



Form 59
Rule 29.02(1)

Affidavit

No. NSD103 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 named in the schedule
Respondents

Lisa Wilkinson
Cross-claimant

Network Ten Pty Limited ACN 052 515 250
Cross-respondent

Affidavit of: **Marlia Ruth Saunders**
Address: Thomson Geer Lawyers, Level 14, 60 Martin Place, Sydney NSW 2000
Occupation: Solicitor
Date: 25 January 2024

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I Marlia Ruth Saunders, of Thomson Geer Lawyers, Level 14, 60 Martin Place, Sydney NSW 2000 affirm:

Filed on behalf of (name & role of party) Network Ten Pty Limited, First Respondent and Cross Respondent
 Prepared by (name of person/lawyer) Andrew Gavin Stewart
 Law firm (if applicable) Baker McKenzie
 Tel 02 8922 5117 Fax _____
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 (include state and postcode) Barangaroo, NSW 2000

[Version 3 form approved 02/05/2019]

1. I am a partner at Thomson Geer Lawyers, and the solicitor on the record in the main proceeding. I am authorised to make this affidavit for Network Ten Pty Limited in respect of the cross-claim brought by Lisa Wilkinson (Ms Wilkinson).
2. Unless otherwise stated, the facts deposed to in this affidavit are within my own knowledge. Where they are not within my own knowledge, they are based on material that I have obtained from Network Ten's business records, which I identify, or the source stated and I believe them to be true to the best of my knowledge and belief.
3. Exhibited before me at the time of affirming this affidavit is a bundle of documents marked "**Exhibit MRS-1**".
4. In my affidavit I have referred to a number of privileged communications. I have done this with Network Ten's consent to properly address allegations and evidence that Ms Wilkinson has adduced in her affidavit evidence. To the extent that privilege is waived, my intention is only to waive privilege to the extent of what is set out in my affidavit, and not further.

Background and Professional History

5. I was admitted to practice in New South Wales in May 2005. From February 2005 to January 2018, I was employed at the firm of Ashurst Australia (previously called Blake Dawson, and before that Blake Dawson Waldron), initially as a lawyer and from July 2010 as a senior associate. I worked in the intellectual property and media team, doing a mix of litigation, commercial and advisory work.
6. From January 2018 to August 2021, I was employed as the Senior Litigation Counsel at News Corp Australia within the Editorial Legal Team.
7. From September 2021 to date, I have been a Partner in the Media team at Thomson Geer Lawyers, based in Sydney.

Engagement of Thomson Geer

8. From 21 June 2022, I was instructed to act for and advise Network Ten Pty Limited (**Network Ten**) and Lisa Wilkinson in connection with the criminal prosecution in R v Lehrmann. From 22 June to December 2022, Thomson Geer:
 - (a) assisted Network Ten and Ms Wilkinson in complying with subpoenas to produce documents issued by Mr Lehrmann's lawyers over the course of July and August 2022; and
 - (b) prepared Ms Wilkinson to give evidence at the trial, including convening two lengthy face to face conferences with her and retaining a criminal barrister to assist with the preparation.




9. Thomson Geer was also instructed to assist Ms Wilkinson following Ms Wilkinson's Logies speech on 19 June 2022 (the **Logies Speech**) and the vacation of Mr Lehrmann's criminal trial. The steps taken to assist Ms Wilkinson in relation to those matters are described below, where I made several attempts to contact the ACT Director of Public Prosecutions (**DPP**), Mr Shane Drumgold SC (Mr Drumgold), for him to correct the record regarding the purported "warning" given by Mr Drumgold to Ms Wilkinson to not give the Logies Speech.

Retaining Dr Matt Collins KC

10. On 21 June 2022, Chief Justice Lucy McCallum of the ACT Supreme Court delivered her judgment in *R v Lehrmann (No 3)* [2022] ACTSC 145 (**Stay Judgment**), in which the trial was vacated and a temporary stay was granted. Her Honour asked Mr Drumgold whether he would be making an application for injunctions to restrain public commentary about the case.
11. Once the judgment was handed down, I was instructed by Ms Tasha Smithies (Senior Litigation Counsel for Network Ten) to represent Network Ten and Ms Wilkinson.
12. On 21 June 2022, I emailed Mr Drumgold at 5:32pm noting her Honour's query as to whether Mr Drumgold intended to seek an injunction in relation to Network Ten, Ms Wilkinson and others, restraining them from making public comments about the case. I said "*We would appreciate it if we could please schedule a time to discuss this issue before a decision is reached to make any such application. Please let us know if there is a suitable time for a call tomorrow.*" A copy of this email is exhibited at page 1 of **Exhibit MRS-1**.
13. Mr Drumgold called me that evening. During that conversation, I typed a file note into a blank email. I converted that file note into an email that I sent to Ms Smithies that evening at 9:32pm, a copy of which is exhibited at page 2 of **Exhibit MRS-1**. During that call Mr Drumgold advised that he was not considering any contempt of court charges against Network Ten or Ms Wilkinson, that he did not want to make a formal application for an injunction and considered it to be unnecessary, and that he did need to give some assurance to the Court that there will be no further conduct which may have a tendency to interfere with Mr Lehrmann obtaining a fair trial in order to justify him not seeking an injunction. He suggested that a written undertaking be provided. I suggested that, instead of a formal written undertaking, a letter of assurance could be provided to the effect that Network Ten and Ms Wilkinson have no intention to engage in any further public commentary about the matter until the conclusion of the trial, apart from engaging in general news reporting. Mr Drumgold was very happy with this suggestion. He said if he could receive the letter before the matter was back in Court at 9.30am on Thursday

(being 23 June 2022) so that he could inform her Honour about it as the reason why he wouldn't be seeking an injunction, it would be a great outcome. I prepared a preliminary draft of the letter, which is attached to the email I sent to Ms Smithies at page 3 of

Exhibit MRS-1

14. On the morning of 22 June 2022, I received a phone call from Ms Smithies. She asked me to retain Dr Matt Collins KC (then QC) to advise on the draft letter and any potential charges of contempt against Ms Wilkinson. I considered Dr Collins was an excellent choice as I had worked with him previously on a contempt matter relating to Cardinal George Pell AC when I was working at News Corp. I knew he was experienced in the area of contempt in a media context and had significant experience working with media companies.
15. When I spoke to Dr Collins on the morning of 22 June 2022 to seek to retain him on behalf of Network Ten and Ms Wilkinson, he immediately raised the fact he had given an interview on Sunrise that morning in his capacity as President of the Australia Bar Association about the vacation of the criminal trial and asked whether Ms Wilkinson would be comfortable to retain him in light of this. I informed Ms Smithies of this conversation and Dr Collins' question. Later that day, Ms Smithies confirmed with me
that Ms Wilkinson was happy to proceed to retain Dr Collins, notwithstanding the Sunrise interview. At no time did Ms Wilkinson express to me any objection to or concerns with retaining Dr Collins.
16. During the morning of 22 June 2022, I worked on the letter of assurance with Dr Collins.
17. On 22 June 2022, at about 2:30pm, I attended a video conference with Ms Wilkinson and Dr Collins to discuss the draft letter of assurance proposed to be sent to the Associate to Chief Justice McCallum addressing the Stay Judgment and the risk of contempt proceedings being instituted against Ms Wilkinson. The meeting was attended by Ms Wilkinson, Mr Peter FitzSimons (Ms Wilkinson's husband), Dr Collins, Ms Smithies, Ms Sarah Thornton (Head of Popular Factual for Network 10) and me.
18. During the conference, Dr Collins and/or I discussed the following matters with Ms Wilkinson:
- (a) the key objective was to minimise the risk of Ms Wilkinson being charged with contempt, and we recommended that the letter be carefully phrased in such a way as to de-escalate the situation while still conveying Ms Wilkinson's view that she had not been warned by the DPP not to give the Logies Speech;
- (b) if Ms Wilkinson was to attend court in Canberra the following day, it would likely be a media circus and would result in further adverse publicity;





