

## **NOTICE OF FILING**

### **Details of Filing**

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File Title:	BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250 & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

### **Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

## Defence

No. NSD 103 of 2023

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### BRUCE LEHRMANN

Applicant

**NETWORK TEN PTY LIMITED (ACN 052 515 250)** and another  
Respondents

The First Respondent (Network Ten Pty Limited (**Ten**)) relies upon the following facts, matters and assertions in answer to the Statement of Claim filed by the Applicant (**Lehrmann**) on 7 February 2023 (**SOC**).

### RESPONDENTS

1. In answer to paragraph 1 of the SOC, Ten:
  - (a) admits sub-paragraph 1(a);
  - (b) denies sub-paragraph 1(b);
  - (c) says that it produces a television program known as *The Project* for broadcast and admits that it is a publisher of that program;
  - (d) says that it distributes *The Project* to certain free-to-air, commercial television broadcasting licence holders throughout Australia for the purposes of broadcast in each State and Territory;
  - (e) admits that it is the operator of the website located at the URL address [www.10play.com.au](http://www.10play.com.au) (**10Play Website**) and that it makes available for streaming material on the 10 Play Website;

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Filed on behalf of (name & role of party) First Respondent being Network Ten Pty Limited  
Prepared by (name of person/lawyer) Marlia Saunders, Partner  
Law firm (if applicable) Thomson Geer Lawyers  
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(include state and postcode) \_\_\_\_\_

(f) admits that it is the operator of *The Project's* YouTube channel on the YouTube website at <https://www.youtube.com/@TheProjectTV/featured> and that it makes available for streaming material on *The Project's* YouTube channel; and

(g) otherwise denies the allegations in paragraph 1 of the SOC.

2. Ten admits the allegations in paragraph 2 of the SOC.

### **FIRST MATTER COMPLAINED OF**

3. In answer to paragraph 3 of the SOC, Ten:

(a) denies that the first matter complained of (as defined in paragraph 3 of the SOC) was of and concerning Lehrmann;

(b) does not plead to paragraphs 3(f) and 3(g) of the SOC as they contain no allegations against Ten; and

(c) otherwise admits the allegations in paragraph 3 of the SOC.

### **Particulars of Publication**

The first matter complained of had an average national audience of approximately 726,728, comprising approximately:

(i) Sydney: 129,000 viewers;

(ii) Northern NSW: 45,000 viewers;

(iii) Southern NSW: 40,000 viewers;

(iv) Melbourne: 193,000 viewers;

(v) Regional Victoria: 42,000 viewers;

(vi) Brisbane: 97,000 viewers;

(vii) Regional Queensland: 61,000 viewers;

(viii) Adelaide: 42,000 viewers;

(ix) Perth: 55,000 viewers;

(x) Regional Western Australia: 13,000 viewers; and

(xi) Tasmania: 9,000 viewers.

4. In answer to paragraph 4 of the SOC, Ten:

- (a) denies that the first matter complained of was of and concerning or defamatory of Lehrmann;
- (b) if, which is denied, the first matter complained of was of and concerning Lehrmann:
  - (i) admits that each of the imputations set out in paragraph 4 of the SOC or imputations that do not differ in substance from those imputations are conveyed by the first matter complained of; and
  - (ii) admits that each of the imputations set out in paragraph 4 of the SOC are defamatory of him;
- (c) says that each of the imputations set out in paragraph 4 of the SOC do not differ in substance; and
- (d) otherwise denies the allegations in paragraph 4 of the SOC.

## **SECOND MATTER COMPLAINED OF**

5. In answer to paragraph 5 of the SOC, Ten:

- (a) denies that the second matter complained of (as defined in paragraph 5 of the SOC) was of and concerning Lehrmann;
- (b) admits that on or about 15 February 2021 it uploaded, or caused to be uploaded, the second matter complained of to the 10Play Website, from where it was available for streaming and viewing for 90 days;
- (c) admits that it published the second matter complained of to persons who streamed and viewed the second matter complained of from the 10Play Website;
- (d) says that there were no views of the second matter complained of after 16 May 2021;
- (e) says that it is unable to ascertain the States and Territories from which persons streamed and viewed the second matter complained of;
- (f) admits the allegations in paragraph 5(b);
- (g) does not plead to paragraphs 5(f) and 5(g) as they contain no allegations against Ten; and

- (h) otherwise denies the allegations in paragraph 5 of the SOC.

### **Particulars of Publication**

The second matter complained of had approximately 17,215 views between 15 February 2021 and 16 May 2021.

- 6. In answer to paragraph 6 of the SOC, Ten:
  - (a) denies that the second matter complained of was of and concerning or defamatory of Lehrmann;
  - (b) if, which is denied, the second matter complained of was of and concerning Lehrmann:
    - (i) admits that each of the imputations set out in paragraph 6 of the SOC or imputations that do not differ in substance from those imputations are conveyed by the second matter complained of; and
    - (ii) admits that each of the imputations set out in paragraph 6 of the SOC are defamatory of him;
  - (c) says that each of the imputations set out in paragraph 6 of the SOC do not differ in substance; and
  - (d) otherwise denies the allegations in paragraph 6 of the SOC.

### **THIRD MATTER COMPLAINED OF**

- 7. In answer to paragraph 7 of the SOC, Ten:
  - (a) denies that the third matter complained of (as defined in paragraph 7 of the SOC) was of and concerning Lehrmann;
  - (b) admits that on or about 15 February 2021 it uploaded, or caused to be uploaded, the third matter complained of to YouTube, from where it was available for streaming and viewing until 7 August 2021;
  - (c) admits that it published the third matter complained of to persons who streamed and viewed the third matter complained of from The Project's YouTube channel;
  - (d) says that there were no views of the third matter complained of after 7 August 2021;
  - (e) says that it is unable to ascertain the States and Territories from which persons streamed and viewed the third matter complained of;

- (f) admits the allegations in paragraph 7(b);
- (g) does not plead to paragraphs 7(e) and 7(f) as they contain no allegations against Ten;
- (h) says that, in respect of the publication of the third matter complained of after 30 June 2021, no concerns notice was sent by Lehrmann in respect of the third matter complained of prior to the commencement of these proceedings as required by s 12B of the *Defamation Act 2005* (NSW) (the **Defamation Act**); and
- (i) otherwise denies the allegations in paragraph 7 of the SOC.

### **Particulars of Publication**

The third matter complained of had 188,902 views from within Australia. 361 views of the third matter complained of occurred from within Australia after 30 June 2021.

8. In answer to paragraph 8 of the SOC, Ten:

- (a) denies that the third matter complained of was of and concerning or defamatory of Lehrmann;
- (b) if, which is denied, the third matter complained of was of and concerning Lehrmann:
  - (i) admits that each of the imputations set out in paragraph 8 of the SOC or imputations that do not differ in substance from those imputations are conveyed by the third matter complained of; and
  - (ii) admits that each of the imputations set out in paragraph 8 of the SOC are defamatory of him;
- (c) says that each of the imputations set out in paragraph 8 of the SOC do not differ in substance; and
- (d) otherwise denies the allegations in paragraph 8 of the SOC.

9. Ten denies the allegations in paragraph 9 of the SOC.

10. In further answer to paragraph 9 of the SOC, Ten denies that Lehrmann is entitled to the relief sought in the Originating Application or any other relief at all.

**CAUSES OF ACTION STATUTE BARRED: ss 14B and 14C of the Limitation Act 1969 (NSW) (Limitation Act)**

11. Lehrmann's claims in respect of the publication of each of the matters complained of is not maintainable by virtue of ss 14B and 14C of the Limitation Act in that:
- (a) the first matter complained of was published on 15 February 2021;
  - (b) the second matter complained of was published between the dates of 15 February 2021 and 16 May 2021;
  - (c) the third matter complained of was published between the dates of 15 February 2021 and 7 August 2021;
  - (d) by operation of s 14C and Schedule 5, Part 4 of the Limitation Act and the commencement of the *Defamation Amendment Act 2020* (NSW) on 1 July 2021, the limitation period for all publications of the third matter complained of occurring after 30 June 2021 is to be treated as having commenced on the date of upload, being 15 February 2021;
  - (e) this proceeding was commenced on 7 February 2023; and
  - (f) accordingly, all causes of action in respect of publications of the matters complained of are statute-barred by the operation of s 14B of the Limitation Act.

