

(Your ref)

(Our ref) PG::23RRG0495
(Date) 11 May 2023
(Sent by)

Company (Giles)

By Email: john.pesutto@parliament.vic.gov.au

Mr John Pesutto
Leader of the Opposition
Leader of the Victorian Liberal Parliamentary Party
Shadow Minister for Multicultural Affairs
State Member for Hawthorn

URGENT

Dear Mr Pesutto

CONCERNS NOTICE ON BEHALF OF MOIRA DEEMING

- 1 We act for Mrs Moira Deeming.
- 2 This is a 'Concerns Notice' for the purposes of Part 3 of the *Defamation Act* 2005 (VIC) (**the Act**) and its counterparts in the other States and Territories.

Outline

- 3 Prior to specifying our client's 'Concerns', as required by the Act, we outline the following by way of an initial summary – that we are instructed that:
 - (a) You have accused our client of being a Nazi sympathiser, amongst other things, and have sought to expel her from the Parliamentary Liberal Party.
 - (b) These accusations, and the Motion to expel her, leaked by you to the media to be published as widely as possible, were defamatory of our client, are false, and have caused serious and potentially irreparable harm to her reputation.
 - (c) You subsequently withdrew the Motion and instead offered to accept, by way of resolution, a 9 month suspension.
 - (d) The suspension was based on certain conditions, which you and our client agreed to, which was to include a full and public retraction by you of the accusations you made about her.
 - (e) You then proceeded to disregard those conditions and refused to carry them out.
 - (f) When our client complained and insisted that you do so, and indeed sought the Minutes of the meeting in which the conditions were approved by Members, she was served with a second Motion to expel her.
 - (g) This second Motion does not state the grounds for our client's expulsion, and yet you still have publicly stated your support for it. In the absence of any grounds, and in the absence of your withdrawal of the accusations, this second Motion, it can reasonably be assumed, is made on the same basis as the first Motion, with the same false and defamatory accusations made against our client.
- 4 Apart from being grossly unfair, the circumstances entitle our client to commence defamation proceedings against you.

The Motion to Expel

- 5 On or about 21 or 22 March 2023, you provided to *The Australian* newspaper a document, on your letterhead and signed by you, being notice of your intention to call a special meeting of the Victorian Parliamentary Liberal Party to move on a motion to expel our client from the Victorian Parliamentary Liberal Party ("**the Motion**").
- 6 For the avoidance of any doubt, the Motion is the 'matter in question' for the purposes of s 12A of the Act. A copy of the Motion is **enclosed (Attachment "A")**.
- 7 The Motion contained the allegations giving rise to the Motion as well as an 'Annexure' which was said to comprise the 'evidence' you relied upon to assert that Mrs Deeming had conducted activities in a manner likely to bring discredit on the Parliament or the Parliamentary Liberal Party.
- 8 The matters raised in the Motion and the supporting documents inherently must always be subject to scrutiny under the principles of procedural fairness. Our client had not formally responded to the Motion, nor had it been tested in any way, before it was published. The inferences you made upon the documents attached to support the Motion were misconceived and false.
- 9 Furthermore, you failed to afford our client any procedural fairness and breached your obligation to ensure the welfare and safety of Mrs Deeming in circumstances where you released the entirety of the Motion and its attachments to the media, without restriction, to be published to the world at large. This in turn saw our client become the target of extreme hate and abuse, to the extent that she and her family were forced to leave their home and reside elsewhere.
- 10 In this regard, we rely on the article published in *The Australian* newspaper on 23 March 2023 and online entitled "*Victorian Liberal leader John Pesutto's bid to expel anti-trans MP Moira Deeming splits Libs*" ("**The Australian Article**") in which it is stated that you released the Motion and contained a link to the Motion. A copy of The Australian Article is enclosed herewith (**Attachment "B"**).
- 11 The Australian Article republished the Motion. You are responsible for the republication of the Motion because you intended and expressly or implicitly authorised it, and its publication via the *Australian Article* (and presumably in other media) was the natural and probable consequence of you releasing the Motion.
- 12 The Australian Article and the link to the Motion continue to be made available for publication at the *Australian* website at the following URL:
- <https://www.theaustralian.com.au/nation/politics/the-case-against-antitrans-liberal-mp-moira-deeming/news-story/0d7b62c3756b48d94887367bea0baa70>
- 13 Our client was clearly identified in the Motion by your mention of her name and her position. She was further identified in *The Australian Article* which also contained static images of her.
- 14 Our client was not provided with any full or reasonable opportunity to refute the allegations or to put forward her side of the story prior to you releasing the Motion to the media, nor did you attempt to do so.