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- (c) because neither Ms Wilkinson nor Network Ten were parties to the proceedings, they could not appeal or seek a review of findings made in the Stay Judgment; and
- (d) by asking that the letter be tendered by Mr Drumgold in open court, the letter would be on the public record and could be obtained and reported on by the media.
19. While I recall that during the conference Ms Wilkinson was upset about the situation, I did not think at any time that Ms Wilkinson appeared uncomfortable about Dr Collins being present at the meeting or in the way she engaged with him. I recall that Ms Wilkinson in fact challenged Mr Fitzsimons when he disagreed with Dr Collins' advice about the wording of the letter. At no point did Ms Wilkinson or Mr Fitzsimons express to me any concern about Dr Collins not acting in her best interests. My impression was that Ms Wilkinson and Mr Fitzsimons were grateful for the advice of Dr Collins.
20. During the afternoon of 22 June 2022, I called Mr Drumgold. We had a conversation about the proposed letter of assurance to the following or substantially the following effect:

I said: *"I wanted to let you know I will be shortly sending a letter to the Court on behalf of Network Ten and Ms Wilkinson, and will copy the parties. Can you please formally tender the letter in Court tomorrow?"*

He said: *"Yes I will do that."*

I think the media has misreported the evidence that was tendered by the defence in the application yesterday. The media have reported that I told her [Ms Wilkinson] not to give a speech. I didn't say that. All I said was that it was not my role to provide legal advice and it could give rise to an application for a stay.

I feel I should correct reports that there was a positive direction not to give a speech. I feel Ms Wilkinson has been poorly treated. I'll give some thought as to how I can deal with it tomorrow and might say something in open court."

My notes of this conversation are set out in an email to Ms Smithies and Mr Stuart Thomas on 22 June 2022 at 4:36pm, a copy of which is exhibited at page 4 of **Exhibit MRS-1**.

21. At 4:30pm on 22 June 2022, I sent an email to the Associate to Chief Justice McCallum, copying Mr Drumgold, Ms Priestly, Ms Emma Roff (Prosecutor at the ACT DPP), Ms Skye Jerome (Prosecutor at the ACT DPP), Kamy Saeedi (Kamy Saeedi Law) and Dr Collins attaching a letter to the Court from Network Ten and Ms Wilkinson. A copy of this email and the attached letter is exhibited at pages 5 to 6 of **Exhibit MRS-1**.




22. The letter sent to the Court on 22 June 2022 stated: *"If your Honour wishes, we will arrange for Senior Counsel to appear before the Court to convey each of the above matters personally"*. Her Honour did not request that senior counsel for Network Ten or Ms Wilkinson appear at the hearing. In circumstances where Mr Drumgold had already advised that he was not considering any contempt of court charges against Network Ten or Ms Wilkinson, I considered it was better to de-escalate the situation by not having anyone attend the hearing in person on behalf of Network Ten and Ms Wilkinson. I assumed that Mr Drumgold would tender the letter in open court as I had requested.
23. On 22 June 2022, pursuant to Network Ten's instruction, I sought and obtained an audio visual link from the Associate to Chief Justice McCallum to observe the proceedings on 23 June 2022. I provided this link to Ms Smithies and Mr Thomas by email on 22 June 2022 at 5:10pm. A copy of this email chain is exhibited at pages 7 to 10 of **Exhibit MRS-1**.
24. At 9:30am on 23 June 2022, I watched the proceedings via the audio visual link. I noted that Mr Drumgold did not seek to correct the record in open court, despite him telling me during our call on 22 June 2022 that he would do so.
25. On 23 June 2022, Mr Drumgold emailed me at 11:35am seeking further clarification to enable him to determine whether there is a real risk of serious interference with the administration of justice. He said:

"Thank you for your letter dated 22 June 2022, in which you confirm that you have directed all future commentary on your platforms and by your journalist concerning Mr Lehrmann, Ms Higgins and this proceeding be strictly limited to general news report [sic], such as reporting of the proceedings as they are conducted in open court.

Can I seek some further clarification to enable me to determine whether, in our view, there is a real risk of serious interference with the administration of justice (see R v Eastman (No 42) [2018] ACTSC 176):

1. *Do you agree to direct all commentators on your platforms not to make or publish commentary surrounding the allegations or circumstances in the case of R v Lehrmann SCC 264 of 2021, including commentary on witnesses, the complainant and the accused but excluding general news reports such as the proceedings as they are conducted in open court, prior to 7 November 2022?*
2. *Do you acknowledge that interfering with the due administration of the law, or a deliberate breach of the sub judice principle may constitute the offence of contempt of court?"*

A copy of this email as part of an email chain is exhibited at pages **11 to 12** of **Exhibit MRS-1**.

26. Later that day I responded to Mr Drumgold stating the following.

"1. A direction has already been sent out to Network Ten journalists in the following terms:

- *All reporting on the trial of Bruce Lehrmann, Brittany Higgins and related applications is to be strictly limited to general news reporting, such as the reporting of the proceedings as they are conducted in open Court until the conclusion of the trial.*
- *Please refrain from commenting on, liking or sharing on social media platforms posts about the trial, related applications, Bruce Lehrmann and Brittany Higgins, in particular opinion pieces.*
- *All stories on all platforms should be run past legal.*

2. Each of Network Ten and Lisa Wilkinson acknowledge that interfering with the due administration of the law, or a deliberate breach of the sub judice principle may constitute the offence of contempt of court."

A copy of this email as part of an email chain is exhibited at pages **13 to 15** of **Exhibit MRS-1**.

27. On 23 June 2022 at 3:59pm, Mr Drumgold responded to my email and said: *"My desire was to also address commentary on witnesses, the complainant and the accused that may impact their credibility at trial, but I believe the second point in number 1 addresses this."* A copy of this email as part of an email chain is exhibited at pages **16 to 19** of **Exhibit MRS-1**.