**THIRD MATTER COMPLAINED OF ON OR AFTER 1 JULY 2021: CAUSE OF ACTION NOT COMPETENT: ss 12A and 12B of the Defamation Act**

12. By reason of s 12B(1) of the Act, the proceeding in relation to any downloads of the third matter complained of on or after 1 July 2021 are not competent because Lehrmann did not give Ten a concerns notice under s 12A(1) of the Defamation Act.

**Particulars**

- (i) On 16 December 2022, the solicitors for Lehrmann sent a letter to representatives of Ten in relation to the First and Third Matters Complained Of.
- (ii) To the extent that the letter purported to be a concerns notice, it did not inform Ten of the harm that Lehrmann considered to be serious harm to his reputation caused, or likely to be caused, by the publication of the third matter complained of as required by s 12A(1)(a)(iv) of the Defamation Act.

**JUSTIFICATION: common law and s. 25 of the Defamation Act**

13. Further or in the alternative, Ten says that each of the imputations pleaded in paragraphs 4, 6 and 8 (the **Applicant's Imputations**) is substantially true.

**Particulars**

Ten relies on the particulars set out in Annexure A to this Defence.

**QUALIFIED PRIVILEGE: s. 30 of the Defamation Act**

14. Further or in the alternative, Ten says that:

- (a) Ten published the matters complained of in the course of giving to the recipients of the matters complained of information about a subject in which the recipients had an interest or had an apparent interest (in the sense that Ten believed on reasonable grounds that the recipients had such an interest); and
- (b) Ten's conduct in publishing the matters complained of was reasonable in the circumstances.

**Particulars**

Ten relies on the particulars set out in Annexure B to this Defence.

**QUALIFIED PRIVILEGE: common law *Lange* privilege**

15. Further or in the alternative, Ten says that:

- (a) each of the matters complained of constituted information, opinions and arguments concerning government and political matters that affected the recipients of the matters complained of;
- (b) the recipients of the matters complained of had an interest in receiving such information, opinions and arguments;
- (c) by reason of sub-paragraphs (a) and (b) above, Ten had a duty to publish the matters complained of; and
- (d) Ten's conduct in publishing the matters complained of was reasonable.

**Particulars**

Ten relies on the particulars set out in Annexure B to this Defence.



## MITIGATION OF DAMAGES

16. If, which is denied, Lehrmann is found to be entitled to damages, Ten will rely in mitigation of damages upon the following facts, matters and circumstances:
- (a) the substantial truth of such of the Applicant's Imputations as are proved true;
  - (b) the substantial truth of such of the particulars of truth as are proved true;
  - (c) the facts, matters and circumstances proved in evidence in support of the defences pleaded in this Defence;
  - (d) such other evidence as is properly admitted at trial;
  - (e) any damages award made in favour of Lehrmann against the respondents in *Lehrmann v News Life Media Pty Limited and Samantha Maiden*, Federal Court of Australia, Proceedings No. NSD104 of 2023;
  - (f) any damages for defamation recovered or compensation received or agreed to be received by Lehrmann in relation to any other publication having the same meaning or effect as the matters complained of; and
  - (g) any damages or compensation paid to Lehrmann in response to concerns notices sent by him to others, including Australian Radio Network and the Australian Broadcasting Corporation.

Date: 7 March 2023



Signed by Marlia Saunders

Lawyer for the First Respondent

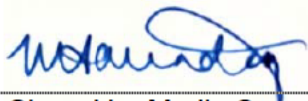
This pleading was prepared by Marlia Saunders, lawyer, and settled by Dr Matthew Collins AM KC and Tim Senior of Counsel.

### **Certificate of lawyer**

I Marlia Saunders certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 7 March 2023



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Signed by Marlia Saunders

Lawyer for the First Respondent

## ANNEXURE A

### PARTICULARS OF JUSTIFICATION

In support of the substantial truth of the Applicant's Imputations, Ten relies upon the following facts, matters and circumstances:

#### Part A – Relationship between Lehrmann and Brittany Higgins

1. For at least 12 months prior to 23 March 2019, Lehrmann was and had been employed as a policy advisor in the parliamentary office of the Hon. Linda Reynolds MP (**Reynolds**) in Canberra, first when Reynolds was the Assistant Minister for Home Affairs and, later, when she was the Minister for Defence Industry.
2. Prior to his employment with Reynolds, Lehrmann had been employed in the office of Bridget McKenzie MP.
3. In September 2018, Brittany Higgins (**Higgins**) moved from the Gold Coast to Canberra to commence employment as an administration officer and junior media advisor in the parliamentary office of the Hon. Steve Ciobo MP (**Ciobo**), who at the time was the Minister for Defence Industry.
4. In early March 2019, Ciobo announced that he would not contest the next federal election and stood down as the Minister for Defence Industry. Reynolds was subsequently announced to replace Ciobo as Minister for Defence Industry.
5. A consequence of Ciobo's resignation was that all staff employed in his office, including Higgins, had to re-apply for their jobs.
6. In early March 2019, Higgins contacted Nicky Hamer (**Hamer**), who was the senior media advisor to Reynolds, in the hope of securing a job in Reynolds' office. Hamer arranged to meet Higgins on 2 March 2019 at the Kingston Hotel in Canberra.
7. Higgins understood her meeting with Hamer was a form of job interview, the purpose of which was to meet members of Reynolds' team and get to know them, before Hamer made any recommendation to Reynolds as to whether Reynolds should offer Higgins a job.
8. In fact, unbeknownst to Higgins, the meeting with Hamer was not a job interview at all but, rather, was arranged at Lehrmann's behest because Lehrmann thought Higgins was physically attractive and he asked Hamer to invite Higgins out for a drink.

9. Higgins met with Hamer and another male member of Reynolds' team at the Kingston Hotel on or about 2 March 2019. Lehrmann was also there.
10. Higgins was subsequently offered, and accepted, a job as an administration officer and junior media advisor in Reynolds' parliamentary office, which she commenced in early-mid March 2019.
11. At the time she commenced working in Reynolds' parliamentary office, Higgins was the most junior staff member in the office and Lehrmann was the most senior (other than the Chief of Staff). Lehrmann occupied his own corner or section in Reynolds' Ministerial suite in Parliament House (**Ministerial Suite**). He had, as at March 2019, worked for Reynolds for at least one year.
12. When Higgins commenced working in Reynolds' office, Lehrmann routinely bossed Higgins around, including by regularly allocating her work and giving her directions, often in areas outside her job description. There was a substantial and obvious imbalance of power and experience between Lehrmann and Higgins.
13. On a date in the first three weeks of March 2019 (and most likely either on 6, 13 or 20 March 2019), Lehrmann and Higgins each attended a social dinner for staff members in Reynolds' office. At the end of the function, Lehrmann and Higgins were standing outside waiting for taxis or Ubers. Lehrmann attempted to kiss Higgins. Higgins politely declined Lehrmann's advance and Lehrmann got into a taxi or Uber and left.

#### **Part B – Events at 'The Dock' on 22 March 2019**

14. On Friday, 22 March 2019, Lehrmann and Higgins each attended a social function at 'The Dock' bar in Canberra.
15. The function was a regular or semi-regular social drinks function organised by persons in Canberra who worked in the defence industry, including defence industry contractors, departmental officials and political staffers.
16. Higgins, who at the time had been employed in Reynolds' office for only weeks, was invited to the drinks function. She wanted to make a good impression on her colleagues and to add value to her team by introducing some of her colleagues to others at the function and so she invited colleagues in Reynolds' office to join her at the drinks function. This included inviting Lehrmann.