Imputations of Concern

- 15 The Motion carried the following imputations of and concerning our client (or imputations that do not differ in substance):
- (a) *Moira Deeming attended a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
 - (b) *Moira Deeming was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
 - (c) *Moira Deeming met with and published a video with persons with known links to neo-Nazis.*

- (d) *Moira Deeming attended a rally on the steps of the Victorian Parliament at which there were speakers who were neo-Nazis.*
- (e) *Moira Deeming was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament where there were speakers who were neo-Nazis.*
- (f) *Moira Deeming met with and published a video with persons who were neo-Nazis.*
- (g) *Moira Deeming stands with Nazis and Neo-Nazis.*
- (h) *Moira Deeming supports Nazis and Neo-Nazis.*
- (i) *Moira Deeming holds abhorrent Neo-Nazi views.*
- (j) *Moira Deeming associates with Nazis and Neo-Nazis.*
- (k) *Moira Deeming sympathises with Nazis and Neo-Nazis.*
- (l) *Moira Deeming is a Neo Nazi.*
- (m) *Moira Deeming is unfit to sit in the Victorian Parliament because she attended a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (n) *Moira Deeming is unfit to sit in the Victorian Parliament because she was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (o) *Moira Deeming is unfit to sit in the Victorian Parliament because she met with and published a video with persons with known links to neo-Nazis.*
- (p) *Moira Deeming is unfit to sit in the Victorian Parliament because she attended a rally on the steps of the Victorian Parliament at which there were speakers who were neo-Nazis.*
- (q) *Moira Deeming is unfit to sit in the Victorian Parliament because she was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament where there were speakers who were neo-Nazis.*
- (r) *Moira Deeming is unfit to sit in the Victorian Parliament because she met with and published a video with persons who were neo-Nazis.*
- (s) *Moira Deeming is unfit to sit in the Victorian Parliament because she stands with Nazis and Neo-Nazis.*
- (t) *Moira Deeming is unfit to sit in the Victorian Parliament because she supports Nazis and Neo-Nazis.*
- (u) *Moira Deeming is unfit to sit in the Victorian Parliament because she holds abhorrent Neo-Nazi views.*
- (v) *Moira Deeming is unfit to sit in the Victorian Parliament because she associates with Nazis and Neo-Nazis.*
- (w) *Moira Deeming is unfit to sit in the Victorian Parliament because she sympathises with Nazis and Neo-Nazis.*
- (x) *Moira Deeming is unfit to sit in the Victorian Parliament because she is a Neo Nazi.*
- (y) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she attended a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (z) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (aa) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she met with and published a video with persons with known links to neo-Nazis.*
- (bb) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she attended a rally on the steps of the Victorian Parliament at which there were speakers who were neo-Nazis.*

- (cc) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she was actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament where there were speakers who were neo-Nazis.*
- (dd) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she met with and published a video with persons who were neo-Nazis.*
- (ee) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she stands with Nazis and Neo-Nazis.*
- (ff) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she supports Nazis and Neo-Nazis.*
- (gg) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she holds abhorrent Neo-Nazi views.*
- (hh) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she associates with Nazis and Neo-Nazis.*
- (ii) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she sympathises with Nazis and Neo-Nazis.*
- (jj) *Moira Deeming is unfit to belong to the Victorian Parliamentary Liberal Party because she is a Neo Nazi.*
- (kk) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by attending a rally on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (ll) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by being actively involved in the organisation and promotion of a protest on the steps of the Victorian Parliament at which there were speakers with known links to neo-Nazis and Nazis.*
- (mm) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by meeting with and publishing a video with persons with known links to neo-Nazis*
- (nn) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by attended a rally on the steps of the Victorian Parliament at which there were speakers who were neo-Nazis.*
- (oo) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by being actively involved in the organisation and promotion of a rally on the steps of the Victorian Parliament where there were speakers who were neo-Nazis.*
- (pp) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by meeting with and publishing a video with persons who were neo-Nazis*
- (qq) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by standing with Nazis and Neo-Nazis.*
- (rr) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by supporting Nazis and Neo-Nazis.*
- (ss) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by holding abhorrent Neo-Nazi views.*
- (tt) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by associating with Nazis and Neo-Nazis.*
- (uu) *Moira Deeming has discredited the Victorian Parliament and the Victorian Parliamentary Liberal Party by being a Neo Nazi.*

