

Leaked inquiry report into aborted Australian #MeToo trial deepens legal crisis

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The leaking of the report from the Australian Capital Territory (ACT) Board of Inquiry into the Criminal Justice System held to investigate the conduct of one of the most highly publicised #MeToo rape trials in Australia has intensified, rather than ameliorated, the crisis surrounding the case.

The trial under review was the prosecution of former Liberal government staffer Bruce Lehrmann following allegations of rape by his then work colleague Brittany Higgins. The crisis surrounding the trial and subsequent inquiry, conducted by Justice Walter Sofronoff KC, has embroiled both the Liberal-National Coalition and the Albanese Labor government elected in May 2022.

Sofronoff provided the report to the Labor/Greens ACT government on July 31 for release after review at the end of August. However, the next day, he handed it “under embargo” to two media outlets, preempting the government’s timetable. Suggestions of charging him for its early release have been mooted.

The inquiry was triggered by allegations of then Director of Public Prosecutions (DPP) Shane Drumgold against the ACTP (ACT Policing) and then Liberal-National Coalition government MPs of interference during the Lehrmann trial that Drumgold was prosecuting. These allegations were contained in a letter dated November 1, 2022, to Chief Police Officer Neil Gaughan, demanding a public inquiry following the trial’s collapse due to juror misconduct five days earlier.

The trial arose from rape allegations by Higgins against Lehrmann, which she claimed had occurred late at night in the parliamentary offices of the then Coalition government Defence Industry Minister Linda Reynolds in March 2019. Higgins withdrew the allegations after two weeks, only to reactivate them two years later. Lehrmann has always maintained his innocence and insists that no sexual encounter of any form took place on the night.

The renewed allegations were presented as part of a highly organised and choreographed media event on national television and via Murdoch outlets prior to any police interview or investigation. Only after the allegations were in the public arena with the accused easily identifiable, although not named, did Higgins agree to the police interview. The aborted trial and subsequent decision by the DPP not to proceed with a retrial due to concerns of its impact to Higgins’ mental health means the charges against Lehrmann will never be tested in court.

Following Drumgold’s November 1, 2022, letter, the Labor/Greens ACT government commissioned the inquiry to commence on February 1, 2023, concluding five months later. It was to investigate Drumgold’s allegations that there was political interference by then Coalition government MP Linda Reynolds and the ACT police, whom

he claimed pressured him not to prosecute Lehrmann due to inconsistencies and lack of cooperation by Higgins. The aim of the government was to redress the crisis of confidence surrounding the justice system arising out of the trial.

Despite Drumgold demanding the inquiry, the central findings of the Sofronoff report were damning condemnations of his conduct and allegations against the ACT Police and Reynolds that were summarily dismissed. The report declared: “This Inquiry has thoroughly examined the allegations in Mr Drumgold’s letter. Each allegation has been exposed to be baseless. Late in giving his oral evidence, Mr Drumgold finally resiled from his scandalous allegations.”

In the report, which includes a Notice of Proposed Adverse Comments sent to Drumgold on June 9, Sofronoff accused Drumgold of a “serious breach of duty” and having “knowingly lied” by misleading Chief Justice Lucy McCallum in reference to the nature of his advice to journalist Lisa Wilkinson regarding her acceptance speech to the Logie TV awards. He had said he had warned her not to give the speech but had not. The report states that his failure to do so, “knowing that her speech would prejudice a fair trial,” meant he had “failed in his duty as a prosecutor.” Also cited by the report were Drumgold’s notes of the Wilkinson speech discussions, which he claimed were written contemporaneously but later admitted were not.

Further, by not disclosing documents to the defence and not adhering to disclosure requirements, he acted “dishonestly” and “tendered false information to support a criminal prosecution.” In reading Higgin’s counselling notes and not declaring such or “disqualifying himself from acting further in the matter,” he “breached his duty as a prosecutor.” In his cross-examination of Reynolds, wrongdoing was imputed to her which was “not reasonably justified by any material then available” and was therefore “improper and should not have been asked,” was “false,” “defamatory” and “grossly unethical.”

In reference to the police investigation, exception was taken to Drumgold’s statements in open court which declared that the “quality of the evidence-in-chief” and the “skills-set of the police officers” conducting interviews “was not high.” The report states the remarks were made “without proper basis,” “improperly made in the hearing of the jury,” and was done so “in order to influence the jury” against police evidence.

Finally, in what was arguably the most serious allegation by the inquiry report, in Drumgold’s press statement in December 2022 announcing the discontinuance of the trial, he declared he still felt, as he had in June 2021, that there was “a reasonable prospect of conviction.” This “implied that Higgins’ complaint of rape was true” and that “Lehrmann was guilty” and “there was clear evidence of

guilt” that existed.

