

Subpoena Number: 2023 / 24

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

SUBPOENA TO PRODUCE DOCUMENTS

To: The Proper Officer

Of: Australian Federal Police
C/- Mr Tony Giugni
Australian Government Solicitor
Level 5, 4 National Circuit
Barton ACT 2600

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)¹ 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

on or before **27 March 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: 20 March 2023



Walter Sofronoff KC
Chairperson
Board of Inquiry

¹ 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. any audio recordings and/or transcript of audio recordings and/or records of a telephone call made by Mr Steven Whybrow to Detective Superintendent Scott Moller via the Australian Federal Police or Australian Capital Territory Police non-emergency police telephone number on or around 11:50am on 13 September 2022.
2. a copy of any Australian Federal Police (**AFP**)/ACT Policing documents, doctrines, guidelines, policies, procedures and/or governance material relating to:
 - (a) the duties and responsibilities of the officers in SACAT;
 - (b) the duties and responsibilities of the officers in Criminal Investigations;
 - (c) the duties and responsibilities of the Criminal Investigations Reception Officer with respect to sexual assault complaints;
 - (d) communication and / or dealing with sexual assault complainants; and
 - (e) obtaining independent legal advice for the AFP/ACT Policing in relation to laying charges.
3. to the extent not covered by [2] above, a copy of any AFP/ACT Policing documents, doctrines, guidelines, policies, procedures and/or governance material relating to sexual assault investigations, including but not limited to the:
 - (a) AFP Investigations Doctrine;
 - (b) AFP Investigations Standards and Practices Group Background;
 - (c) AFP National Guide on Property and Exhibits;
 - (d) Investigation Standards and Practices;
 - (e) Standard Operating Procedures, including but not limited to for:
 - i. interviewing vulnerable witnesses;
 - ii. victims of crime;
 - iii. referrals to the family violent orders liaison officer;
 - iv. crime scene management;
 - v. drink spiking response and investigation; and
 - vi. crime scene management
 - (f) Better Practice Guides, including but not limited to on:
 - i. evidence in chief interviewing; and
 - ii. victims rights.
 - (g) Handbooks/Plans relevant to Sexual Assault and Child Abuse Team (**SACAT**);
 - (h) Handbooks/Plans relevant to the Criminal Investigations division; and

- (i) Operational forms, including but not limited to the:
 - i. ACT intermediary program – police referral form;
 - ii. ACT intermediary program – consent form (self-consent); and
 - iii. Wraparound referral.
4. a copy of any AFP/ACT Policing documents, including doctrines, guidelines, policies, procedures, handbooks/plans and/or governance material, relating to the threshold to charge.
5. a complete copy of the Investigators toolkits 1 - 4, including a screenshot of the topics covered and accompanying videos/transcripts of videos.
6. a copy of any documents and/or manuals from the Australian Federal Police College relating to training, courses, programs and/or education material in relation to investigations generally and sexual assault investigations, including but not limited to:
 - (a) the Detective training program;
 - (b) the SACAT training program as at February 2021;
 - (c) the SACAT training program as at the date of this subpoena;
 - (d) the Interviewing Vulnerable Witnesses training program; and
 - (e) the SIO training program.
7. to the extent not covered by [6] above, any documents relating to the planning and/or decision to introduce, amend or discontinue any training, courses, programs and/or education material listed at [6](a) – (e) above.
8. a copy of any training, courses, programs and/or education material provided by services external to the AFP/ACT Policing related to conducting sexual assault investigations and/or dealing with sexual assault complainants, including but not limited to from the:
 - (a) Office of the Director of Public Prosecutions;
 - (b) Victims of Crime Commissioner/Victim Support ACT; and
 - (c) Canberra Rape Crisis Centre.
9. a complete copy of the AFP/ACT Policing training records (including workbooks) for the following officers as at the date of this subpoena:
 - (a) Mr Scott Moller;
 - (b) Mr Marcus Boorman;
 - (c) Mr Gareth Saunders;
 - (d) Mr Jason McDevitt;