(the Imputations)

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Each of the Imputations is clearly carried by the Motion, and each is obviously and seriously defamatory of Mrs Deeming.

No Defences

- 17 In the circumstances, the publication of the Motion is indefensible. For example (without seeking to be exhaustive):
- (a) Each of the imputations is utterly false, such that there could be no possible defence of justification under s.25 of the Act;
 - (b) The publication of the Motion by you to *The Australian* was not published on an occasion of absolute or qualified privilege under s.27 or s.30 of the Act;
 - (c) Given, as we have said, you published the Motion to *The Australian* without any restriction, in circumstances where you intended, knew or ought to have known that it would then be republished to the world at large, you would be unable to establish the required element of reciprocity (i.e. between your duty or interest as publisher and the duty or interest of each of the recipients) necessary to ground the common law version of qualified privilege; and
 - (d) Given, as we have said, you did not seek or publish the substance of Mrs Deeming's side of the story or make a reasonable attempt to obtain or publish her response to the substance of the Motion (or the Imputations it conveyed), your conduct in publishing the Motion could not be said to be reasonable, such that you would be unable to rely upon the statutory version of qualified privilege (or any *Lange* defence).
- 18 The Motion should not have been released. The matters raised therein were misconceived, disingenuous and false, and they did not reflect what actually occurred at the event nor our client's involvement with it.

Background

- 19 It is clear that our client's account of events was not represented by you in the Motion in any relevant way. In this regard we are instructed that:
- (a) On Saturday 18 March 2023, Mrs Deeming attended the '*Let Women Speak*' event hosted by '*Standing For Women UK*' (**SFW**).
 - (b) SFW advocates for the reinstatement of reasonable biological-sex based rights and against the irreversible and harmful medical transitioning practices used on gender non-conforming, autistic and gay minors.
 - (c) This organisation and its goals are mainstream and global, and are supported by high profile members and leaders of every mainstream political party in the world.
 - (d) The Melbourne "*Let Women Speak*" event was attended by Muslims, Christians, Atheists and members of the Greens, Labor, LDP and Liberal Parties.
 - (e) Our client announced on International Women's Day, in Parliament, that she would be attending the event. She invited Natalie Hutchins to join her, because she is the Minister for Women.
 - (f) Due to threats of violence from extreme left activists, our client was approached and asked if she could drive international speaker Kelly-Jay and her security guards to park in Parliament House car park, for safer passage to and from the Parliament House steps. Our client sought and gained permission from Parliament services to do so.
 - (g) The event was organised by Angela Jones, a left-wing, pro-gay rights Jewish woman, who liaised with Victoria Police to arrange a buffer zone between her event and any counter protestors.