28. Between June 2022 and October 2022 I was instructed by Network Ten and Ms Wilkinson in relation to the matters I describe at paragraph 6 above, as follows:

- (a) On 30 June 2022, Network Ten and Ms Wilkinson received subpoenas from Mr Lehrmann's lawyers. On 6 July 2022, I sent a letter to Kamy Saeedi Lawyers (Mr Lehrmann's solicitors at the time) seeking to narrow the scope of the subpoenas. A copy of this letter is exhibited at pages **20 to 22** of **Exhibit MRS-1**.
- (b) On 15 July 2022, Network Ten and Ms Wilkinson received revised subpoenas that were served correctly. I worked with Network Ten to try to further limit the categories for production and in producing documents responsive to the subpoenas on behalf of both Network Ten and Ms Wilkinson.




- (c) On or around 25 July 2022, I was involved in the decision to retain a criminal barrister to assist Ms Wilkinson in preparing for the trial. I had concerns about Mr Drumgold's preparation of Ms Wilkinson for the trial as there was only one preparation meeting on 15 June 2022 by video conference, which Ms Smithies told me was brief and high level. Ms Smithies and I discussed that retaining a criminal barrister would put Ms Wilkinson in the best position as they would help to identify the likely topics for cross-examination, and would be able to talk Ms Wilkinson through how the cross-examination would be approached at the trial so she could think about her responses and provide tips on how to remain calm and ensure her answers were responsive to the questions asked. On 26 July 2022, Ms Smithies confirmed instructions to retain Louise Jardim, a defence barrister, with experience cross-examining witnesses in similar cases.
- (d) Between 26 July 2022 and 3 October 2022, I emailed the ACT DPP about various trial arrangements. A copy of this email chain is exhibited at pages **23 to 27** of **Exhibit MRS-1**.
- (e) We arranged three witness conferences with Ms Wilkinson and Ms Jardim to help prepare her for cross-examination, however the third conference did not go ahead after it was confirmed Ms Wilkinson was not required to give evidence at the trial. I attended the following meetings:
- i. On 30 September 2022, a first conference with Ms Jardim, Ms Wilkinson, Mr Nick Fordham (Ms Wilkinson's personal agent) and Ms Smithies in person at Thomson Geer's Sydney office. The purpose of the first meeting was to review materials and discuss the likely areas Ms Wilkinson would be examined and cross-examined on.
 - ii. On 5 October 2022, a second conference at which Ms Jardim, Ms Wilkinson, Mr Fordham and Ms Smithies attended in person at Thomson Geer's Sydney office and I attended via audio visual link given I was on annual leave at the time. We attended for the purpose of Ms Jardim running a mock examination in chief and cross examination with Ms Wilkinson.
- (f) On 7 October 2022, I attended a conference with Ms Smithies, Ms Wilkinson, Mr Fordham and a number of Network Ten personnel to determine media strategy and logistics during Ms Wilkinson's evidence. An email from Ms Smithies setting out an agenda for this conference is exhibited at page **28** of **Exhibit MRS-1**.
- (g) On 11 October 2022, I received an email from Ms Sarah Pitney at the Office of the DPP in which she advised that Ms Wilkinson would no longer be required to give



evidence at the trial, a copy of which is exhibited as part of an email chain at pages **29 to 33** of **Exhibit MRS-1**.

29. On or around 18 October 2022, I was instructed to prepare a draft letter to Mr Drumgold on Thomson Geer letterhead regarding Ms Wilkinson's Logies Speech to send after the jury in the criminal trial retired for deliberations. I sent a draft of this letter to Ms Smithies on 18 October 2022 at around 2:50pm. A copy of this email is exhibited as part of an email chain at pages **34 to 38** of **Exhibit MRS-1**. On 19 October 2022, I reviewed Mr Fordham and Ms Wilkinson's amendments to the letter, and made further amendments. A copy of this email is exhibited at pages **39 to 44** of **Exhibit MRS-1**.
30. On 19 October 2022, I attended a meeting with Ms Wilkinson, Mr Fordham, Ms Smithies, Ms Donovan and Mr Bendall. The purpose of the meeting was to discuss the criminal trial, draft media responses to the verdict, correspondence with the DPP, and PR strategy. A copy of email arranging this meeting is exhibited at pages **45 to 46** of **Exhibit MRS-1**. A file note of this meeting as part of an email chain is exhibited at pages **47 to 48** of **Exhibit MRS-1**.
31. On 24 October 2022, I made a telephone call to Mr Drumgold. At this time, the jury had retired in the R v Lehrmann trial to deliberate. We had a conversation to the following or substantially the following effect:

I said: *"I am calling on behalf of Lisa Wilkinson. She has been the subject of intense and unfair criticism in the media since the stay of the trial was granted in June, largely based on the judge's finding that she was warned by you not to give a speech, which is incorrect. The reports are continuing even four months later, and they are impacting her personally and causing her distress."*

He said: *"I haven't been able to say anything to date in response to questions from the media so as not to impact the trial, but my view is that there has never been a question of anything remotely resembling a contempt of court by Ms Wilkinson.*

Reporters have lined me up for the same reasons. This intense media coverage has been new to me. I've never encountered this. I would think they would have moved on by now. The stay is no longer an operative factor. I'm at a loss to understand how it is still a story.

One of the issues that troubles me is that it was never my role to give legal advice. I am acutely conscious there is a judgment in place. I can't use my authority to bridge a gap that the judgment can't bridge.




I care for everybody but if I was to jump out and go on the defence for a witness, I would be exceeding my authority. Most of the media is already suggesting I am overly protective of Ms Wilkinson because of the decision to shut down book sales which mention the allegations but not charge Ms Wilkinson with contempt. Janet Albrechtsen wrote a column to that effect.

If I am asked whether I will lay charges against Ms Wilkinson I will say no because contempt of court was not committed. What was applied was a safety pause. I am pretty keen to do that for my own benefit to avoid an allegation of favouritism. I will be circumspect in my answer but I will give that answer.

I have been asked numerous questions regarding whether a decision has been made to lay charges. I haven't been able to answer because of the trial. Now the trial has concluded I will be free to answer if the trial results in a concluded outcome.

I think the subject of the story will transfer to Linda Reynolds and Michaelia Cash. I may comment in writing about that. Once the trial concludes, the inquiry should recommence into political interference in the trial. The narrative may change. In April 2021 I called for an inquiry into political interference in the criminal process.

It seems to me that the stay is no longer a story. If there was any harm, it is now non-existent. There has never been any suggestion that any contempt has been committed."

