

Subpoena Number: 2023 / 05

Section 26(1)(b) of the *Inquiries Act 1991*

## SUBPOENA TO PRODUCE DOCUMENTS

To: The Proper Officer  
Of: ACT Policing Headquarters  
Winchester Police Centre  
72 College Street  
BELCONNEN ACT 2617

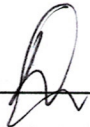
Pursuant to s 26(1)(b) of the *Inquiries Act 1991*, I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)<sup>1</sup> dated 1 February 2023 require you to produce this subpoena or a copy of it and the documents or things stated in the schedule to:

Solicitor Assisting  
[BOI.notices@inquiry.act.gov.au](mailto:BOI.notices@inquiry.act.gov.au)

on or before **13 February 2023** at 4:00pm AEST.

**Failure to comply with this subpoena without lawful excuse is a Contempt of Board and you may be dealt with accordingly.**

Date: 6 February 2023



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Walter Sofronoff KC  
**Chairperson**  
Board of Inquiry

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<sup>1</sup> The terms of reference of the Board of Inquiry, contained in NI2023-49 dated 1 February 2023 are set out as Annexure A to this subpoena.

## Schedule

The documents and things you must produce are as follows:

1. The full brief of evidence relating to the complaint by Ms Brittney Higgins concerning Mr Bruce Lehrmann / the matter of *R v Lehrmann*, including but not limited to all:
  - (a) exhibits;
  - (b) statements;
  - (c) recordings;
  - (d) diary notes;
  - (e) police logs;
  - (f) extracts from the electronic case management system (such as PROMIS or any successor);
  - (g) CCTV footage; and
  - (h) police summaries.
  
2. An exact copy of the brief of evidence provided by the Australian Federal Police (**AFP**) to the Australian Capital Territory Office of the Director of Public Prosecutions (**ODPP**) on 21 June 2021, including any accompanying correspondence and file notes.
  
3. To the extent not covered by [1] and [2] above, any documents relating to the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann, including but not limited to:
  - (a) statements;
  - (b) recordings;
  - (c) diary notes;
  - (d) police logs;
  - (e) extracts from the electronic case management system (such as PROMIS or any successor);
  - (f) CCTV footage;
  - (g) police summaries;
  - (h) statement of facts;
  - (i) any documents and / or diary notes recording communications with:
    - (i) the ODPP;
    - (ii) Mr Bruce Lehrmann and / or his legal representatives; and
    - (iii) Ms Brittany Higgins and / or her legal representatives;
  - (j) CCTV footage; and
  - (k) police summaries.

4. Any documents relating to a request by Ms Brittany Higgins for an internal investigation into the decision of the AFP to share evidence with the legal representatives for Mr Bruce Lehrmann including, but not limited to documents:
  - (a) relating to the conduct of the internal investigation; and
  - (b) recording the outcome of the internal investigation.
5. The letter from the Australian Capital Territory Director of Public Prosecutions (**DPP**), Mr Shane Drumgold SC to the Australian Capital Territory Police Chief Police Officer, Mr Neil Gaughan dated 1 November 2022.
6. Any documents relating to the investigation by the Australian Commission for Law Enforcement Integrity into the conduct of the investigation by the AFP of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann.
7. To the extent not covered by [6] above, any documents relating to a professional standards investigation arising out of the investigation by the AFP of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann.
8. Any documents relating to the complaint by the AFP to, and the investigation by, the Australian Capital Territory Ombudsman relating to the possibility of freedom of information breaches by the ODPP / DPP in relation to the matter of *R v Lehrmann*.
9. Any operational procedures, manuals, policies, toolkits and / or procedures (**AFP procedure documents**) relating to the investigation of sexual offences.
10. The index of the AFP procedure documents.

## Notes

### Informal service

1. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the subpoena and its requirements.

### Where the addressee is a corporation or agency

2. If this subpoena is addressed to a corporation or agency, the corporation or agency must comply with the subpoena by its appropriate person or proper officer.

### Production to occur electronically

3. To comply with this subpoena, you must produce the documents described in the Schedule by sending an email to [BOI.notices@inquiry.act.gov.au](mailto:BOI.notices@inquiry.act.gov.au) unless otherwise required.

Please specify the reference number of the subpoena in the subject line of the email to the email address set out above.

The process of transferring data will be agreed between Ms Jessica Lauc, Solicitor Assisting and you. Queries regarding this production process should be directed in the first instance to [BOI.notices@inquiry.act.gov.au](mailto:BOI.notices@inquiry.act.gov.au).

### Production of things

4. You may comply with this subpoena by delivering or posting things sought by the subpoena which are unable to be produced in electronic form to the address specified in this subpoena.

### Indexed production

5. If the subpoena requires the production of more than one document or thing:
  - the production must be accompanied by an index identifying which document or thing relates to which subparagraph of the Schedule; and
  - to the extent possible, where documents are produced electronically, they should be contained in an electronic folder or equivalent that allows identification of which document relates to which subparagraph of the Schedule.

### Objections

6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry

about your objection and the grounds of your objection either orally on the return date for this subpoena or in writing before or after the return date.

### **Production of copy instead of original**

7. If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
8. The copy of the document may be—
  - (a) a photocopy; or
  - (b) in PDF format; or
  - (c) in any other electronic form that the issuing party has indicated will be acceptable.

### **Contempt of Board of Inquiry**

9. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
10. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
11. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

### **Protections**

12. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).
13. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

**ANNEXURE A**  
**Terms of Reference**

1. The Board will inquire into:
  - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
    - (i) in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
    - (ii) in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
    - (iii) in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
    - (iv) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
  - (b) If any police officers so acted, their reasons and motives for their actions.
  - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann.
  - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
  - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
  - (f) Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *R v Lehrmann*.
  - (g) Any matter reasonably incidental to any of the above matters.
2. The Board will report to the Chief Minister by 30 June 2023.