- (h) Our client and the other attendees were horrified to see masked men all clad in black inside the buffer zone. They thought that they were going to be attacked. However, the police did not seem worried and were talking with them over at the edge of the line.
 - (i) Later our client saw the police seemingly usher these men right through the centre of the buffer zone in between the '*Let Women Speak*' event and the counter protestors, which is when those men raised their hands in a Nazi salute.
 - (j) Our client was horrified, but relieved that the police moved them on.
 - (k) These masked men had in fact mounted Parliament House steps outside of our client's view on the other end and performed a Nazi salute. Members of the SFW group asked the police to make them leave but were informed that the Police had no powers to move them on.
 - (l) The '*Let Women Speak*' event saw several women injured by the extreme left counter protestors who infiltrated the event. Our client was assaulted and injured, along with multiple other women, including one who was taken to hospital after being knocked unconscious. They also became violent with police and punched police horses, forcing the '*Let Women Speak*' event to finish early.
 - (m) Our client condemned the actions of the masked men in black who gate-crashed the '*Let Women Speak*' event and who were later identified as Neo-Nazis. Most of the LWS supporters did not realise who they were until they were being escorted out by Victoria Police, when they did the despicable Nazi salute.
 - (n) Our client rejects the beliefs of National Socialists (Nazis) or Neo-Nazis and finds any allegation, as you imputed, that she is connected with such beliefs highly offensive, defamatory and malicious. She has personally experienced first-hand the impact that the Holocaust had on a family member.
 - (o) None of those organising the event had any involvement with these men, as has been confirmed by Victoria Police, the Australian Jewish Association and all the organisers themselves.
 - (p) Our client was not, and is not, aware of Ms Kellie-Jay Keen, Katherine Deeves, or Angie Jones having known links to Nazis or Neo-Nazis or supporting such abhorrent beliefs and is similarly not aware of those persons having actual links to persons with far-right extremist views outside the mainstream of the Liberal Party and society in general, save that Ms Keen and Ms Jones may have some left-wing views that Mrs Deeming and members of the Liberal Party do not share.
- 20 If you had contacted our client in an appropriate manner, investigated the events of 18 March 2023 in a meaningful way, or conducted yourself in a manner fitting your position as the Leader of the Opposition and the Parliamentary Liberal Party, the Motion should not have been instigated. Instead of a balanced, considered and fair motion which reflected the events accurately, the Motion promoted a false narrative that the event was fuelled by racist and white supremacist rhetoric and ideology and supported and espoused Nazi ideology and that Mrs Deeming herself supported that rhetoric and ideology. Nothing could be further from the truth.
- 21 The deliberate release of the Motion to the media, and your failure to provide our client a full and reasonable opportunity to refute the allegations prior to publication or present her version of events in the document, not only created an impression in the minds of readers that Mrs Deeming is a callous, irresponsible, despicable, racist and white supremacist that supports Neo-Nazi ideology, but also caused her and her family great hurt, distress and embarrassment.

Serious Harm

- 22 The Motion and its republication in *The Australian* and elsewhere have already caused, and are likely to cause further, serious harm to our client's reputation within the meaning of s 10A of the Act – including because of the following facts and matters:
- (a) The seriousness of the Imputations – for example:
 - i. Imputations alleging a person is a Neo-Nazi are amongst the most serious allegations against a person's character that can be made in modern Australian society and, if believed to be true, will cause much of the public to shun, avoid and refuse to engage with or do business with that person, let alone elect that person to public office which is our client's chosen profession.
 - ii. Imputations alleging a person is a Neo-Nazi are amongst the most serious allegations that can be levelled against a standing Member of Parliament, so much so that it puts her position as a representative of her constituents at risk, which is her chosen profession.
 - iii. Imputations alleging our client is unfit to belong to the Victorian Parliament and the Parliamentary Liberal Party because of her connection with Neo-Nazis or so-called extremist views jeopardises our client's position as a Member of the Parliament and standing within the Liberal Party and therefore her ability to be pre-selected, elected or have a role within her chosen profession and political party.
 - (b) Before the Motion was published Mrs Deeming had a respected reputation within the Victorian Liberal Party, her constituency, and the community, and was proud of the contribution that she and her family had made as a Member of Parliament. Our client considers that the Imputations levied against her have caused, and are likely to cause, very serious harm to her reputation by making her a pariah in the Victorian and Australian communities and in particular within that segment of the electorate that previously supported her and the Liberal Party politically and elected her to office.
 - (c) Since the publication of the Motion, Mrs Deeming has been subjected to vile abuse and harassment from sections of the public and fears for the safety of her family. This reaction, which has been caused by the Motion, reflects the significant damage to her reputation within the broader community.
 - (d) Your role as the Leader of the Liberal Party making allegations about a Member of your own Parliamentary Party means that readers have believed, and were likely to believe, that the Imputations are true, irrespective of their falsity or contrary information from our client or other sections of the public and media – not only constituents and members of the public or the Left or other political persuasions who may actively disagree with Mrs Deeming and her political positions but also members of the Liberal Party and other persons with centre-right views that would otherwise support her. This is particularly the case as you took the drastic steps toward expelling Mrs Deeming from the Parliamentary Liberal Party, a highly unusual step in Australian politics.
 - (e) The Motion was published in *The Australian* and remains available online for download. *The Australian* by its reputation publishes news to that significant section of the community with centre-right views that (prior to the Motion being published) held Mrs Deeming in the highest regard. Those readers that previously held her in that regard are more likely to read and believe true the contents of the Motion and therefore the defamatory Imputations about Mrs Deeming. The leaking of the Motion to *The Australian* was intended to, and did in, fact damage Mrs Deeming's reputation amongst those persons who were asked to vote on the Motion. However, beyond that, the indiscriminate publication in *The Australian* to the world at large has had a devastating impact. The newspaper has a large audience/readership both in hard copy and online in Victoria and throughout Australia. Accordingly, the Motion