17. Higgins arrived at The Dock for the function at approximately 7:19pm on 22 March 2019. Lehrmann arrived some time later, at approximately 8:39pm. In total, there were approximately 25 people at the function.
18. Higgins had her first alcoholic drink at approximately 7:24pm. Between 7:24pm and approximately 11:50pm, Higgins had 11 alcoholic drinks, including a last drink which she 'skolled' at approximately 11:50pm before leaving the venue. Lehrmann purchased and handed Higgins at least 2 alcoholic drinks. Higgins did not have any non-alcoholic drinks at The Dock and did not eat any food.
19. Over the course of the function at The Dock, Higgins became visibly intoxicated and struggled to maintain her balance. Lehrmann interacted with Higgins intermittently during the function, including by buying and handing her drinks, and was aware that she had become drunk. Lehrmann was not intoxicated.

#### **Part C – Events at '88MPH' on 23 March 2019**

20. The function at The Dock ended just before midnight and the attendees began to disperse.
21. Higgins, Lehrmann and two friends (Lauren Gain (**Gain**) and Austin Wenke (**Wenke**)) decided to continue socialising. At Lehrmann's suggestion, they decided to go to a nightclub called '88MPH'. The four of them travelled there by taxi or Uber.
22. At 88MPH, Higgins, Lehrmann, Gain and Wenke continued to socialise, dance and drink alcohol, including doing 'shots'.
23. Over the course of the night at 88MPH:
  - (a) Higgins and Lehrmann spent time together;
  - (b) Higgins became extremely intoxicated;
  - (c) Lehrmann was not intoxicated; and
  - (d) Lehrmann began to touch Higgins familiarly.
24. As the night progressed, Higgins became so drunk that she fell over and had to be helped up by Lehrmann. Lehrmann was not intoxicated. He was aware that Higgins was heavily intoxicated.
25. Shortly after she fell, at approximately 1:30am, Higgins realised how drunk she was and decided that she needed to go home. Lehrmann suggested that Higgins and he share a taxi

or Uber as they both lived in the same direction. Lehrmann then called an Uber. He told Higgins that he first needed to go to Parliament House to pick something up from work.

#### **Part D – Entry into Parliament House on 23 March 2019**

26. Lehrmann and Higgins arrived at the Ministerial Entrance at Parliament House at approximately 1:40am on 23 March 2019. Neither of them had their security passes in order to access and enter the building and so Lehrmann called security via an intercom.
27. When they arrived at Parliament House, Higgins was the most drunk she had ever been in her life. Lehrmann was not intoxicated.
28. Lehrmann, knowing how drunk Higgins was, told her to remain quiet. He pushed the intercom button and spoke to a member of security. He identified himself by name, described himself as working for Reynolds and said that they had been requested to pick up some documents.
29. A security guard met Lehrmann and Higgins at the entrance to the building and escorted them to a security checkpoint inside the building, where they were required by two further security guards to show their identification, sign-in for a temporary security pass and clear a security screening. Higgins was observed to be intoxicated.
30. Higgins was so drunk that during the security screening:
  - (a) she was unable to sign her own name;
  - (b) she was required to remove her shoes and then had great difficulty putting them back on; and
  - (c) she subsequently gave up trying to put her shoes back on and proceeded to walk barefoot.
31. Lehrmann, knowing how drunk Higgins was, signed her in himself.
32. A security guard escorted Lehrmann and Higgins to the Ministerial Suite, where they arrived at approximately 1:48am. The security guard then left.
33. Higgins entered Reynolds' office and sat on a ledge overlooking the Prime Minister's courtyard. She sat there by herself for a short period. She began to feel sick and extremely tired. At some point shortly afterwards, she passed out.

## Part E – The Rape

34. Sometime later, Higgins was woken by a sharp pain in her thigh. She woke to find herself lying on her back on the sofa in Reynolds' office. She was wedged into the corner of the sofa. Lehrmann was on top of her. He had his knee crushed against Higgins' thigh, holding her legs open. He had her pinned into the corner of the sofa. He was sweaty and crouched over Higgins. His penis was inside Higgins' vagina and he was having forceful sexual intercourse with Higgins, audibly slapping himself against her.
35. Higgins had not consented to having sexual intercourse with Lehrmann and was incapable of so consenting because:
  - (a) she was too intoxicated to voluntarily and freely give her consent; and
  - (b) she had been passed out, either asleep or unconscious.
36. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to having sexual intercourse with Lehrmann.
37. Lehrmann knew that Higgins had not consented to sexual intercourse with him because he was aware, prior to penetrating Higgins' vagina with his penis, that:
  - (a) Higgins was too intoxicated to voluntarily and freely give her consent;
  - (b) Higgins was passed out, either asleep or unconscious; and
  - (c) Higgins had not communicated to Lehrmann, either in words or by actions, any consent to having sexual intercourse with him.
38. Alternatively, because of his knowledge of the matters set out in the preceding paragraph, Lehrmann was reckless or indifferent as to whether or not Higgins had consented to having sexual intercourse with him.
39. In the premises, Lehrmann raped Higgins, within the ordinary meaning of that term and committed the offence in s 54 of the *Crimes Act 1900* (ACT) (**Crimes Act**).
40. After waking up and realising that Lehrmann was having sexual intercourse with her, Higgins said 'no' at least half a dozen times and told Lehrmann to stop. Lehrmann did not stop and continued to have sexual intercourse with Higgins without her consent. Higgins could not get Lehrmann off her and began crying. Lehrmann continued to have sexual intercourse with Higgins without her consent and while she was crying.

41. Higgins had not consented to Lehrmann continuing to have sexual intercourse with her because:
- (a) Higgins said 'no';
  - (b) Higgins told Lehrmann to stop;
  - (c) Higgins cried while Lehrmann was having sexual intercourse with her; and
  - (d) Higgins was too intoxicated to voluntarily and freely give her consent.
42. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to Lehrmann continuing to have sexual intercourse with her and, to the contrary, her words and actions particularised in the preceding paragraph plainly communicated to Lehrmann that she did not consent.
43. Further, Lehrmann knew that Higgins did not consent to him continuing to have sexual intercourse with her because he was aware that:
- (a) Higgins had said 'no';
  - (b) Higgins had told him to stop;
  - (c) Higgins was crying;
  - (d) Higgins had been passed out, either asleep or unconscious, immediately before the words and actions particularised in sub-paragraphs (a) to (c) above;
  - (e) Higgins was too intoxicated to voluntarily and freely give her consent; and
  - (f) Higgins had not communicated to Lehrmann, either in words or by actions, any consent to Lehrmann continuing to have sexual intercourse with her.
44. Alternatively, because of his knowledge of the matters set out in the preceding paragraph, Lehrmann was reckless or indifferent as to whether or not Higgins had consented to him continuing to have sexual intercourse with her.
45. In the premises, Lehrmann continued to rape Higgins within the ordinary meaning of that term and committed the offence in s 54 of the Crimes Act.
46. Some time prior to 2:30am, Lehrmann finished having sexual intercourse with Higgins, looked at her and left her on the sofa in Reynolds' office, either completely or substantially



naked, or with her dress scrunched up around her waist. He then left the Ministerial Suite and Parliament House.

#### **Part F – Matters consistent with the rape of Brittany Higgins**

47. Ten relies upon the combination of the following further matters as being consistent with Higgins having been raped by Lehrmann.
48. The relationship between Lehrmann and Higgins involved a substantial imbalance of power and experience as particularised in Part A of this Annexure.
49. Lehrmann was sexually attracted to Higgins, as demonstrated by the matters particularised in Part A and paragraph [23] of this Annexure, namely:
  - (a) he contrived to meet Higgins at the Kingston Hotel on 2 March 2019 because he thought she was physically attractive;
  - (b) he attempted to kiss Higgins after a staff dinner in March 2019; and
  - (c) he touched Higgins familiarly at 88MPH in the early hours of 23 March 2019.
50. In the days following her rape, between 23 March and 8 April 2019, Higgins made contemporaneous complaints to at least the following 9 persons, in which she consistently described being raped or sexually assaulted by Lehrmann in a manner consistent with the allegations in Part E of this Annexure:
  - (a) Fiona Brown (**Brown**), Reynolds' Chief of Staff, in a series of meetings and conversations;
  - (b) Ben Dillaway (**Dillaway**), Higgins' former partner, in a series of phone calls, text messages and conversations;
  - (c) Chris Payne (**Payne**), the Department of Defence Departmental Liaison Officer to Reynolds' parliamentary office, in a conversation;
  - (d) Reynolds, in a meeting;
  - (e) Captain Nikita Irvine, the Aide-de-Comp to Reynolds, in a conversation;
  - (f) two members of the Australian Federal Police, Agent Rebecca Cleaves and Agent Katie Thelning, in a meeting at Parliament House; and

(g) two members of ACT Police's Sexual and Child Assault Team, Detective Senior Constable Sarah Harman and Constable Kristy Anderson, in a meeting at Belconnen Police Station in Canberra.