32. I took handwritten notes of this conversation, a copy of which is exhibited at pages **49** to **50** of **Exhibit MRS-1**. After the conversation, I sent an email to Ms Smithies and Mr Myles Farley updating them on the conversation. A copy of this email is exhibited at page **51** of **Exhibit MRS-1**.
33. On 25 October 2022, I received an email from Ms Smithies forwarding Ms Wilkinson's comments on my conversation with Mr Drumgold, a copy of which is exhibited at page **52** of **Exhibit MRS-1**. In that email, Ms Wilkinson said "*Thanks so much Tasha. That does look promising.*"
34. On 27 October 2022, I became aware that the jury in the criminal trial was discharged due to juror misconduct. On 27 October 2022 at 11:29am Ms Wilkinson sent an email to Ms Smithies and me, in relation to the jury being discharged, in which she asked:

“Wondering what this means in regard to my commitment to the court not to talk or report on the trial until its conclusion? Can we find out ahead of tonight’s show please?”

35. On 27 October 2022, Ms Smithies responded to Ms Wilkinson’s email confirming that Ms Wilkinson was still unable to comment on the trial, but that she could do the introduction (called a “cross”) to any pre-recorded segments on The Project. Ms Smithies noted that *“there are PR ramifications if you do any cross, and also if you don’t but no legal concerns”*. A copy of this email chain is exhibited at pages **53 to 55** of **Exhibit MRS-1**.
36. On 4 November 2022, I received an email from Mr Mitchell Greig confirming that the DPP did not intend on calling Ms Wilkinson as a witness at the retrial. I informed Ms Smithies of this by email at 4:53pm, a copy of which is exhibited at pages **56 to 57** of **Exhibit MRS-1**.
37. On or about 1 December 2022, I became aware that Mr Drumgold would be making an announcement the following day, and that it was possible that the criminal charge would be withdrawn.
38. On 1 December 2022, I was copied on an email from Ms Wilkinson to Ms Smithies, in which Ms Wilkinson requested an audio visual meeting that day to discuss Mr Drumgold’s expected announcement about the criminal prosecution being withdrawn, and how Ms Wilkinson can now correct the record about the Logies Speech. A copy of this email is exhibited at page **58** of **Exhibit MRS-1**.
39. Ms Smithies responded to Ms Wilkinson’s email of 1 December 2022 later that day, addressing the issues raised in Ms Wilkinson’s email and suggesting times for a meeting. A copy of this email as part of an email chain is exhibited at pages **59 to 60** of **Exhibit MRS-1**
40. On 1 December 2022, I had a telephone conversation with Ms Wilkinson about Mr Drumgold’s expected announcement. In that call, I agreed to call Mr Drumgold that day, and we discussed the points to make in a follow up email to Mr Drumgold. My file note of that conversation is exhibited at page **61** of **Exhibit MRS-1**.
41. On 1 December 2022, I attempted to call Mr Drumgold two or three times, but he did not answer my calls. I cannot recall if I left a voicemail, however it is possible that I did.
42. On 1 December 2022 at 6:23pm, I sent an email to Mr Drumgold, in substance covering the points requested by Ms Wilkinson during our call. A copy of this email is exhibited at page **62** of **Exhibit MRS-1**:

I refer to our telephone discussion on 24 October 2022 regarding my client, Lisa Wilkinson. On that occasion, we discussed your intention to make a public




statement following the resolution of the Lehrmann proceedings to the effect that no contempt of court was committed by Ms Wilkinson and the DPP has no intention of pursuing contempt charges against her.

You may be aware that, since that conversation, Ms Wilkinson has left her role on The Project due to the unwarranted media attention she has received in connection with these proceedings.

I note that you will be making a media statement tomorrow at 10am. Without speculating as to what will be said by you during that conference, I request that consideration be given to you also making a statement in relation to Ms Wilkinson during the conference. Ms Wilkinson is very concerned that the injustice she has experienced be addressed at the earliest opportunity.

Thank you in advance for your consideration of this request. If you would like to discuss this further, please let me know.

43. After my conversation with Ms Wilkinson, on 1 December 2022 at 6:40pm, Ms Wilkinson sent an email to Mr Fordham, Ms McGarvey (Executive Vice President and Chief Content Officer and head of Paramount+ at Network Ten), Ms Taylor and me. In that email, Ms Wilkinson thanked me for the conversation, and confirmed the points to include in a follow up email to Mr Drumgold, being a request that he:

"honours his previous two offers to you to correct the public record, making it clear that Lisa Wilkinson was never "warned" not to give that speech, and in so doing right the complete injustice done to Lisa Wilkinson's good name and reputation" and that he understands that because of the "unprecedented and unrelenting damage done to Lisa Wilkinson's reputation in the six months since the Logies, she has had to resign her role as co-host of The Project".

A copy of this email as part of an email chain is exhibited at pages **63 to 65** of **Exhibit MRS-1**.

44. On 1 December 2022 at 7:29pm, I sent an email to Ms Wilkinson and Mr Fordham, informing them of my attempt to call Mr Drumgold, and my subsequent email. I said:

"As anticipated, Shane Drumgold didn't answer my call, so I emailed him with the request. I had already emailed him prior to receiving your email but confirm that I covered the points you raised".

A copy of this email as part of an email chain is exhibited at pages **66 to 69** of **Exhibit MRS-1**.

45. On 2 December 2022 at around 10:00am, I watched the announcement given by Mr Drumgold which was streamed live online. He announced that he had filed a notice




declining to proceed with the retrial of the criminal proceeding. Mr Drumgold did not make any mention of Ms Wilkinson or Network Ten in his statement.

46. On 2 December 2022, I sent an email to Ms Wilkinson, Mr Fordham, Ms McGarvey and Ms Taylor stating that:

"It's disappointing that Shane Drumgold did not refer to Lisa in his statement this morning, but it's also not surprising". I suggested that " the best course is for me to contact him again on Monday....If I am unable to get him on the phone, we can send a letter along the lines of the one we drafted in October".

A copy of this email as part of an email chain is exhibited at pages **70 to 75** of **Exhibit MRS-1**.

47. On 5 December 2022 at 10:00am, Mr Fordham replied to my email saying the following: *"Appreciate your work on this and efforts last week, greatly appreciated. Look forward to receiving further updates in due course."* A copy of this email as part of an email chain is exhibited at pages **76 to 79** of **Exhibit MRS-1**.

48. On 5 December 2022, I attempted to call Mr Drumgold. He did not answer my call and I left him a voicemail. I emailed Mr Fordham to inform him of this attempt, and suggested I try him again the next day. A copy of this email as part of an email chain is exhibited at pages **80 to 83** of **Exhibit MRS-1**.

49. On 6 December 2022 at 1:58pm, I sent a further email to Mr Drumgold requesting that he let me know a convenient time for a discussion about my email of 1 December 2022. A copy of this email is exhibited at page **84** of **Exhibit MRS-1**.

50. On 7 December 2022 at 3:13pm, I sent an email to Ms Wilkinson and Mr Fordham drawing their attention to an article in *The Australian*, which referred to the letter sent to the Court on Network Ten and Ms Wilkinson's behalf, and noted Ms Wilkinson denied having been warned by Mr Drumgold. I said:

"You may have seen the article in The Australia today (a copy of which is attached) which reports on the letter sent to the court on your behalf in July, including the fact you disputed that Shane Drumgold warned you against giving the Logies speech....this has also been picked up by news.com.au....It's great that the messaging is now in the public domain that you were not warned by Mr Drumgold..."

