision and what the DPP had said about how he intended to announce his decision.

46. To the extent not addressed above, provide details in relation to any discussions or concerns raised by Mr Lehrmann's legal representatives with the DPP/ODPP regarding a public statement by the DPP in relation to the discontinuance. Include details of any conversations or correspondence in relation to the public statement and any response from/subsequent communications with, the DPP/ODPP in relation to the raising of any such concerns.

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

At the meeting on 1 December 2022, Mr Whybrow SC raised a concern in relation to wanting to discuss how the Director was going to announce the discontinuance. Following our meeting, due to

[REDACTED]

media reporting which appeared to pre-empt the Director's announcement and outlined the reasons for doing so, I sent an email to the Director expressing such concerns in relation to this public statement. I attach a copy of that email. There was no further communication to which I was a party in respect of this.

Dealings with AFP/ACT Policing post trial

47. In chronological order, from the time the jury was discharged until the date of this subpoena, outline the meetings, discussions and or communications you were involved in, or had, with AFP officers in relation to the matter of *R v Lehrmann*. Include information about: (a) the person who initiated the meeting/discussion; (b) the purpose of the meeting/discussion; (c) where the meeting/discussion took place; (d) the people in attendance; (e) the nature of the meeting/discussion/communication; (f) your impressions of the discussions; and (g) whether you, after the meeting/discussion/communication discussed the contents of the meeting/discussion/communication with any other persons not in attendance.

Attach copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

I had no such meetings, discussions or communications with AFP officers post the trial.

Post-Trial Conduct of the AFP/ACT Policing Officers

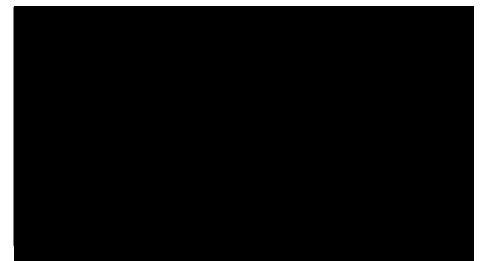
48. Outline your views and experience regarding the conduct of the AFP/ACT Policing officers after the announcement of mistrial in the matter of *R v Lehrmann* including: (a) in their dealings with the DPP/ODPP; (b) in their dealings with defence lawyers; and (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

Provide details of the relevant officers' names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

I had no dealings with them, nor was I aware of their dealings with the DPP/ODPP in that time period.

Post-Trial Conduct of the DPP/ODPP

49. Outline your views and experience regarding the conduct of the DPP/ODPP staff after the announcement of mistrial in the matter of *R v Lehrmann* including: (a) in their dealings with the AFP/ACT Policing; (b) in their dealings with defence lawyers; and



(c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*. Provide details of the relevant ODPP staff names, the basis for your views and provide examples, where appropriate. **Attach** copies of relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

I was not aware of their dealings with the AFP/ACT Policing other than that which has been reported in the media and in government statements relating to the establishment of this Board of Inquiry. I had concerns that was raised in correspondence with DPP/ODPP in respect of disclosure of material at the time in which a retrial was being contemplated. As stated above, these communications are contained within my affidavit of 21 November 2022.

In the circumstances where the DPP had determined to discontinue the proceedings, I accept the approach to the Court and defence representatives to notify this decision before it was publicised was appropriate. However, statements made within the DPP's statement to the media announcing the discontinuance were concerning to the extent that they went beyond the decision to discontinue and expressed views about the strength and nature of the case against Mr Lehrmann to which he would now no longer be afforded a legal ability to defend.

Following the meeting with the Chief Justice, and other than receiving the formal notice not to prosecute, I had no further dealings with the DPP or ODPP in relation to this matter.

Conduct of the AFP and ODDP/DPP during matter generally

Conduct of the AFP / ACT Policing Officers

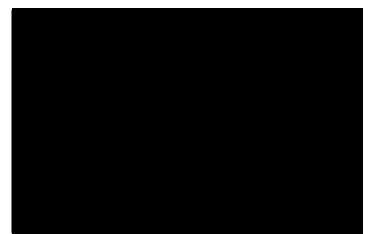
50. To the extent not already addressed in response to the above paragraphs, outline any concerns you have regarding the conduct of the AFP/ACT Police in relation to the Investigation and/or prosecution of the matter of *R v Lehrmann* including:

- (a) in their dealings with the DPP in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann;
- (b) in their dealings with you and previous legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
- (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*; and
- (d) any instances where you believe that conduct of AFP officers may have been improper or in breach of their duties (provide examples where possible).

Any concerns I have, have already been outlined in this statement.