51. Higgins spent the entire weekend of 23 and 24 March 2019 crying uncontrollably and bed-bound in her bedroom and there was no reason for her to do so other than the fact that she had been raped by Lehrmann.
52. On or about 26 March 2019, Higgins emotionally broke down at work while telling Brown about the rape and was told she could work from home.
53. On 28 March 2019, Higgins experienced an emotional breakdown when speaking to Dillaway about the rape.
54. On 1 April 2019, when attending a meeting with Reynolds and Brown in Reynolds' office where the alleged rape had occurred, Higgins felt panicked. There was no reason for Higgins to feel panicked about meeting with Reynolds and Brown in Reynolds' office other than the fact that she had been raped by Lehrmann in that office.
55. In the days and weeks following the rape, Higgins was periodically hysterical and in a depressive state, regularly crying, uncharacteristically unsociable, cold and distant and tended to remain in her bedroom when at home. There was no reason for her to behave in that manner other than the fact that she had been raped by Lehrmann.
56. In the days and weeks following the rape, Higgins lost a significant amount of weight and began to experience intermittent panic attacks. There was no reason for Higgins to lose such a significant amount of weight and experience panic attacks other than the fact that she had been raped by Lehrmann.
57. In the 12 months following the rape, Higgins received ongoing medical treatment and counselling for her mental health from the Canberra Rape Crisis Centre and a private counsellor. There was no reason for Higgins to receive such treatment and counselling other than the fact that she had been raped by Lehrmann.

#### **Part G – Lehrmann's lies, inconsistencies and consciousness of guilt**

58. Ten relies upon the combination of the following further matters as being consistent with Higgins having been raped by Lehrmann.
59. When leaving 88MPH with Higgins, Lehrmann lied to Higgins when he told her that he needed to go to Parliament House to pick something up from work.

60. When he arrived at Parliament House at approximately 1:40am on 23 March 2019, Lehrmann also lied to security when he told them via the intercom that he had been requested by Reynolds, or by someone in her office, to pick up some documents.
61. In fact, Lehrmann did not need to pick up anything from work. He had not been asked by anyone to pick up any documents, knew that he had not been so asked and did not in fact pick up any documents or anything else from Parliament House. Lehrmann's explanation for going to Parliament House was also inconsistent with explanations he gave on subsequent occasions after 23 March 2019, as referred to below.
62. When he was in the Ministerial Suite, between approximately 2:16am and 2:18am, Lehrmann received six telephone calls to his mobile phone from his then girlfriend. Lehrmann did not answer any of the telephone calls.
63. At approximately 2:31am, Lehrmann used his mobile phone to call for an Uber. He would have seen the six missed calls from his girlfriend. Lehrmann did not return his girlfriend's telephone calls. There was no plausible reason for Lehrmann to neither answer nor return his girlfriend's telephone calls while in the Ministerial Suite. Lehrmann's conduct in not doing so is consistent with either or both of:
  - (a) him having been in the process of raping Higgins when the telephone calls were received; and
  - (b) a consciousness of guilt for having raped Higgins.
64. After he raped Higgins, Lehrmann used his mobile phone to call an Uber and hastily left the Ministerial Suite at approximately 2:31am. Lehrmann did not check on Higgins before leaving. He then quickly left Parliament House at approximately 2:33am, before his Uber had arrived. Lehrmann hurried out of Parliament House, throwing his security pass towards security as he left. The haste with which Lehrmann left the Ministerial Suite and Parliament House without first checking on Higgins is consistent with a consciousness of guilt for having raped Higgins.
65. Since 23 March 2019, Lehrmann has given a number of statements or accounts about the events of 23 March 2019, which statements and accounts have contained inconsistencies and, in some cases, lies. Lehrmann's multiple inconsistent and/or knowingly false accounts are consistent with a consciousness of guilt for having raped Higgins. They are as follows.
66. On or about 26 March 2019, in a meeting with Brown, Lehrmann told Brown that he had gone back to the Ministerial Suite to drink whisky and that he had two glasses of whisky

before leaving. Lehrmann repeated that explanation in a telephone call with Brown and Reg Chamberlain on 5 April 2019.

67. In a record of interview with ACT Police on 19 April 2021, Lehrmann denied returning to the Ministerial Suite to drink whisky, said that he did not keep any alcohol in the Ministerial Suite and nor did anyone else, and gave a number of other reasons for returning to the Ministerial Suite.
68. In fact, Lehrmann did keep an extensive collection of alcohol at his desk in the Ministerial Suite. Accordingly:
  - (a) Lehrmann lied to police when he told them that he did not keep alcohol in the Ministerial Suite; and
  - (b) Lehrmann either lied to Brown and Reg Chamberlain when he told them that he visited the Ministerial Suite to drink whisky or he lied to police when he denied going to the Ministerial Suite to drink whisky.
69. On or about 5 April 2019, Lehrmann sent an email to Brown in which he denied telling security at Parliament House that he needed access to the Ministerial Suite for the purposes of official business or that he had implied to security that he was acting under Reynolds' authority.
70. In fact, as Lehrmann was well aware, he had told security that he needed access to the Ministerial Suite for official business and he had implied that he was acting under Reynolds' authority. Lehrmann told security that he worked for Reynolds and that he had been requested (implicitly, by Reynolds) to collect some documents. In the circumstances, Lehrmann lied in his email to Brown.
71. During his record of interview, Lehrmann told ACT police on five separate occasions that he returned to Parliament House in the early hours of 23 March 2019 because his usual practice was to leave his keys at his desk after work and collect them later in the evening when going home. However:
  - (a) Lehrmann did not take his security pass with him to The Dock and 88MPH. Had it been Lehrmann's usual practice to leave his keys at his desk, he could be expected to take his security pass with him too, in order to easily obtain access to the Ministerial Suite to retrieve his keys. It is inherently implausible that Lehrmann would have left his security pass behind if it was his usual practice to leave his keys at his desk and return later in the night to retrieve them;

- (b) in his email to Brown on 5 April 2019, Lehrmann admitted that it is a security breach to access the Ministerial Suite after hours. It is inherently implausible that Lehrmann would adopt a practice of leaving his keys at his desk and retrieving them later in the night after hours, in circumstances where Lehrmann believed that to do so would constitute a security breach;
  - (c) Lehrmann was in the Ministerial Suite for approximately 40 minutes in the early hours of 23 March 2019, far longer than necessary to simply retrieve his keys. It is inherently implausible that Lehrmann was there for 40 minutes to simply retrieve his keys; and
  - (d) Lehrmann's account was inconsistent with what he had told security via the intercom on 23 March 2019 and what he told Fiona Brown and Reg Chamberlain, were his reasons for accessing the Ministerial Suite.
72. In the premises, it is to be inferred that Lehrmann lied to ACT police when he told them that he accessed the Ministerial Suite on 23 March 2019 to collect his keys.
73. During his record of interview, Lehrmann told ACT Police on approximately six separate occasions that he returned to the Ministerial Suite in the early hours of 23 March 2019 because, during the course of the evening, he had been reminded that he needed to update Reynolds' 'Question Time Folders', and so he returned to his desk to re-order, annotate and update the Question Time Folders. However:
- (a) Parliament was not sitting in the week commencing on 25 March 2019 and so there was no urgency whatsoever for Lehrmann to re-order and annotate the Question Time Folders, much less at 2:00am in the morning on 23 March 2019 after having been out socialising for approximately six or seven hours and consuming alcohol;
  - (b) it was the ordinary practice within the Coalition government at the time that Question Time Folders were only used during sitting weeks;
  - (c) Lehrmann would have had ample time to re-order and annotate the Question Time Folders when he returned to work on 25 March 2019 and throughout the following week;
  - (d) Lehrmann had no incentive to return to his desk at approximately 2:00am on a Saturday morning in circumstances where he was due to finish in his position as a policy advisor to Reynolds on or about 29 March 2019;
  - (e) Lehrmann did not tell Higgins when leaving 88MPH that he was going to Parliament House to work or to re-order and annotate the Question Time Folders; and

(f) Lehrmann gave Fiona Brown and Reg Chamberlain a different explanation for going to Parliament House.