A copy of this email is exhibited at page **85** of **Exhibit MRS-1**.

51. On or around 7 December 2022, Dr Collins and Tim Senior were briefed to act for Network Ten in relation to any defamation action brought by Mr Lehrmann.

52. On 8 December 2022 I received an email from Mr Fordham replying to my email from the previous day. He thanked me and stated that: "*Hopefully he gets the drift that we will not be backing off until this is done. The sooner he can do it, the better for everyone.*" A copy of this email as part of an email chain is exhibited at pages **86 to 87** of **Exhibit MRS-1**.

53. On 8 December 2022 at 2:07pm, I received an email from Ms Smithies providing an update on a discussion she had with Ms Wilkinson. She said:

I had a long chat to Lisa yesterday and she is comfortable with a steady approach as you have suggested ie: to wait until later this week to call, then circulate a letter and send it next week. She understands that backing him into a corner will mean a no and that if the press is to be believed he may be unwilling to assist.

She also understands that N10 won't issue a statement as it won't want to antagonise the Office of the DPP, which means we need to take a careful approach to see if we can make this work.

A copy of this email as part of an email chain is exhibited at pages **88 to 89** of **Exhibit MRS-1**.

54. On 9 December 2022 at 9:10pm, I sent an email to Ms Wilkinson, Mr Fordham and Ms Smithies attaching the draft letter to Mr Drumgold. A copy of this email as part of an email chain is exhibited at pages **90 to 94** of **Exhibit MRS-1**.

55. On 12 December 2022 at 11:17am, Ms Wilkinson replied to my email setting out her comments and suggested changes to the draft letter. A copy of this email as part of an email chain is exhibited at pages **95 to 99** of **Exhibit MRS-1**.

56. On 12 December 2022 at 1:00pm, I replied to Ms Wilkinson's email, attaching a further revised version of the draft letter in which I incorporated most of her suggestions, and provided explanations for my recommendations against including some of Ms Wilkinson's suggested changes. A copy of this email as part of an email chain is exhibited at pages **100 to 106** of **Exhibit MRS-1**.

57. On 12 December 2022 at 4:23pm, Ms Wilkinson replied to my email attaching a further revised version of the draft letter and requested that I provide my comments. A copy of this email is exhibited at pages **107 to 110** of **Exhibit MRS-1**.

58. On 12 December 2022 at 4:43pm, I replied to Ms Wilkinson's email with a further revised version of the draft letter, and provided explanations for my recommendation against including some of Ms Wilkinson's suggested changes. A copy of this email as part of an email chain is exhibited at pages **111 to 113** of **Exhibit MRS-1**.




59. On 12 December 2022 at 6:05pm, Ms Wilkinson replied to my email, saying:

"Dear Marlia, I am in your hands for the best possible outcome, so please go ahead and send. I am happy with the changes."

A copy of this email as part of an email chain is exhibited at pages **114 to 115** of **Exhibit MRS-1**.

60. On 13 December 2022 at 9:19am, I sent an email to Mr Drumgold attaching the letter. A copy of this email is exhibited at pages **116 to 118** of **Exhibit MRS-1**.

61. On 15 December 2022 at 9:44am, Mr Fordham sent me an email asking if I had heard from Mr Drumgold. By reply email, I confirmed that I had not, but that I would try calling Mr Drumgold again that day. A copy of this email chain is exhibited at pages **119 to 122** of **Exhibit MRS-1**.

62. On 15 December 2022 at about 10:53am. Mr Fordham sent me an email thanking me for the update. He said: *"I am very aware how close we now are to Christmas, so can I request that we get an update on your situation with Drumgold by 4 pm today."* A copy of this email as part of an email chain is exhibited at pages **123 to 127** of **Exhibit MRS-1**.

63. I attempted to call Mr Drumgold three times on the 15 December 2022, once from my mobile and twice from a landline. All calls were quickly diverted to voicemail. Mr Drumgold did not return any of my calls.

64. I did not receive a response from Mr Drumgold to my calls, emails and letter referred to in paragraphs 60 to 62 above.

65. On 15 December 2022 at about 4:11pm, I responded to Mr Fordham's email informing him that I had made three attempts to call Mr Drumgold. I said:

"It might be that he's avoiding my calls, either because he is still considering how to respond to our letter or because he doesn't want to take any action at this time given everything else that is going on ...Unfortunately, there's not much more we can do from a legal perspective at this time."

A copy of this email as part of an email chain is exhibited at pages **128 to 131** of **Exhibit MRS-1**.

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66.

I advised that there was not much more to do from a legal perspective because we had already exhausted all possible avenues to correct the record. By this stage, we had already made extensive efforts to ask Mr Drumgold to correct the record at the time of the Stay Judgment, while the jury was deliberating, and after the jury was discharged. After the charge was withdrawn the only forum in which Mr Drumgold could correct the record was through a public statement, and I did not think it was likely that he would do




that. For these reasons, I did not think there were any further steps that could be taken from a legal perspective. I understood at the time Network Ten had made a commercial decision not to put out a statement. While, I thought it would be problematic for Ten to put out a statement while the prosecution of Mr Lehrmann was ongoing, I did not think there was any legal issue in Network Ten putting out a statement after but once the charge was withdrawn. However, I did think putting out a statement at that time would have had negative repercussions for both Network Ten and Ms Wilkinson from a publicity perspective.

Since the prosecution had just been withdrawn due to a threat to the complainant's life, I considered that it would be a bad look to be so making a statement about a comparatively less serious issue at that time. For those reasons I did not think releasing a statement was in Ms Wilkinson's best interests.

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67. On 15 December 2022, at about 6:02pm Ms Wilkinson responded to my email and expressed her disappointment, asking for "*suggestions you have on how we move forward and correct the public record*". A copy of this email as part of an email chain is exhibited at pages **132 to 137** of **Exhibit MRS-1**.
68. On 15 December 2022 at about 7:01pm, Mr Fordham also responded to my email asking if Mr Drumgold was "*obliged to formally respond to you under 4.1.3 of the Legal Professionals Conduct Rules*" and if Network Ten could "*issue a formal public statement*". Mr Fordham also asked Ms McGarvey to introduce him to Network Ten's crisis communications company. A copy of this email as part of an email chain is exhibited at pages **138 to 142** of **Exhibit MRS-1**.
69. At this time, I considered whether Mr Drumgold had breached any of his professional obligations under the Legal Profession (Barristers) Rules. I looked at the Rules, but did not consider that Mr Drumgold's conduct in not responding to me amounted to a breach. At that time, I was unaware of the process undertaken by the DPP in preparing the file note of their conference with Ms Wilkinson which was tendered before Chief Justice McCallum and relied on in the Stay Judgment. This did not come to light until the proceedings of the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory (**Board of Inquiry**) in 2023.
70. On 16 December 2022, at about 9:31am, Ms Smithies responded to Mr Fordham and Ms Wilkinson's emails. In that email, Ms Smithies agreed that "*there is not much more we can do from a legal perspective*", and that she did not "*see any downside to a personal email from Lisa which re-attaches the letter as sent.*" Ms Smithies also provided her thoughts from a legal perspective on the issues raised by Mr Fordham and Ms Wilkinson, including that she recommended against complaining about Mr Drumgold or making a public statement that challenged the Office of the DPP. A copy of this email

containing Ms Smithies' thoughts, as part of an email chain, is exhibited at pages **143 to 148 of Exhibit MRS-1.**