was published widely, which means the number of persons who believe the defamatory meanings to be true is substantial and serious.

- (f) The incursion by Neo-Nazis at the 18 March 2023 event, and your steps to have our client removed from the Liberal Party as a result, made the Motion topical and as The Australian Article appears prominently in answer to a Google search of our client's name, our client considers that readership of the Motion and accordant harm is likely to increase.
 - (g) The Motion and your false allegations against our client have been widely discussed on a large number of other platforms, including social media, particularly given the political interest and notoriety of the incursion by Neo-Nazis at the 18 March 2023 event and your subsequent call to expel our client from the Parliamentary Liberal Party, meaning that the grapevine effect has increased the harm to our client's reputation. Your actions in leaking the Motion, subsequent actions, and the grapevine effect have the effect of making our client a figure-head for Neo-Nazis in Australia.
 - (h) Finally, the disingenuous use of "evidence" to support the untrue allegations makes it more likely that readers will believe the defamatory Imputations to be true and, accordingly, more likely to cause serious harm to Mrs Deeming's reputation.
- 23 Given the Motion embedded in The Australian Article remains available to download online and outside of your control, in the absence of a public and sincere retraction and apology from you, the harm to Mrs Deeming's reputation is likely to continue.
- 24 The matters outlined above also support a claim for aggravated damages – that is, that your conduct was lacking in good faith and was improper and unjustifiable, and has aggravated the harm our client has sustained. Accordingly, she will seek an increase in the damages to be awarded. It is important that you understand that aggravated damages may be awarded not only in respect of your conduct prior to and at the time of publication but also in respect of your ongoing conduct since publication, which is all relevant to the harm suffered.

Suspension

- 25 At the meeting to determine the Motion, on 26 March 2023, various Members expressed their views for and against the Motion based on your accusations. Our client submitted her strong denial of your accusations. It became apparent that you would not succeed in achieving the requisite majority. After adjourning the meeting, a discussion took place with our client to resolve the matter, which led to you withdrawing the Motion.
- 26 You offered and our client agreed that she would be prepared to undergo a suspension for 9 months in return for which you would publish a joint statement in which you would exonerate her from the defamatory imputations you had published about her. This resolution was put to the meeting and approved. The draft Minutes of the meeting (published in *The Australian*) record that there was a 'promised compromise' that our client was to be suspended for 9 months; that you and she would issue a 'joint statement'; and that there would be a 'media statement' which would 'make it clear that no one was accusing [her] of being a Nazi, or Nazi sympathiser'.
- 27 After the Members' meeting on 26 March 2023, you were reported as having suggested that the expulsion Motion was withdrawn because our client had made 'concessions'. For example, you are reported as having said you accepted Mrs Deeming's suspension (i.e. rather than expulsion) given 'Moir had provided what I had been seeking and recognised why it was important to do that', and that 'the conduct that I wanted condemned has been condemned'. This was not a fair reflection of what had occurred. The submissions made by our client to Members on 26 March 2023 conveyed the strongest possible denial of the accusations of being a Nazi sympathiser or knowingly being associated with Nazis. You publicly suggested that you agreed to the suspension given Mrs Deeming's 'concessions'. That was false.
- 28 Our client disputed your suggestions publicly.