74. In the premises, it is to be inferred that Lehrmann lied to ACT police when he told them that he accessed the Ministerial Suite on 23 March 2019 to annotate and re-order the Question Time Folders.
75. In his record of interview, Lehrmann told ACT police on approximately seven separate occasions that, when he returned to Parliament House with Higgins in the early hours of 23 March 2019, Higgins was not noticeably or heavily intoxicated. In fact, having regard to the matters particularised in Parts B, C and D of this Annexure, Higgins was heavily and visibly intoxicated when she returned to Parliament House, had been observed by at least one security guard to be intoxicated, and Lehrmann, who was not intoxicated or otherwise affected by alcohol, knew Higgins was heavily and visibly intoxicated. Accordingly, Lehrmann lied to ACT police when he told them that Higgins was not visibly or heavily intoxicated when she accompanied him to Parliament House in the early hours of 23 March 2019.
76. During his record of interview, Lehrmann told ACT police that he had not observed Higgins fall down over the course of the night on 22 and 23 March 2019. In fact, as particularised in Part C of this Annexure, Higgins had fallen down at 88MPH, Lehrmann had observed her falling down and Lehrmann had assisted her to get up. Accordingly, Lehrmann lied to ACT police when he told them that he had not observed Higgins fall down over the course of the night on 22 and 23 March 2019.
77. During his record of interview, Lehrmann twice told ACT police that Higgins signed herself into Parliament House at the security checkpoint. In fact, as particularised in Part D of this Annexure, Higgins was too intoxicated to sign herself into Parliament House and Lehrmann knew that and he in fact had signed Higgins into Parliament House. Accordingly, Lehrmann lied to ACT police when he told them that Higgins had signed herself into Parliament House.
78. During his record of interview, Lehrmann twice denied having any intimate contact with Higgins beyond flirtation during the evening of 22 March 2019 and the early hours of 23 March 2019. In fact, as particularised in Part C of this Annexure, Lehrmann touched Higgins familiarly at 88MPH. Accordingly, Lehrmann lied to ACT police when he told them that he had not had any intimate contact with Higgins beyond flirtation during the evening of 22 March 2019 and the early hours of 23 March 2019.
79. During his record of interview, Lehrmann twice denied receiving any telephone calls while he was in the Ministerial Suite in the early hours of 23 March 2019. In fact, having regard to

the matters particularised in paragraphs [62] and [63] of this Annexure above, Lehrmann missed six telephone calls from his then girlfriend and must have known that he had received those calls. Accordingly, Lehrmann lied to ACT police when he told them that he had not received any telephone calls while he was in the Ministerial Suite in the early hours of 23 March 2019.

## ANNEXURE B

### PARTICULARS OF QUALIFIED PRIVILEGE

In support of the defences of qualified privilege pleaded in paragraphs 14 and 15 of this Defence, Ten relies upon the following facts, matters and circumstances:

#### SUBJECTS

1. Ten published the matters complained of in the course of giving to the recipients of the matters complained of information about the following subjects, each of which was of interest or apparent interest to the recipients (the **Subjects**):
  - (a) an allegation of rape occurring in a Minister's office at Parliament House after hours;
  - (b) political staffers accessing a Minister's office at Parliament House after hours while intoxicated;
  - (c) the Government's handling of an allegation by a political staffer of rape by a colleague;
  - (d) allegations of a political coverup by the Government of an allegation by a political staffer of rape by a colleague;
  - (e) the treatment by the Government of a staff member who made a rape complaint;
  - (f) the absence of an appropriate human resources structure and complaints handling process for ministerial and parliamentary staff;
  - (g) the fact and circumstances of an investigation by the Parliament House police unit and the Australian Federal Police into an allegation of rape occurring in a Minister's office at Parliament House after hours, and the availability of CCTV footage from Parliament House as part of those investigations;
  - (h) the response by the Prime Minister in Parliament to an allegation of rape occurring in a Minister's office at Parliament House after hours;
  - (i) the conduct of the Government in the lead up to a federal election;
  - (j) the conduct of a Minister towards a member of her staff;
  - (k) the culture and safety of Parliament House as a workplace;
  - (l) the treatment of women in Parliament House;



- (m) the treatment of women by the Liberal Party; and
  - (n) the treatment of sexual assault complainants.
2. Ten believed on reasonable grounds that the recipients of the matters complained of had an interest or had an apparent interest in the Subjects.
  3. Each of the Subjects was a matter of public interest.
  4. Each of the Subjects related to government and political matters.

## REASONABLENESS

5. Ten's conduct in publishing the matters complained of was reasonable in the circumstances set out in [6] to [47] below.
6. By reasons of the matters in [2], [3] and [4] above, Ten reasonably held the view that the matters complained of were in the public interest.
7. The matters complained of related to Lehrmann's role as a senior advisor to Reynolds, who was at the time the Minister for Defence Industry.
8. The production team responsible for producing the matters complained of, which was made up of employees of both Ten and its production services provider, 7pm Company Pty Ltd (**Production Team**), was made up of experienced and competent journalists, comprising:
  - (a) Christopher Bendall (**Bendall**), who was initially the Co-Executive Producer of *The Project* then became the Executive Producer. Bendall's role was to supervise the production of the matters complained of, ensure that all necessary journalistic steps had been taken and give the matters complained of final sign off;
  - (b) Angus Llewellyn (**Llewellyn**), Producer;
  - (c) Peter Meakin (**Meakin**), Executive Consultant, News and Current Affairs;
  - (d) Laura Binnie, Head of Field;
  - (e) Sarah Thornton (**Thornton**), Network Executive Producer;
  - (f) Lisa Wilkinson (**Wilkinson**), Host; and
  - (g) Craig Campbell, who was the Executive Producer of *The Project* when the story was commissioned.

9. The Production Team communicated with Higgins or on her behalf about the allegations on the following occasions prior to the publication of the matters complained of:
- (a) via emails exchanged between Wilkinson and Higgins' partner David Sharaz (**Sharaz**) on 18 January 2021;
  - (b) in a telephone conversation between Wilkinson and Sharaz on 19 January 2021;
  - (c) via emails exchanged between Wilkinson and Sharaz on 19 January 2021, which attached a document entitled "Brittany Higgins – Timeline" and was forwarded by Wilkinson to the other members of the Production Team on 20 January 2021;
  - (d) in a lengthy telephone conversation between Wilkinson and Sharaz on 20 January 2021;
  - (e) via emails exchanged between Wilkinson and Sharaz on 20 January 2021;
  - (f) in WhatsApp messages between Wilkinson and Higgins between 21 January 2021 and 15 February 2021;
  - (g) in a lengthy telephone conversation between Wilkinson and Higgins on 21 January 2021;
  - (h) in a telephone conversation between Wilkinson and Higgins on or about 23 January 2021;
  - (i) in a telephone conversation between producer Llewellyn and Higgins on or about 26 January 2021;
  - (j) via WhatsApp messages between Llewellyn and Sharaz between 26 January 2021 and 15 February 2021;
  - (k) in a face-to-face meeting in Sydney with Higgins, Sharaz, Wilkinson and Llewellyn on 27 January 2021, which lasted for approximately 5 hours;
  - (l) via WhatsApp messages between Llewellyn and Higgins between 30 January 2021 and 15 February 2021; and
  - (m) in a recorded interview between Higgins and Wilkinson on 2 February 2021, which lasted for over 2 hours, and at which Llewellyn, Tasha Smithies (Senior Legal Counsel) and two camera operators were in attendance (**Unedited Interview**).