71. On 16 December 2022 at 2:24pm, Ms Smithies informed me that Network Ten had received a concerns notice from Mr Lehrmann at 1.20pm (**Concerns Notice**). Ms Smithies asked me to act for Network Ten in relation to the matter. A copy of this email attaching the concerns notice, as part of an email chain, is exhibited at pages **149 to 158 of Exhibit MRS-1.** The Concerns Notice was not addressed to Ms Wilkinson.
72. On 20 December 2022 at 7:42pm Nick Fordham replied to Ms Smithies' email of 16 December 2022, copying me. He stated: "*we are still collectively going to have to continue pursuing this until these matters are properly addressed and dealt with to all of our satisfaction*" and "*I appreciate that there could be a perception that it may not be in Ten's interest to release a public statement (at this time), but I would still like to continue discussing this as it may be our last resort*". A copy of this email as part of an email chain is exhibited at pages **159 to 165 of Exhibit MRS-1.**
73. On 21 December 2022 at 9:52am, I replied to Mr Fordham's email. I referred to the ACT Government's announcement that morning that it would be establishing a Board of Inquiry to review the Lehrmann trial. I said that might explain why Mr Drumgold had not responded to any of my correspondence, as "*He will not be in a position to say anything publicly while the inquiry is pending.*" A copy of this email as part of an email chain is exhibited at pages **166 to 173 of Exhibit MRS-1.**
74. On 11 January 2023 at 3:50pm, Mr Fordham sent an email to Ms Smithies and me, requesting a conference call to discuss Mr Drumgold, the Board of Inquiry and Network Ten's position on the concerns notice received from Mr Lehrmann. A copy of this email as part of an email chain is exhibited at pages **174 to 176 of Exhibit MRS-1.**
75. On 11 January 2023 at 5:33pm, Ms Smithies replied to Mr Fordham's email stating: "*the DPP is not in any position to respond or take any further action at this time, accordingly there are no further steps we can take during the course of the inquiry.*" In relation to the request to discuss the letter from Mr Lehrmann, Ms Smithies stated that "*no claim or demand is made against Lisa, it is limited to Ten as the publisher...Of course if the situation changes and Lisa is named or she is the subject of any claim we will let you know.*" A copy of this email as part of an email chain is exhibited at pages **177 to 178 of Exhibit MRS-1.**
76. On 11 January 2023 at 9:53pm, Mr Fordham responded to Mr Smithies' email stating: "*Appreciate it's really not in Ten's interests to continue to pursue this, but clearly we're not going to be satisfied until we get the result we're after. Considering the significant damage that has been caused to Lisa's career and ongoing damage to her professional*

reputation we'd like to have some understanding of how Ten is proposing to respond to the defamation letter." A copy of this email as part of an email chain is exhibited at pages **179 to 181** of **Exhibit MRS-1**.

77. On or around 19 January 2023, I had a conversation by telephone with Ms Wilkinson about a number of matters, including the Board of Inquiry.
78. On 24 January 2023 at 9:59am, I sent an email to Ms Wilkinson and Ms Smithies providing a copy of an article from *Guardian Australia* which stated that the terms of reference for the Board of Inquiry were expected to be released the following week. A copy of this email is exhibited at page **182** of **Exhibit MRS-1**.
79. On 24 January 2023 at 10:19am, Ms Wilkinson replied to my email stating "*Thanks... Meanwhile I just wanted to clarify, do you think now would be a good time for me to send my personal letter to Shane Drumgold asking him to honour his two, separate commitments to you...?*" A copy of this email is exhibited at page **183** of **Exhibit MRS-1**.
80. On 25 January 2023 at 11:05am, Ms Smithies replied to Ms Wilkinson's email stating: "*Happy to be guided by you Marlia as to the timing of any letter from Lisa...I would suggest you [Lisa] run any letter by us before sending.*" A copy of this email as part of an email chain is exhibited at pages **184 to 185** of **Exhibit MRS-1**.
81. On 25 January 2023 at 1:43pm, I replied to Ms Smithies' email copying Ms Wilkinson and recommended that Ms Wilkinson "*wait until we see the terms of reference for the inquiry next week, then we can consider the letter in that context.*" A copy of this email as part of an email chain is exhibited at pages **186 to 187** of **Exhibit MRS-1**.
82. On 27 January 2023 at 11:32am, Ms Wilkinson sent an email to Ms Smithies, Mr Fordham, and me attaching a draft letter to Mr Drumgold. In that email, Ms Wilkinson stated: "*I disagree that we should wait on sending this personal letter from me ...*". She also stated: "*the last seven months have been a complete nightmare for me, and it is not over. I refuse to just limp away from this situation professionally – and personally defeated, with my reputation as an ethical journalist who deeply respects the legal system still not restored, and us not pushing for the outcome that I hope you agree I genuinely deserve...*". A copy of this email is exhibited at pages **188 to 192** of **Exhibit MRS-1**.
83. On 27 January 2023 at 12:48pm, I replied to Ms Wilkinson's email, stating that I had suggested changes to Ms Wilkinson's letter but would wait to discuss them with Ms Smithies when she returned from leave. I explained that I did not think the release of the terms of reference for the Board of Inquiry would change our position but would shed light on the topics to be covered, and stated "*That doesn't mean you shouldn't send your*




letter, but it unfortunately means he is unlikely to respond". A copy of this email as part of an email chain is exhibited at pages **193** to **194** of **Exhibit MRS-1**.

84. On Saturday 28 January 2023 at 12:43pm, Ms Wilkinson replied to my email, stating that she wanted her personal letter to be sent "*within the time frame of his current three month post-trial silence*". Ms Wilkinson explained that while agreed with me and expected that Mr Drumgold wouldn't respond to her letter, the timing of the letter was important to her in clearing her name "*on the public record*". Ms Wilkinson asked for a call with myself, Ms Smithies and Mr Fordham to discuss her concerns. A copy of this email as part of an email chain is exhibited at pages **195** to **196** of **Exhibit MRS-1**.

85. On Monday 30 January 2023 at 10:48am, I replied to Ms Wilkinson's email attaching an amended draft letter to Mr Drumgold and explaining the changes that I had made. I stated that, subject to the changes, "*it is a matter for you whether to send this out now*", however I reiterated my view that I was unsure whether sending the letter would be productive and set out why. I was not trying to discourage Ms Wilkinson from sending the letter, however I wanted to manage her expectations as to the likely results of receiving a response to the letter, which I thought were low. Also, if the letter entered the public domain it could be reported on adversely for the same reasons as I outline in paragraph 66 above. A copy of this email as part of an email chain is exhibited at pages **197** to **203** of **Exhibit MRS-1**.

