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Our Ref: MOBL657

16 December 2022

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3 Byfield Street
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Ciaran Davis
Chief Executive Officer
HT&E, Australian Radio Network Pty
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3 Byfield Street
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Millie Michael
Executive Producer: Jonesy and Amanda
Australian Radio Network Pty Limited and
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3 Byfield Street
Macquarie Park NSW 2113

By Email: milliemichael@arn.com.au

Confidential and Not for Publication

Dear Sir/Madam

DEFAMATION OF BRUCE LEHRMANN

- 1 We act for Mr Bruce Lehrmann.
- 2 As you would be aware, criminal proceedings were brought against Mr Lehrmann in the Supreme Court of the Australian Capital Territory over the alleged sexual assault of Ms Brittany Higgins.
- 3 Mr Lehrmann has at all times vehemently denied sexually assaulting Ms Higgins.
- 4 The criminal proceedings brought against Mr Lehrmann were withdrawn on 2 December 2022.

Publications

- 5 On or about 20 June 2022, 101.7 WSFM broadcast a segment on the *Jonesy & Amanda* program in relation to Lisa Wilkinson being awarded a silver Logie for the interview with Brittany Higgins (the **Segment**). The Segment was broadcast via the radio station 101.7 www.markobrienlegal.com.au

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WSFM, and was also published online via WSFM's website (at the URL: <https://www.wsfm.com.au/entertainment/jonesy-amandas-post-logies-show-live-from-the-gold-coast/>) and by way of the podcast and radio streaming platform, iHeart (<https://www.iheart.com/live/1017-wsfm-6186/>) (the **Matters Complained Of**). A copy of the transcript of the Segment is **enclosed**.

- 6 The Matters Complained Of contained a number of statements regarding Mr Lehrmann, including the following:
- (a) *Amanda: 'Brittany had – the back story here I'm sure you remember – was raped in Parliament house.'*
- Jonesy: 'Yup.'*
- Amanda: 'She had tried to get someone to listen to her about that and she felt she was being stonewalled. So, she was so angry she went to the media. And it was an incredible story.'*
- (b) *[Recorded speech of Lisa Wilkinson]: 'After forty years in journalism this interview, and this story is by far the most important work I have ever done. As Brittany warmed me before we went to air, her story would be seen by many of the most powerful people in this country, not as a human problem, but as a political problem. And governments tend to like political problems to go away. But Brittany never did.'*
- And the truth is, this honour belongs to Brittany. It belongs to a woman who said enough. It belongs to a woman who inspired more than a hundred thousand similarly pissed off, exhausted, fierce women - and men- to take to the streets right across this country to roar in numbers too big to ignore. Brittany, thank you for helping to change the national conversation. And on behalf of all the generations of women to come, thank you Brittany for never giving up.'*
- (c) *Jonesy: 'Yeah. And if you do any sort of reading into the Brittany Higgins story – how it was handled was dreadful, just absolutely dreadful you know. Just the very fact that she had to have a meeting in the very room that she was raped with her superiors and then her career was virtually finished for no fault of her own – other than she had a few drinks which everyone does but you don't expect that to happen at the end of the night. So it was, that's what journalism, good journalism is about.'*
- Amanda: 'that's right. And hats off to Lisa and the team, and also to Brittany Spears (sic) for insisting her story be told.'*

Identification

- 7 The Matters Complained Of were clearly of and concerning Mr Lehrmann, with Mr Lehrmann being identifiable to many listeners by reason of the extensive reporting by the mass media that Mr Lehrmann was the man accused of, and charged with, the sexual assault of Ms Higgins. By way of example, Mr Lehrmann had been named in the following mass media publications published prior to the Matters Complained Of:
- (a) <https://www.smh.com.au/politics/federal/bruce-lehrmann-identified-as-man-charged-with-sexual-assault-of-brittany-higgins-20210807-p58gql.html>;