- 29 Subsequent to the meeting on 26 March 2023 and the agreed resolution, you did not join with her in making a public statement, as promised, or at any time retract or withdraw the imputations you had published, nor did you apologise to her. In fact, our client provided her contribution to the proposed joint statement in accordance with the agreement. That was then unilaterally issued by the Liberal Nationals Media on 27 March 2023 - as a statement from her alone, not as a joint statement, contrary to the agreement, without any contribution from you.
- 30 As a result of your repudiatory, and misleading and deceptive conduct, our client sought the Minutes of the meeting from the Parliamentary Secretary on three occasions. We are instructed that you objected to the approval of those Minutes, refused to accept that the contemporaneous notes recording the meeting could constitute the Minutes, and refused to provide them to our client, notwithstanding that they would be strong evidence of what had occurred at the meeting. It is important that you retain a copy of those notes in anticipation of these proceedings and that you not destroy them.
- 31 A version of the Minutes was eventually leaked and published in *The Australian*.
- 32 Our client was left in a position after a month by early May where she had been given no authorised document stating the conditions of her suspension despite the approval of the suspension on 26 March 2023. She sought to clarify the conditions of the suspension in the absence of authorised Minutes. Negotiations took place between two Members on behalf of yourself and our client last week. They failed to resolve the impasse.
- 33 Our client sent an email to Members on 4 May 2023 setting out her position. This was met with the allegation, reported in the media, that our client had threatened to sue the Liberal Party for breach of the Constitution and for defamation. This was false.

Second Motion to Expel

- 34 On Saturday 6 May 2023, five Members initiated a new Motion (**the new Motion**) to expel our client in similar formal terms to the first Motion with a request for a special meeting to be held this Friday 12 May 2023. The reason stated was that our client had "*engaged in conduct in violation of Clause 57 [of the Victorian Parliamentary Liberal Party Constitution (**the Constitution**)], bringing discredit on the Parliamentary Party*".
- 35 In breach of Clause 59 of the Constitution, the new Motion was not signed by the Members.
- 36 In breach of Clause 60 of the Constitution, the new Motion was not served on our client at least five clear business days prior to the date of the meeting at which the new Motion will be heard.
- 37 More importantly, and again in breach of Clause 59 of the Constitution, the new Motion does not state or provide any grounds or reasons in support of the alleged 'violation' of Clause 57 and in support of the proposed expulsion. Our client has twice requested that she be informed of the grounds or reasons said to support the new Motion - in her email of 7 May 2023, she requested 'a copy of the alleged conduct that has apparently brought the Party into disrepute'; and in her email of 9 May 2023, she requested 'a copy of the exact conduct to which the expulsion motion refers' (and specifically said she was making the request 'so that I can prepare my defence'). She still has not been provided with the grounds or reasons.
- 38 The new Motion was once again widely publicised in the mainstream media and elsewhere – for example:
- (a) By the ABC – at the following URLs:
 - i. <https://www.abc.net.au/news/2023-05-06/moira-deeming-denies-plans-sue-victorian-liberal-party-expulsion/102312462>
 - ii. <https://www.abc.net.au/news/2023-05-07/victorian-liberal-party-divisions-moira-deeming-john-pesutto/102313978>
 - (b) By the Age – at the following URLs:
 - i. <https://www.theage.com.au/politics/victoria/deeming-backs-down-from-legal-threat-against-pesutto-20230506-p5d68m.html>

- (c) By the AFR – at the following URLs:
 - i. <https://www.afr.com/politics/federal/deeming-backtracks-on-threat-to-sue-liberals-20230506-p5d69h>
<https://www.afr.com/politics/moira-deeming-to-face-expulsion-vote-for-second-time-20230508-p5d61a>
- (d) By The Guardian – at the following URL:
 - i. <https://www.theguardian.com/australia-news/2023/may/06/moira-deeming-suspended-victorian-liberal-mp-says-she-never-once-considered-suing-party>

39 These flagrant breaches of the Constitution have been ridiculed and dismissed by anonymous Members in the media, notwithstanding the breaches would invalidate the new Motion. In any court, this conduct would be seen as oppressive and unconscionable.