10. Ten did not pay Higgins, other than for her travel and accommodation expenses in order to come to Sydney to attend the meetings and interviews referred to at [9(k)] and [9(m)] above.
11. On 3 February 2021, Higgins signed an "Adult Appearance Release" with Ten, in which she agreed to the following clause:
  2. *You warrant and represent to 7PM and 10 that any information contributed by you to the Program will be true and factually accurate, that you own or are entitled to all right, title and interest (including copyright) in any materials (i.e. documents, pictures or videos) provided by you to 7PM or 10 for the purpose of inclusion in the Program and that such materials do not contain confidential information or otherwise breach a duty of confidence owed by You to a third party.*
12. In researching the matters complained of and prior to their publication, Ten also had regard to the following:
  - (a) a document entitled "Brittany Higgins – Timeline" provided to Wilkinson by Sharaz on behalf of Higgins, which recorded that:
    - (i) on Saturday 23 March 2019, the incident occurred;
    - (ii) on Wednesday 26 March 2019, Higgins met with the Parliament House Police Unit to recount the incident;
    - (iii) on Monday 29 April 2019, Higgins received a call from the AFP Bureau Chief of the Sexual Assault Unit;
    - (iv) on Friday 18 October 2019:
      - (A) Reynolds called the Chief of Staff to then Minister Michaelia Cash (**Cash**), Daniel Try (**Try**), for whom Higgins worked at the time, about a journalist enquiry from the *Canberra Times* regarding an alleged staffer incident that occurred ahead of the election;
      - (B) a staffer (variously called Kirsty, Kristy or Christie) from Reynolds' office came to speak to Higgins;
      - (C) Higgins and Try informed Cash of the incident; and
      - (D) Higgins left to work from home for the rest of the day;
    - (v) on Saturday 19 October 2019, Cash asked Higgins if she was okay;

- (vi) on Sunday 20 October 2019, Higgins received a call from Rebecca Cleaves (Police Officer) stating the ACT Commissioner had prepared notes on the incident to go into his Senate Estimates briefing pack;
  - (vii) Payne told Higgins she was "found" by a security guard who entered Reynolds' suite early Sunday morning and asked whether she had been raped by Lehrmann;
  - (viii) Higgins met with Rebecca Cleaves and gave an "unofficial statement";
  - (ix) Higgins met with Kathryn Cripps who was there as a support person from the Canberra Rape Crisis Centre;
  - (x) Higgins told her parents and her therapist about the incident; and
  - (xi) a photograph of an official contact sheet for Reynolds and her staff is included, which sets out the name, email, phone number, position and location for Lehrmann;
- (b) a screenshot from the website for ACT Policing crime statistics, which showed reports of sexual assaults made in April to June 2019 including an incident at Parliament House;
  - (c) photographs of Lehrmann from his social media accounts, which were provided to Wilkinson by Sharaz;
  - (d) a meeting with Higgins of around five hours' duration;
  - (e) a recorded interview with Higgins of over two hours' duration;
  - (f) photographs of Higgins with various politicians, including then Prime Minister Scott Morrison, Minister Christopher Pyne, Minister Karen Andrews, Cash, Ciobo, Minister Julie Bishop and Reynolds;
  - (g) photographs of Higgins' employee access passes for Australian Parliament House;
  - (h) a screenshot of text messages exchanged between Higgins and Brown exchanged on 31 March 2019;
  - (i) an email from Federal Agent Katie Thelning from the Australian Federal Police to Higgins on 2 April 2019;
  - (j) an email from Rebecca Cleaves from the Australian Federal Police to Higgins;

- (k) a photograph of a bruise on Higgins' leg taken on 3 April 2019;
- (l) voicemails from the Australian Federal Police on 4 April 2019 and 9 April 2019;
- (m) an email from Higgins to Sarah Harman from the Australian Federal Police on 13 April 2019;
- (n) an email from Kathryn Cripps from the Canberra Rape Crisis Centre to Higgins on 4 June 2019;
- (o) a screenshot of text messages exchanged between Higgins and Dillaway in or about May 2019;
- (p) a *Sydney Morning Herald* and Channel Nine news story from 30 July 2019 about Liberal Party sexual assault allegations which included an interview with Cash and the Vice President of the Federal Liberal Party;
- (q) a screenshot of text messages exchanged between Higgins and Dillaway in or about early July 2019;
- (r) a screenshot of a voicemail from Cash left on Higgins' mobile on 20 October 2019;
- (s) an audio recording of a voicemail from Cash left on Higgins' mobile on 20 October 2019;
- (t) a screenshot of a voicemail from Try left on Higgins' mobile on 20 October 2019;
- (u) an audio recording of a voicemail from Try left on Higgins' mobile on 20 October 2019;
- (v) a text message from Higgins to Try regarding taking a personal leave day and engaging with the Employee Assistance Program;
- (w) contact details for then Prime Minister Scott Morrison and his staffers including John Kunkel, Yaron Finkelstein, Andrew Carswell and Brown;
- (x) phone numbers for Reynolds and Cash;
- (y) a screenshot of an email sent by Higgins to Try on 29 January 2021 attaching her resignation letter;
- (z) Higgins' resignation letter addressed to Try on 29 January 2021;
- (aa) a screenshot of messages between Higgins and Cash on 29 January 2021;

- (bb) a screenshot of missed calls from Cash to Higgins on 29 January 2021;
  - (cc) Lehrmann's email addresses;
  - (dd) Lehrmann's phone number;
  - (ee) a screenshot of Lehrmann's LinkedIn profile;
  - (ff) a screenshot of a text message from AFP Senior Constable Emma Frizzell confirming the initial report Higgins made on 1 April 2019 and the reference number for that report; and
  - (gg) screenshots from Higgins' Uber account, recording her Uber trip home from Parliament House on the morning of 23 March 2019.
13. In researching the matters complained of and prior to their publication, Ten conducted the following further enquiries by way of further verification:
- (a) Llewellyn conducted internet searches to confirm everyone named by Higgins existed and held the roles she described;
  - (b) Llewellyn independently checked the ACT Policing crime statistics, which showed reports of sexual assaults made in April to June 2019 including an incident at Parliament House.
  - (c) Llewellyn independently checked Lehrmann's LinkedIn, Twitter and Facebook profiles;
  - (d) Llewellyn conducted research on how the Australian Federal Police worked within Parliament House;
  - (e) Llewellyn conducted research on the human resources arrangements for staff working at Parliament House;
  - (f) on or about 29 January 2021, Llewellyn spoke to Kathryn Cripps from Canberra Rape Crisis;
  - (g) in or about late January or early February 2021, Llewellyn spoke to Alex Humphries, Higgins' former flatmate;
  - (h) in or about late January or early February 2021, Llewellyn attempted to contact Federal Agents Emma Frizzell, Rebecca Cleaves and Katie Thelning from the Australian Federal Police;

- (i) Llewellyn independently located a media release online with Lehrmann's name and phone number on it;
  - (j) in or about early February 2021, Llewellyn attempted to contact Nino Tesoiero, from Parker & Partners where Lehrmann had been employed, to ask for contact details for Lehrmann but did not get through;
  - (k) on or about 1 February 2021, Llewellyn spoke to Professor Anne Twomey, a constitutional law expert at the University of Sydney;
  - (l) on or about 1 February 2021, Llewellyn spoke to the former Clerk of the Senate, Rosemary Laing; and
  - (m) on or about 9 February 2021, Llewellyn spoke to Professor George Williams, a constitutional law expert at the University of NSW.
14. In light of the seriousness of Higgins' allegations, Ten decided prior to recording the Unedited Interview to not name Lehrmann as the alleged perpetrator in the matters complained of and instead referred to him as a "senior male advisor", "senior male colleague", "senior colleague" or "senior staffer". Ten took care not to inadvertently identify any other person as the alleged perpetrator. Lehrmann's name was not used with the broader Production Team.
15. In light of the seriousness of Higgins' allegations, Ten decided to maintain confidentiality over the story within the company and 7pm Company by:
- (a) keeping the Production Team small;
  - (b) giving the story a codename "ENVIRO"; and
  - (c) keeping all documents, scripts, recordings and edited videos off the shared server.
16. Ten took care to distinguish between suspicions, allegations and proven facts in the questions that were put to Higgins by Wilkinson and the way the information provided by Higgins was described, by repeated use of the words "claims", "allegations", "alleged rapist", "alleged incident", "alleged rape", "the man you say raped you", "alleged assault" and "if everything you say is true".
17. After recording the Unedited Interview, Ten arranged for it to be transcribed in full and provided a copy to Higgins in order for Higgins to check the accuracy of the information she had provided during the Unedited Interview and for the purposes of providing the statutory declaration referred to below.