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86. On 30 January 2023 at 3:29pm, Ms Wilkinson replied to my email and stated that while she was "*prepared to accept almost all*" of the changes I had made, she was confused on two points, being the relevance of my phone calls with Mr Drumgold, and why I thought the letter would not be looked favourably upon by the media if leaked. A copy of this email as part of an email chain is exhibited at pages **204** to **210** of **Exhibit MRS-1**.

87. On 30 January 2023 at 4:49pm, I replied to Ms Wilkinson's email and responded to her queries. A copy of this email as part of an email chain is exhibited at pages **211** to **214** of **Exhibit MRS-1**.

88. On 1 February 2023 at 12:09pm, Ms Wilkinson replied to my email and provided a link to media reports that anticipated the release of the terms of references for the Board of Inquiry that day. Ms Wilkinson explained that she was disappointed as she felt her time to send the letter to Mr Drumgold had elapsed. A copy of this email as part of an email chain is exhibited at pages **215** to **217** of **Exhibit MRS-1**.

89. On 1 February 2023 at 1:34pm, Ms Smithies responded to Ms Wilkinson's email, stating that she was confused by her prior email as, while she and I did not think the letter should be sent for the reasons previously outlined, it was ultimately Ms Wilkinson's decision. Ms Smithies explained, "*We had thought you may have already sent it and*

don't believe the terms of reference being released prevents you from sending it, should you wish to do so notwithstanding the legal advice...". A copy of this email is contained at page **219** of the email chain exhibited at pages **218** to **223** of **Exhibit MRS-1**.

90. On 1 February 2023 at 5:12pm, Ms Wilkinson sent an email to Ms Smithies, Mr Fordham and me. Ms Wilkinson explained that she had always proceeded on the "*advice, knowledge and approval*" of Ms Smithies and Network Ten, including in relation to the Logies Speech and surrounding circumstances. Ms Wilkinson quoted and paraphrased parts of emails that had previously been sent by myself and Ms Smithies in explaining how she felt about the delay in sending the letter to Mr Drumgold. My understanding of Ms Wilkinson's email was that she felt that she had acted on the advice of myself and Ms Smithies in her decision to not send the letter, and she now felt that it was too late to do so. It was clear to me that Ms Wilkinson felt upset by this chain of events. A copy this email as part of an email chain is exhibited at **224** to **229** of **Exhibit MRS-1**. I felt bad for Ms Wilkinson, but I also thought that her letter would not have changed the situation given my extensive attempts to contact Mr Drumgold by that point.
91. On 1 February 2023 at 5:24pm, I responded to Ms Wilkinson's email, and stated: "*I apologise that I did not make clearer that Tasha had reviewed and was in agreement with the changes to your letter which I sent to you on Monday. I had assumed it was clear since I said in my email on Friday that I wanted to check the changes past Tasha and we would respond on Monday, but I should have been more explicit about that in my email on Monday*". A copy of this email as part of an email chain is exhibited at pages **230** to **234** of **Exhibit MRS-1**.
92. On 1 February 2023 at 6:08pm, Ms Wilkinson responded to my email, noting the Inquiry will deliver its findings on 30 June and thanking me for getting back to her with the details. A copy of this email as part of an email chain is exhibited at pages **235** to **242** of **Exhibit MRS-1**.
93. s 136 limitation I understood Ms Wilkinson's frustration, but I had been working strenuously on the matter to assist both Ms Wilkinson and Network Ten so I wanted to explain what we had done to try to get a successful result for her. Accordingly, on 2 February 2023 at 6:00pm, I responded to Ms Wilkinson's email and explained to Ms Wilkinson the opportunities that myself and Ms Smithies had taken to try and get a result for her with Mr Drumgold, and set out a timeline of correspondence including my six attempts to contact Mr Drumgold. Following this I set out that Mr Drumgold had been the subject of a professional misconduct complaint, and explained that it was likely that the issues Ms Wilkinson had encountered would be "*raised during the Inquiry's processes*." A copy of this email as part of an email chain is exhibited at pages **243** to **249** of **Exhibit MRS-1**.




94. On 3 February 2023 at 8:17am, Mr Fordham sent an email to Ms Smithies, Ms Wilkinson and me. A copy of this email is exhibited at page **250** of **Exhibit MRS-1**.

Hi Tasha,

I have been discussing this ongoing saga with Lisa and wish to raise and reiterate the following:

- *As you and Marlia can no doubt appreciate, Lisa continues to be, quite frankly, devastated that since the Logies speech her professional reputation has been severely damaged through absolutely no fault of her own.*
- *She also remains very frustrated and concerned that any real prospect of being able to adequately restore her reputation seems to be rapidly disappearing, given the limited options that she now has left open to her.*
- *Further, at this stage I see no real utility in revisiting the issues surrounding the proposed draft email to Drumgold, which I confirm, after taking your legal advice, has not been dispatched by Lisa.*
- *In the meantime, Lisa and I have carefully reviewed the terms of reference released for the Board of Inquiry to be chaired by Mr Sofronoff KC.*
- *As has been reported, the terms of reference have been cast quite widely, and as such we are seeking your opinion as to whether or not Network Ten should be making an urgent submission to extend the terms of reference to include the delay in the trial and Drumgold's conduct in failing to correct the public record relating to his instructions to Lisa as well as what was (and wasn't) said at the 15 June 2022 meeting.*
- *If you and Marlia do not consider it appropriate (or legally viable) to seek to extend the terms of reference, would you please then explain as to what positive steps Network Ten can and will take in order to have Mr Drumgold's conduct pertaining to Lisa and the June 15 meeting brought to the attention of Mr Sofronoff KC to ensure that is duly considered and dealt with at the Board of Inquiry.*
- *Additionally, can you please provide guidance on whether Network Ten should consider making a formal complaint to the Bar Association of the ACT (as Lehrmann has now done) in relation to Drumgold's conduct before, during and after the trial.*

I look forward to your response.

95. On 3 February 2023 at 5:14pm, Ms Smithies responded to Mr Fordham's email. She confirmed that, going forward, due to the different views held by Network Ten and Ms Wilkinson, I would act solely for Ms Wilkinson (and not Network Ten) in relation to the Board of Inquiry and Ms Wilkinson should deal with me directly. A copy of this email as part of an email chain is exhibited at pages **251** to **252** of **Exhibit MRS-1**.

Dear Nick,

Thanks for your email.

We appreciate that you have had different views from the network concerning the most appropriate and effective pathway to correct the public misstatements that have been made (and further exaggerated in hostile media) concerning the




nature of advice given by Drumgold to Lisa, and related matters. We do, however, respect those different views and confirm that we have no desire to obstruct actions that Lisa may wish to take in that regard. Good and reasonable minds can have different views on how to best to approach these matters.