- (b) [https://www.abc.net.au/news/2021-11-18/bruce-lehrmann-trial-date-set-june-2022/100629728;](https://www.abc.net.au/news/2021-11-18/bruce-lehrmann-trial-date-set-june-2022/100629728)
- (c) [https://www.theguardian.com/australia-news/2021/nov/18/brittany-higgins-charge-bruce-lehrmann-to-stand-trial-in-june;](https://www.theguardian.com/australia-news/2021/nov/18/brittany-higgins-charge-bruce-lehrmann-to-stand-trial-in-june)
- (d) [https://www.news.com.au/national/nsw-act/distressed-brittany-higgins-accused-bruce-lehrmann-denies-allegations/news-story/0c535d67f3f811d078454302c9a8b1cb;](https://www.news.com.au/national/nsw-act/distressed-brittany-higgins-accused-bruce-lehrmann-denies-allegations/news-story/0c535d67f3f811d078454302c9a8b1cb)
- (e) [https://www.dailytelegraph.com.au/truecrimeaustralia/police-courts-nsw/man-to-be-charged-over-alleged-sexual-assault-of-brittany-higgins/news-story/140fc50a5fc2ac59621e0f9bb2c2d69a;](https://www.dailytelegraph.com.au/truecrimeaustralia/police-courts-nsw/man-to-be-charged-over-alleged-sexual-assault-of-brittany-higgins/news-story/140fc50a5fc2ac59621e0f9bb2c2d69a)
- (f) [https://www.theaustralian.com.au/nation/exliberal-staffer-bruce-lehrmann-accused-of-raping-brittany-higgins-committed-to-stand-trial/news-story/5a0a695d0b5f8816a7e1f90de1546dde.](https://www.theaustralian.com.au/nation/exliberal-staffer-bruce-lehrmann-accused-of-raping-brittany-higgins-committed-to-stand-trial/news-story/5a0a695d0b5f8816a7e1f90de1546dde)

It was therefore a matter of notoriety that Mr Lehrmann was the person accused of, and charged with, the sexual assault of Ms Higgins.

- 8 Further, our client was contacted shortly after the publication of the Matters Complained Of by an acquaintance who had listened to the Segment and had identified our client.

Imputations

- 9 The Matters Complained Of carried the following defamatory imputation (or any imputation that does not differ in substance) of and concerning Mr Lehrmann:
- (a) That he raped Brittany Higgins in Parliament House.
- (the **Imputation**).
- 10 Mr Lehrmann vehemently denies that he sexually assaulted Ms Higgins, and the Imputation is therefore grossly and indefensibly defamatory of him.

Serious harm

- 11 Mr Lehrmann considers that the publication of the Matters Complained Of has caused serious harm to his reputation within the meaning of s 10A of the *Defamation Act 2005* including as follows, and by reason of the following facts, matters and circumstances:
- (a) the Imputation carried is extremely serious;
 - (b) the statements made by the radio presenters in the Segment had an inherent tendency to cause serious harm to Mr Lehrmann;
 - (c) the large number of listeners of the *Jonesy & Amanda* Segment totaling approximately 400,000 at the time of publication of the Matters Complained Of, and coupled with the identification particulars in paragraphs 7 and 8 above, the overwhelming likelihood is of serious and substantial harm occasioned to our client's reputation by reason of publication of the matters complained of;

- (d) Jonesy and Amanda are portrayed on the WSFM website as being 'one of Australia's most popular and well-respected radio teams', 'ACRA award-winning' and 'delivering ... intelligent conversation' so as to give credence to what is claimed about our client in the Matters Complained Of;
- (e) the comments made by Chief Justice McCallum in her Honour's decision *R v Lehrmann (No 3)* [2022] ACTSC 145 at paragraph 25, that '*each of the radio presenters [Jonesy and Amanda] assumed the guilt of the accused*' when making remarks on their '*widely broadcast*' and '*popular*' morning radio program, demonstrating that our client's reputation had in fact been damaged by the Matters Complained Of.

Hurt and harm

- 12 The publication of the Matters Complained has caused our client great anxiety and distress.
- 13 The publications are manifestly indefensible. The Imputation is untrue and calculated to harm our client, both personally and professionally, and should never have been published, noting that in a civil case Ms Higgins' allegations would be required to be proven to the standard in *Briginshaw v Briginshaw* (1938) 60 CLR 336.
- 14 No notice was ever given to our client as to the proposed content of the Segment so that he could respond, and consequently the statutory qualified privilege and public interest defences are not available.