18. On or about 10 February 2021, Ten obtained a signed statutory declaration from Higgins which stated:

1. *On Tuesday, 2 February 2021, I sat down with Lisa Wilkinson for the purpose of recording a (sic) interview (**Interview**) for broadcast by Network Ten Pty Limited (**Network 10**) on the television program, *The Project*.*
2. *A transcript of the Interview provided to me by Network 10 is annexed to and forms part of my statutory declaration (**Annexure A**).*
3. *To the very best of my knowledge and recollection, the Interview, as recorded by the transcript at Annexure A, represents the complete truth of the event surrounding the rape and sexual assault of me by Bruce Lehrmann that occurred in Minister Linda Reynolds office overnight on Friday 22/3 and Saturday 23 March 2019, culminating in my decision to ultimately resign from working in the office of Minister Michaelia Cash on 29 January 2021.*
4. *I did not lie or misrepresent the truth at any stage during the Interview.*
5. *I did not omit any key details that would undermine the veracity of my account during the Interview.*
6. *The photograph of the buise (sic) on my leg, as I referred to in the Interview, is also annexed to and form part of my statutory declaration (**Annexure B**).*
7. *The photograph at Annexure B shows the buise (sic) on my leg that was caused by Bruce Lehrmann during the rape and sexual assault that occurred in Minister Reynolds office on 22-23 March 2019.*
8. *I took the photograph with my iPhone at Annexure B on 03/04/19.*

*I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.*

19. During the course of the extensive communications with Higgins referred to in [9] above, Ten formed a view prior to publication of the matters complained of that Higgins had integrity and was a credible source, for reasons including that:

- (a) she was believable in the way she told her story;
- (b) she was clearly upset and traumatised by what had happened to her;



- (c) her stated motivation in telling her story was to ensure it did not happen to anyone else;
  - (d) she was consistent each time she told her story;
  - (e) she was candid when she did not know or could not recall a detail;
  - (f) she provided information and documents which corroborated her story; and
  - (g) Higgins' story was not contradicted by any of the further enquiries undertaken by Ten set out in paragraph [13] above or the responses provided in response to requests sent by Ten set out in paragraphs [26] to [29] below.
20. Ten reasonably believed that the information it included in the matters complained of was true, and omitted any information which could not be independently verified.
21. Ten sought and obtained legal advice in relation to the matters complained of (in respect of the content of which it does not waive privilege) over the period from 21 January 2021 to 15 February 2021, comprising the following:
- (a) phone calls and meetings between members of Ten's legal clearance team and members of the Production Team on:
    - (i) 21 January 2021;
    - (ii) 26 January 2021;
    - (iii) 28 January 2021;
    - (iv) 29 January 2021;
    - (v) 9 February 2021; and
    - (vi) 10 February 2021;
  - (b) emails exchanged on 25 January 2021, 26 January 2021, 3 February 2021, 4 February 2021, 5 February 2021, 7 February 2021, 8 February 2021, 9 February 2021, 10 February 2021, 11 February 2021, 14 February 2021 and 15 February 2021;
  - (c) at the recorded interview between Wilkinson and Higgins on 2 February 2021;
  - (d) reviewing the Unedited Interview in full;
  - (e) reviewing the edited works in progress; and

- (f) reviewing the final version of the matters complained of on 15 February 2021 prior to publication.

22. Ten made reasonable attempts to obtain Lehrmann's side of the story by:

- (a) Llewellyn calling Lehrmann on Friday 12 February 2021 at around 2:45pm on the mobile phone number 0455 076 480, being the number provided to Llewellyn by Sharaz;
- (b) Llewellyn emailing Lehrmann on Friday 12 February 2021 at 2:46pm to his personal email address [REDACTED], being the address provided to Llewellyn by Sharaz;
- (c) Llewellyn sending an SMS to Lehrmann on Friday 12 February 2021 at 3:01pm on the mobile phone number 0455 076 480;
- (d) Llewellyn calling Lehrmann on Monday 15 February 2021 at 10:45am on the mobile phone number 0455 076 480. There was no facility for Llewellyn to leave a voicemail message; and
- (e) Llewellyn emailing Lehrmann on Monday 15 February 2021 at 10:45am to what he believed to be his work email address [bruce.lehrmann@p-p.com.au](mailto:bruce.lehrmann@p-p.com.au) (being an address provided to Llewellyn by Sharaz) and his personal email address [REDACTED] asking him to refer to the email sent to his personal email address on the previous Friday.

23. By the email referred to in paragraph [22(b)] above, Ten set out a series of questions to which it sought a response from Lehrmann, which fairly and fully put Lehrmann on notice of the substance of Higgins' allegations and the content of the matters complained of. The email relevantly read:

*I'm producing a story for Network Ten's The Project. The Project has been informed of an alleged rape of Brittany Higgins perpetrated by you within a minister's office in Australian Parliament House on the evening of 22 March 2019/morning of 23rd March 2019. Could you please answer the specific queries below by no later than 10am Monday 15 February 2021:*

- *Did you attend a drinks function with Ms Higgins and colleagues on 22nd March 2019?*
- *Did you buy Ms Higgins drinks?*
- *Did you become intoxicated at the drinks?*

- *Did Ms Higgins become intoxicated at the drinks?*
- *Did you share a taxi with Ms Higgins after the drinks?*
- *Did you take Ms Higgins to Australian Parliament House after the drinks?*
- *Did you use your pass to enter Parliament House?*
- *Did you use your pass to enter the Ministerial Wing?*
- *Did you rape Brittany Higgins as alleged?*
- *Did you leave Parliament House without Ms Higgins after the alleged rape?*
- *Were you sacked or given an opportunity to resign over the alleged rape?*
- *Have you ever had contact with the AFP Sexual Assault and Child Abuse Team (SACAT)?*
- *Have you ever been interviewed by the AFP or the AFP SACAT?*
- *Have you ever been interviewed by the APH police regarding events on the evening of 22nd March 2019 and the morning of 23rd March 2019?*
- *Have you seen the CCTV footage showing you and Ms Higgins in Parliament House on the evening of 22nd March 2019 and/or the morning of 23rd March 2019?*
- *Are you available for an interview with The Project?*

24. Lehrmann did not respond to any of Ten's attempts to contact him.

25. Had Lehrmann responded to Ten's attempts to contact him, Ten would have included Lehrmann's side of the story, by including his response or the substance of his response, in the matters complained of. Depending on the nature of any response from Lehrmann, Ten may have considered offering him the opportunity to participate in an on-camera interview which could have been included in the matters complained of or considered delaying publication of the matters complained of to give him an opportunity to respond.