- (e) Mr David Fleming;
 - (f) Mr Trent Madders;
 - (g) Ms Emma Frizzell;
 - (h) Mr Robert Rose;
 - (i) Mr Callum Hughes;
 - (j) Mr James Brown;
 - (k) Ms Kirsten Zeller;
 - (l) Mr David Fleming
 - (m) Mr Hall O’Meagher;
 - (n) Ms Sarah Harman;
 - (o) Ms Kristy Anderson;
 - (p) Mr Heath Langlands and
 - (q) Ms Lauren Gillilands.
10. a copy of the AFP/ACT Policing organisational chart, including a breakdown of the organisational structure of the SACAT and Criminal Investigations divisions as at:
- (a) February 2021; and
 - (b) the date of the subpoena.
11. a copy of any material received or provided by the Sensitive Investigation Oversight Board (**SIOB**) relating to the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann and/or the matter of *R v Lehrmann*, including but not limited to:
- (a) any documents/briefing material, including a copy of the:
 - i. full report prepared by Mr Scott Moller on 7 June 2021 with the subject ‘Seeking direction re Operation COVINA’ with the DCPO-R’s ‘Final Approval’ comments;
 - ii. Executive Briefing by Mr Gareth Saunders on 8 February 2021 with the subject ‘Alleged Sexual Assault PROMIS 6381473’; and
 - iii. Sensitive Investigation Brief to the SIOB by Mr Gareth Saunders dated 9 February 2021 titled ‘Topic: PROMIS 6381473’;
 - (b) any communications within the SIOB, including but not limited to correspondence, emails, text messages, file notes and diary notes; and
 - (c) any communications to and from the SIOB, including but not limited to correspondence, emails, text messages, file notes and diary notes.
12. a copy of any documents relating to any investigative reviews conducted by the AFP/ACT Policing arising from the investigation of Ms Higgins’ complaint concerning Mr Lehrmann from 2019 to the date of this subpoena, including but not limited to a full

final report of each investigative review.

13. a copy of any documents relating to the review conducted by Mr David Fleming in 2021 and any accompanying documents produced pertaining to the workload and staffing of SACAT.
14. a copy of any Executive Briefings and/or material completed from 2021 to the date of this subpoena by the Project Officer for Sexual Offences and Child Abuse relating to sexual assault investigations, including but not limited to the:
 - (a) full final reports of each briefing/review; and
 - (b) the data relating to the tranches currently being considered for reinvestigation arising from recommendation 15 of the 'Listen. Take action to prevent, believe and heal' report by the Steering Committee in December 2021 and any accompanying briefings and/or material.
15. a copy of the following correspondence:
 - (a) email dated 4 November 2021 at 11:09am from Detective Sergeant Michael Woodburn inviting all SACAT officers to a full day meeting with Ms Skye Jerome and Mr Andrew Chatterton to be held on 24 November 2021;
 - (b) email dated 23 February 2022 from Inspector Callum Hughes advising of a retraction to the views of the DPP in relation to the full day meeting held on or about 24 November 2021; and
 - (c) email/letter dated 31 August 2021 from Senior Constable Paul Calatzis to Commander Joanne Cameron titled 'Resource Issues Criminal Investigations from the SOCA team'.
16. a copy of any Executive Briefings and/or material prepared for AFP Commissioner Reece Kershaw in relation to his attendance at Senate Estimates in 2021 regarding the investigation of Ms Higgins' complaint concerning Mr Lehrmann.
17. a copy of the 'Fuller review' signed by AFP Commissioner Reece Kershaw on 17 March 2023.

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 comply with Document Management Protocol

3. Production of documents must be in accordance with the Document Management Protocol enclosed with this subpoena.

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.

Objections

5. 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

6. 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.
7. The copy of the document may be—
 - (a) in PDF format; or
 - (b) in any other electronic form that the issuing party has indicated will be acceptable.

Contempt of Board of Inquiry

8. 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**)).
9. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
10. 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

11. 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)).
12. 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.