40 However, in the absence of any detail of the grounds for expulsion, the ordinary reasonable reader is entitled to, and would, infer that the same grounds were relied on in the new Motion as for the first Motion. The new Motion therefore conveys the same Imputations as the first Motion, as set out above, with the same continuing serious impact and further serious harm to Mrs Deeming's reputation.

41 Subsequent to the publication of the new Motion, you stated publicly that you supported the new Motion. For the reasons given in the preceding paragraph, this was therefore in effect a repetition by you of the Imputations conveyed by the first Motion.

Demands

42 Having now served this Concerns Notice, it will be open to our client to commence defamation proceedings against you after the applicable period of 28 days has elapsed (s 12B of the Act).

43 Prior to doing so, our client would like to give you an opportunity to make amends.

44 We are therefore instructed to make the following offer to settle the dispute:

- (a) You as Leader of the Parliamentary Liberal Party and Chairman of the meetings seek the immediate withdrawal of the new Motion and agree to never repeat or republish the contents of the original Motion or the new Motion or any of the Imputations (or imputations that do not differ in substance) in any form.
- (b) You provide to our client a signed and dated letter, on your letterhead and signed by you, with the following Apology, to be used by our client as she sees fit for the purpose of vindicating her reputation:

Apology to Moira Deeming

On 22 March 2023, I, John Pesutto, wrote, published and released to the media a Motion to Expel Moira Deeming from the Liberal Party.

The Motion made false and defamatory allegations about Mrs Deeming concerning her attendance at an event on 18 March 2023.

I withdraw those allegations without reservation. They should never have been made.

I apologise to Moira Deeming for the harm, hurt and distress caused to her and her family by reason of my making the false allegations.”

(the “Apology”).

- (c) You publish the Apology for a period of 14 days on your website and social media accounts/platforms.

- (d) You pay our client compensation by reason of the substantial damage, including damage to her reputation, which she has suffered as a result of the publication of the Motion - either:
- (i) In a sum to be agreed; or
 - (ii) In a sum to be determined by the Federal Court.
- (e) You agree to pay our client her reasonable legal costs in pursuing this matter.
- (f) You provide our client with the terms of the resolution of the meeting of 26 March 2023 confirming the conditions of the suspension as represented to our client and to which she agreed and acted upon in good faith.
- 45 Although you have 28 days under the Act to make amends, noting the serious and ongoing damage to our client's reputation, this offer is open until 9am on Friday, 12 May 2023. The timing is urgent because of the extreme and unseemly speed with which the new Motion has been proposed and is to be determined despite clear and obvious breaches of the Constitution and the continuing defamation of our client.
- 46 Any delay in the publication of an apology will of course significantly decrease its effect.
- 47 In the unfortunate event that the above requests are not agreed to, we are instructed to commence proceedings in the Federal Court of Australia without further notice after the lapse of 28 days. In any such proceedings, damages will be claimed, and this correspondence will be relied upon on the questions of aggravated damages, injunctions and costs.
- 48 In the meantime, our client reserves her rights, including her entitlement to rely on this correspondence. We also draw your attention to the terms of the *Civil Dispute Resolution Act 2011* and invite you to attempt to resolve this dispute before proceedings are commenced.
- 49 Further, our client relies on her rights to seek to invalidate the new Motion, if it is approved, on the basis of the breaches of the Constitution that have taken place (referred to above). She also reserves her rights to bring defamation proceedings against those who have participated in the defamatory publications to the world at large.
- 50 In anticipation of legal proceedings, we request that you retain all communications – from 18 March 2023 to date and ongoing – which are potentially relevant to this dispute and the events referred to in this letter – including (without limitation):
- (a) All records of communications between you, or others on your behalf or at your direction, with any journalists or members of the media – including any publication to the media of the Motion or the new Motion; and
 - (b) All records of communications between you, or others on your behalf or at your direction, and the five Members initiating the new Motion.
- 51 We await your urgent reply.

Yours faithfully
COMPANY GILES



Patrick George
(Principal)

Encl.