26. In addition to the steps taken in [22] above, on Friday 12 February 2021:

- (a) Ten sent requests for comment to each of the following via email from Llewellyn:
- (i) Reynolds;
  - (ii) Brown;
  - (iii) Senator Scott Ryan, a Presiding Officer at Australian Parliament House;
  - (iv) the Hon. Tony Smith, a Presiding Officer at Australian Parliament House;

- (v) Reece Kershaw, the Commissioner of the Australian Federal Police, Federal Agent Katie Thelning and Federal Agent Rebecca Cleaves;
  - (vi) John Kunkel, the Prime Minister's Chief of Staff;
  - (vii) Yaron Finkelstein, the Prime Minister's Principal Private Secretary;
  - (viii) Cash; and
  - (ix) Try.
- (b) Llewellyn sent text messages to the following people, referring to the email he had just sent to them:
- (i) Reynolds;
  - (ii) Brown;
  - (iii) John Kunkel;
  - (iv) Yaron Finkelstein; and
  - (v) Cash.

27. In relation to the steps taken in [26] above, Ten received responses from:

- (a) a Federal Government spokesperson on behalf of the Prime Minister's Office, Minister Reynolds and Brown;
- (b) a spokesperson for ACT Policing, Australian Federal Police;
- (c) Minister Cash; and
- (d) the Presiding Officers at Australian Parliament House.

28. Each of these responses was:

- (a) referred to at the end of the matters complained of as follows:

*Full statements on behalf of the Prime Minister's office, Fiona Brown, Linda Reynolds, Michaelia Cash, and the Australian Federal Police can be seen on our website;*

- (b) published in full by Ten on the 10Play Website at <https://10play.com.au/theproject/articles/statements-regarding-our-story-on-15-february/tpa210215wdtmh> where they remain as at the date of this Defence.

29. The substance of the response from Federal Government spokesperson on behalf of the Prime Minister's Office, Reynolds and Brown was included in the matters complained of as follows:

*A Federal Government spokesman admits that the meeting between Brittany Higgins and Senator Reynolds should not have taken place in the office where the alleged assault occurred. But, he insists that Minister Reynolds and Fiona Brown encouraged Brittany to speak to the police and guaranteed there would be no impact on her career.*

30. Further, a clip of the former Prime Minister, Scott Morrison, responding to questions in Parliament about the incident and the way it had been handled by Government officers was included in the matters complained of.

31. As part of the responses received as a result of the enquiries referred to at [26] above and prior to the matters complained of being published, Ten received confirmation that:

- (a) on Tuesday 26 March 2019, senior staff in Reynolds' office became aware of an incident that occurred in the Minister's office outside of work hours involving two staff, which was initially treated as a breach of the Statement of Standards for Ministerial Staff;
- (b) after further consultation with Higgins over the following days, it became clear to senior staff that there were elements of the incident that may be of a more serious nature;
- (c) Higgins was told she would be supported by the office and the Minister if she chose to pursue a complaint; and
- (d) Reynolds and a senior staff member met with Higgins in the Minister's office, and given the seriousness of the incident, consideration should have been made to the location of the meeting with Higgins;
- (e) Reynolds encouraged Higgins to speak with the police in order to assess the options available to her;
- (f) at the meeting, Higgins indicated she would like to speak to the Australian Federal Police, which Reynolds supported and her office facilitated;
- (g) Reynolds was subsequently informed that a complaint had been made to the AFP;
- (h) ACT Policing received a report in April 2019 in relation to an alleged assault at Parliament House;

- (i) ACT Policing investigators spoke to the complainant who chose not to proceed with making a formal complaint;
  - (j) ACT Policing's investigation remains open;
  - (k) ACT Policing continued to engage with the complainant throughout the investigation and provided details of support services such as the Canberra Rape Centre; and
  - (l) the Department of Parliamentary Services had secured CCTV footage from the night of the incident and would provide it to the ACT Police investigation at the request of the Australian Federal Police.
32. Ten considered that it was in the public interest in the circumstances for the matter published to be published expeditiously because:
- (a) Higgins had felt unsupported by the Government in making her allegations at the time in 2019;
  - (b) Higgins had after almost two years decided she was ready to make her allegations public;
  - (c) Higgins chose to go to the media with her allegations because she felt she had no other recourse;
  - (d) Ten reasonably believed it was in the public interest for Higgins to be given a forum for these serious allegations to be made;
  - (e) Higgins' allegations had been published by news.com.au and Samantha Maiden (**News**) on the morning of 15 February 2021; and
  - (f) the Prime Minister Scott Morrison had answered questions about the allegations in Parliament during the day on 15 February 2021 saying:

*The Government has aimed to provide Ms Higgins with her agency. To provide support, to make decisions in her interests, and to respect her privacy. This offer of support and assistance continues.*

33. Prior to publication of the matters complained of, Bendall in his role as Executive Producer conducted a final review of the matters complained of and formed the view that:
- (a) the matters complained of were in the public interest and should be published;
  - (b) Lehrmann was not identified in the matters complained of; and

(c) all reasonable journalistic steps had been taken in terms of verifying the story, ensuring it was accurate and issuing requests for comment.

34. The public interest in the matters complained of, and the reasonableness of Ten's conduct in the circumstances, is also to be inferred from the following matters that occurred following the publication of the matters complained of.
35. On 16 February 2021, then Prime Minister Scott Morrison called a press conference to announce a review into workplace culture at Parliament House as a result of the matters complained of and the publications by News. He said:

*I said yesterday in the Parliament that we had to listen to Brittany. I have listened to Brittany. ... It shatters me that still in this day and age that a young woman could find herself in the vulnerable position she was in. It's not her doing. And we have to do more, whether it's in this workplace or in any other workplace in the country to ensure that people can work safely in their place and be at their best and do what they went into that job to do.*

36. On 5 March 2021, the Independent Review into Commonwealth Parliamentary Workplaces was established by the Government, to be conducted by Sex Discrimination Commissioner Kate Jenkins.
37. On 16 May 2021, the second matter complained of ceased to be available for streaming and viewing.
38. On or about 7 August 2021, Lehrmann was charged with one count of sexual assault by ACT Police.
39. On 7 August 2021, consequent upon Lehrmann being charged, Ten took the third matter complained of down from YouTube.
40. Lehrmann was not named in any mainstream media until after he was charged on 7 August 2021.
41. On 30 November 2021, Sex Discrimination Commissioner Kate Jenkins published the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*.
42. On 8 February 2022, a joint Statement of Acknowledgment was delivered in Parliament on behalf of the Parliamentary Cross-Party Leadership Taskforce, which acknowledged the unacceptable history of workplace bullying, sexual harassment and sexual assault in

Commonwealth Parliamentary Workplaces. It was confirmed that in 2021, the following measures were implemented:

- (a) a new independent complaints process was established for Parliamentary workers;
- (b) the Government began providing trauma-informed support for people who have experienced serious incidents working in Parliament; and
- (c) Members of Parliament, Senators and Parliamentary staff were provided with professional workplace training.

43. On 8 February 2022, then Prime Minister Scott Morrison gave an apology to Higgins in Parliament in the following terms:

*I'm sorry to Ms Higgins for the terrible things that took place here. And the place that should have been a place of safety and contribution turned out to be a nightmare.*

44. Lehrmann's criminal trial commenced in the ACT Supreme Court on 3 October 2022.

45. On 26 October 2022, Chief Justice Lucy McCallum discharged the jury which had been deliberating in the Lehrmann trial due to juror misconduct.

46. On 28 November 2022, the *Anti-Discrimination and Human Rights Legislation (Respect@Work) Bill* was passed through Parliament, which will:

- (a) place a positive duty on employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation, as far as possible;
- (b) strengthen the Australian Human Rights Commission with new functions to assess and enforce compliance with this new requirement, including the capacity to give compliance notices to employers who are not meeting their obligations;
- (c) expressly prohibit conduct that results in a hostile workplace environment on the basis of sex; and
- (d) ensure Commonwealth public sector organisations are also required to report to the Workplace Gender Equality Agency on its gender equality indicators.

47. On 2 December 2022, the ACT Director of Public Prosecutions Shane Drumgold SC withdrew the charge against Lehrmann, citing an unacceptable risk to Higgins' life.