Sofronoff concluded: “By making that statement in the course of purportedly discharging your duty as DPP, you undermined the presumption of innocence to which Mr Lehrmann was entitled. Further, you made the statements in circumstances in which Mr Lehrmann was precluded by your decision to discontinue the prosecution from having any opportunity to secure a verdict of not guilty.”

The final remarks of the Notice were: “In the premises: (a) you are not a fit and proper person to remain on the roll of barristers; (b) you are not a fit and proper person to hold the office of Director of Public Prosecutions.

“I invite you to make submissions as to why I ought not recommend to the Attorney-General that he terminate your appointment as Director of Public Prosecutions for misbehaviour.”

While findings have been made against other legal practitioners over the years, the breadth of those against Drumgold is somewhat unprecedented and could include criminal conduct. Unquestionably his conduct was unconscionable in terms of his duty as a prosecutor, but Drumgold was not the only figure responsible for such a potential gross miscarriage of justice.

The litany of disasters that has accompanied the trial cannot be explained by the character and competence, or otherwise, of the individuals at its heart but by broader and more profound processes. The course of events before, during and after the trial exposes the political agenda and political forces which underpinned it.

The revelations and recriminations which accompanied the trial’s spectacular collapse were of backroom discussions and machinations that had little to do with truth but with creating an atmosphere where Higgins was lauded as a crusader for women’s rights, her accusations were to be taken as good coin and never challenged.

Audio recordings of a January 2021 meeting held with Higgins’ partner, David Sharaz, a former journalist close to Labor Party circles, Higgins, Lisa Wilkinson, Channel 10 host of the talk show The Project and her producer were leaked in the aftermath of the mistrial.

In the five-hour meeting, the participants are heard planning media releases coinciding them with parliamentary question time so “friendly” Labor Party MP’s could pepper questions to the then-Morrison government to “keep the case alive.” This meeting was held prior to Higgins’ reactivation of the allegations and her interview with the police.

This characterised the conduct of the #MeToo campaign during the case. It included Higgins’ appearance and speech airing her allegations at a 2021 March4Justice rally outside the parliament house before charges had been laid. Then a 2021 inquiry into workplace culture at Parliament House by the Sex Discrimination Commissioner was called, which arose from Higgins’ unsubstantiated allegations. In 2022, a public parliamentary apology to Higgins was issued by then Prime Minister Scott Morrison “for the terrible things which have happened to you in this place,” jeopardising the possibility of a fair trial of the accused.

The commencement of the trial proper did nothing to allay the evisceration of due process and Lehrmann’s presumption of innocence. In June 2022, before witnesses were able to take the stand, a stay of three months was called by Chief Justice Lucy McCallum due to the prejudicial speech given by Wilkinson at the Logies. In October, the trial was discontinued completely. Throughout, the unprecedented nature and volume of the media coverage continued unabated, along with questions being peppered to the government

benches in question time by then Labor opposition MPs.

Once in government, the Albanese Labor government, despite the mistrial being declared and the fact that the allegations were not tested, awarded Higgins a reported more than \$2 million in compensation. She was not obliged to prove her allegations to receive the payout.

The fact Sofronoff, the person commissioned to restore confidence in the criminal justice system, is now the subject of possible charges is a clear indication of the extent to which the trial has exposed the crisis of not only the ACT Office of Director of Public Prosecutions (ODPP) but the state apparatus itself.

The fallout continues in the form of defamation action by Lehrmann against media outlets and his plans for a multi-million dollar compensation case against the ODPP and the ACT government. Separate defamation action has been announced against Higgins by Linda Reynolds.

The responsibility for the crisis has been sheeted home entirely at the feet of the former DPP Drumgold. His role was to execute the agenda of the #MeToo campaign, which was adopted and hailed by Labor. If “the complainant must be believed,” then the accused must be guilty—a premise that inevitably dispenses with the presumption of innocence and due process. This is not a perspective that flows naturally but means perverting the rights of the accused, in particular, the presumption of innocence, due process and the right to silence—a charge which has been made against Drumgold.

This clear attack on democratic rights was used by governments, Liberal and Labor, legal layers, and the media and widely hailed by political forces in the pseudo-lefts. This is a warning to the working class that there is no constituency for the defence of democratic rights in the ruling class and such methods will increasingly be used against the working class.

The fact that cases are being thrown out of court in all such trials here and increasingly internationally is an expression of the absence of any groundswell of support among broad sections of the population.



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