Provide details of the relevant officers' names, the basis for your views and any instances where you raised any such concerns with the AFP/ACT Police or DPP/ODPP. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

51. Describe your relationship generally, both during the trial and after the trial, with those ACT Policing officers involved in the Investigation and/or the prosecution of the matter of *R v Lehrmann* including but not limited to those officers listed at paragraph 10.



There is no relationship with those ACT Policing officers involved in the Lehrmann matter other than those described elsewhere in this statement and having read witness statements from some of them or seen them give evidence at court in respect of other clients matters.

52. To the extent not addressed above, since your first involvement in the matter did the DPP or ODPP staff raise with you any concerns they had regarding the conduct of police in the matter of *R v Lehrmann*? If so, provide details including when this occurred, what these concerns were, your response (if any) and any views you had in relation to these concerns. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

No.

Conduct of the DPP and ODPP

53. To the extent not already addressed in response to the above paragraphs, outline any concerns you have regarding the conduct of the DPP or ODPP staff during the course of the matter of *R v Lehrmann* including:

- (a) in their dealings with the AFP/ACT Policing;
- (b) in their dealings with you and previous legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
- (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*; and
- (d) any instances where you believe that conduct of the DPP and/or ODPP staff may have been improper or in breach of their duties (provide examples where possible).

Provide details of the relevant staff members' names, the basis for your views and any instances where you raised any such concerns with the DPP or ODPP staff and/or AFP/ACT Policing. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

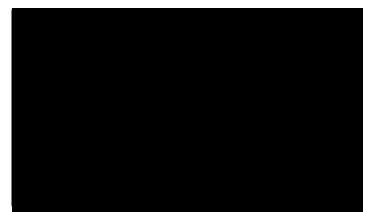
Any concerns I have, have already been outlined in this statement.

Media

54. Outline your interactions (if any) with the media in relation to the matter of *R v Lehrmann*.

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

During the course of the trial, I observed a large number of media both inside and outside the Court room. My client, his other legal representatives and myself were routinely filmed and photographed coming to and from the Court throughout the trial. However, I had no substantive interaction with the media in relation to the matter. I may have exchanged pleasantries with some members of the media around the court room. The only substantive interaction I had with the media was a request from Elizabeth Byrne at the ABC for a copy of a letter that Ms Byrne indicated Janet Albrechsten of



the Australian had reported had been sent by Mr Lehrmann to the ACT Bar Association. I forwarded her request to Mr Lehrmann, together with her email address, and had no further involvement.

Victims of Crime Commissioner

55. Outline your interactions (if any) with the Victims of Crime Commissioner (VCC) or her staff in relation to the matter of *R v Lehrmann*.

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

Other than on one occasion to confirm Ms Yates had instructions to accept service of a subpoena issued to Ms Higgins prior to the trial, I had no interaction with the VCC or her staff in relation to this matter. A copy of those emails back and forth are attached.

56. To the extent not already addressed in response to the above paragraphs, outline any concerns you have regarding the conduct of the VCC or her staff during the course of the matter of *R v Lehrmann* including:

- (a) in their dealings with the AFP/ACT Policing;
- (b) in their dealings with the DPP/ODPP;
- (c) in their dealings with you and previous legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
- (d) in their provision of information to any persons in relation to the matter of *R v Lehrmann*; and
- (e) any instances where you believe that conduct of the VCC or her staff may have been improper or in breach of their duties (provide examples where possible).

Provide details of the relevant staff members' names, the basis for your views, any instances where you raised any such concerns and to whom you raised those concerns with. **Attach** copies of any relevant communications or documents including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I had no concerns with the VCC or her staff's conduct in relation to the trial so far as I was aware of it which extended only to what I saw reported in the media and saw by way of her attendance at Court as a support person. However, I was concerned about the appropriateness of her standing next to the complainant when the complainant read out a preprepared statement in respect of the conduct of the trial in circumstances where that statement which was critical of the ACT justice system including cornerstones of it such as a defendant's right to silence. My concern related to her presence whilst that statement being read, amounting to, or being perceived to be an endorsement of the views expressed therein.

Documents

[REDACTED]

[REDACTED]

[REDACTED]

Board of Inquiry

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

There are no further matters I wish to raise.

I solemnly and sincerely declare and affirm that the answers to all questions within this statement are true

[REDACTED]

Witness:

[REDACTED]

MICHAEL KUKULIES-SMITH

DATE *5 May 2023*

Michael Walter Kukulies-Smith
Solicitor
Kamy Saeedi Law
1 University Avenue
Canberra ACT 2601