Next Steps

- 15 We have retained Steven Whybrow SC and Matthew Richardson SC to act in defamation proceedings against WSFM in relation to the Matters Complained Of.
- 16 However, Mr Lehrmann is prepared to consider a non-litigious resolution of his concerns before proceedings are commenced. In that regard we refer you to the provisions of the *Civil Dispute Resolution Act 2011* (Cth) in addition to the *Defamation Act 2005* (NSW).
- 17 Mr Lehrmann offers to resolve the dispute on the following terms:
 - (a) Payment of the sum of \$250,000 to Mr Lehrmann as compensation for the hurt and harm he has suffered by reason of the publication of the Matters Complained Of.
 - (b) WSFM provides to Mr Lehrmann a letter of apology on WSFM letterhead and signed by the Executive Producer of the program *Jonesy & Amanda* in the following terms:

"Apology to Bruce Lehrmann

On about 20 June 2022, 101.7 WSFM broadcast a segment on the program Jonesy & Amanda commenting on Network Ten being awarded a TV Week Logie for the 'Brittany Higgins interview'.

The broadcast alleged that Ms Higgins was raped in a room in Parliament House. The man accused of the rape was immediately identified by many persons as Mr Bruce Lehrmann.

101.7 WSFM only ever intended to suggest that Ms Higgins had made allegations against Mr Lehrmann and not that he was guilty of those allegations.

On 2 December 2022, the Director of Public Prosecutions in the Australian Capital Territory announced the withdrawal of the charges against Mr Lehrmann.

We accept in those circumstances that Mr Lehrmann is entitled to the presumption of innocence, and we apologise to him for the publication of the broadcast."

(c) Payment of Mr Lehrmann's costs, including Counsels' fees, incurred to date.

- 18 This offer is open for 14 days from the date of this Concerns Notice.
- 19 Mr Lehrmann, in the event the offer is not accepted, will rely upon the sending of this letter, and any response to it (or lack of response) on any issue arising in the proceedings, including aggravated damages and indemnity costs, noting that such proceedings will be instituted after the expiration of 28 days from the date of this letter.

Yours faithfully



Mark O'Brien

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Transcript of Jonesy and Amanda segment – Monday 20 June 2022

Amanda: But there were some really lovely moments last night, one of which was the award that Lisa Wilkinson and The Project picked up for the story they did on Brittany Higgins. They just, it was a phone call that came to Lisa. She answered Brittany Higgin's phone call. Brittany had – the back story here I'm sure you remember – was raped in Parliament house.

Jonesy: Yup

Amanda: She had tried to get someone to listen to her about that and she felt she was being stonewalled. So, she was so angry she went to the media. And it was an incredible story.

Recorded speech of Lisa Wilkinson: After forty years in journalism this interview, and this story is by far the most important work I have ever done. As Brittany warmed me before we went to air, her story would be seen by many of the most powerful people in this country, not as a human problem, but as a political problem. And governments tend to like political problems to go away. But Brittany never did.

And the truth is, this honour belongs to Brittany. It belongs to a woman who said enough. It belongs to a woman who inspired more than a hundred thousand similarly pissed off, exhausted, fierce women - and men- to take to the streets right across this country to roar in numbers too big to ignore. Brittany, thank you for helping to change the national conversation. And on behalf of all the generations of women to come, thank you Brittany for never giving up.

Amanda: And you know what, I really feel that that whole movement and, as Lisa said a whole lot of pissed of women who felt they were unseen and unheard. I think that led in the election for a lot of TEAL independents to step up, females to say let me represent you because I don't know if you are being represented in our current parliament.

Jonesy: Yup

Amanda: So that was a big deal. And it was a great moment to have referenced last night. And to have that television moment be captured, be recognised, for what it was and the ripple effect it had.

Jonesy: Yeah. And if you do any sort of reading into the Brittany Higgins story – how it was handled was dreadful, just absolutely dreadful you know. Just the very fact that she had to have a meeting in the very room that she was raped with her superiors and then her career was virtually finished for no fault of her own – other than she had a few drinks which everyone does but you don't expect that to happen at the end of the night. So it was, that's what journalism, good journalism is about.

Amanda: that's right. And hats off to Lisa and the team, and also to Brittany Spears for insisting her story be told.

Jonesy: You just said Brittany Spears.

Amanda: Oh did I? wow

Jonesy: But Brittany Spears is next.

Amanda: wow toxic

Jonesy: And just because Lisa swore doesn't mean you can swear as well. Ok?

Amanda: Let's pretend I didn't say Brittany Spears.

Jonesy: Doesn't matter, we'll edit that out.

Amanda: Sure, Brandon. I think we will be editing out a lot of today's show when this makes it to air.

Jonesy: Look, Dr Chris Brown is about to arrive

Amanda: Is he here?

Jonesy: No, I'm just distracting