With Marlia, we have been most concerned to ensure that Lisa is legally protected in any actions that may be pursued. For that reason, we had suggested amendments to Lisa's draft letter to Drumgold to avoid both any risk of contempt of court and also the risk of waiver of legal privilege. We also considered that the purpose of the letter could bear little fruit in the circumstances of the proposed Inquiry, but we did not stipulate that the letter should not be sent.

To separate and simplify the roles of Marlia and myself, with immediate effect, Marlia will act solely for Lisa on this matter. In that way, Lisa can have direct recourse to Marlia's advice without network involvement. With that simplification, moving ahead, we suggest that you and Lisa should deal directly with Marlia so that Lisa can resolve her preferred actions on the basis of that separate advice. Acting on Lisa's instructions, Marlia can then communicate with me for network input on proposed courses of actions. Notwithstanding this separation of roles, N10 will continue to fund the costs of Marlia's advice to Lisa on the Drumgold complaint.

It is our view that it is not appropriate for the network to make any submissions to the board of inquiry, for several reasons including that any complaint is properly a personal complaint by Lisa. It seems to us (but Marlia could advise Lisa on the question more directly) that a complaint could be lodged personally by Lisa directly to the Inquiry without the need for an expansion of the terms of reference. As you know, Lehmann has lodged a personal complaint and it is open, subject to Marlia's advice, for Lisa to take a similar approach. We consider that this approach is more likely to bear fruit than Lisa's proposed letter to Drumgold. We also do not consider that is appropriate for the network to lodge a complaint to the Bar Association of the ACT. However, Marlia can also advise Lisa on the merits of a complaint made by Lisa, and the network has no objection in principle to this course of action if that is preferred.

We trust this new approach will streamline communications and roles, and better assist Lisa in pursuing a course of action that is preferred.

96. On 6 February 2023 at 9:06am, I forwarded that email to Ms Wilkinson, and asked her if she wanted to discuss it further. A copy of this email as part of an email chain is exhibited at pages **253 to 255** of **Exhibit MRS-1**.
97. On 7 February 2023 at 9:57am, I sent an email to Ms Wilkinson providing a link to a Daily Mail article which referred to the letter which was sent by Network Ten to the Court and DPP on Ms Wilkinson's behalf last June. The article said the letter had been "leaked" to them. At 12:24pm, Ms Wilkinson responded asking if she could give me a call to discuss it. A copy of this email chain is exhibited at pages **256 to 259** of **Exhibit MRS-1**.

98. That morning, Network Ten received an email from a News Corp journalist requesting Network Ten's comments on the letter to the DPP that was leaked. Ms Smithies forwarded me proposed responses to the questions to be sent out by Network Ten.
99. On 7 February 2023 at around 1:00pm, I had a telephone conversation with Ms Wilkinson during which we discussed the following matters:
- (a) The proposed response from Network Ten to the media enquiry. Ms Wilkinson confirmed she did not want to provide any further comment, and told me she was very pleased with the approach being taken by Network Ten.
 - (b) Ms Wilkinson said she could not be more grateful for the effort I had gone to with Mr Drumgold, and that I could not have done anything more.
 - (c) Ms Wilkinson confirmed she would like to make a submission to the Board of Inquiry.
 - (d) Ms Wilkinson said she was happy that Network Ten had confirmed they would cover my fees in assisting her with her submission to the Board of Inquiry.
 - (e) She asked me what the process was for making a submission and I said I would look into it and come back to her.
 - (f) Ms Wilkinson said she would prepare a draft of the submission and send it to me for review.
 - (g) I said I thought Mr Lehrmann's complaint might have gone away since we had not heard anything recently.

A file note of my conversation with Ms Wilkinson is exhibited at page **260** of **Exhibit MRS-1**, being an email I sent myself at 4:53pm on 7 February 2023.

100. On 7 February 2023 at 7:24pm, I sent an email to Ms Wilkinson confirming we had made enquiries with the ACT government about the process of making a submission to the Board of Inquiry. I said that they "*confirmed it's not possible to make a submission yet – once they confirm the process, it will be communicated on the website... We will continue to monitor the website for further details. There's therefore no rush to prepare a submission just yet.*" A copy of this email as part of an email chain is exhibited at pages **261** to **264** of **Exhibit MRS-1**.
101. At paragraphs 66 and 67 of Ms Wilkinson's affidavit affirmed on 16 January 2024 (Ms Wilkinson's Affidavit) she states that there was a "growing conflict of interest" between Network Ten and Ms Wilkinson because of matters that I "could not disclose" because I was "protecting TEN's interests". At this time, I did not hold any confidential material belonging to Network Ten in relation to it not wanting to make a submission to the Board of Inquiry. My understanding was merely that Network Ten did not want to make a




statement for commercial reasons. These were not reasons that I had any input on, or reasons that were the result of my legal advice. During my conversation with Ms Wilkinson on 7 February 2023, I was unable to disclose why Network Ten did not want to make a submission because I did not have any of that specific information. I did not think this would impact on my advice to Ms Wilkinson in respect of her personal submission since the only legal issue for Network Ten was whether the submission might unilaterally waive joint advice privilege. I did not consider that this amounted to a conflict, since it would simply be a matter of seeking Network Ten's consent to the waiver and, if such consent was not provided, ensuring the submission did not waive privilege.

Defamation proceedings

102. On 7 February 2023 at 5:33pm, I received an email from Mr Lehrmann's lawyer, Paul Svilans from Mark O'Brien Legal, saying that they had filed proceedings against Network Ten and Ms Wilkinson (the **Defamation Proceedings**), and asked if we had instructions to accept service. When I read the email from Mr Svilans, I did not notice that it stated that Ms Wilkinson was a party to the proceedings. At that time, I focused on the fact that the proceedings had been commenced and letting Network Ten and Ms Wilkinson know as soon as possible. I wanted to let Ms Wilkinson know given she had an interest and necessary involvement in proceedings related to the Program, regardless of whether or not she was a named party.
103. I forwarded this email to Ms Smithies at 5:50pm and asked if she would like me to call Ms Wilkinson to update her. Since Ms Smithies had been dealing with Ms Wilkinson directly in respect of the defamation issue up to that time, I thought Ms Smithies might like to be the one to tell her the news. Ms Smithies responded at 6:33pm confirming I should call Ms Wilkinson. A copy of this email chain is exhibited at pages **265 to 267 of Exhibit MRS-1**. By this time, I had entered a board meeting and did not have an opportunity to call Ms Wilkinson. I was conscious that it may be too late to call Ms Wilkinson at 7:30pm when the board meeting ended, so I texted Ms Wilkinson at 6:55pm to let her know that Mr Lehrmann had filed proceedings against Network Ten and News Corp. I said "*we will accept service of the court documents tomorrow so I will update you further then. If you want to discuss tonight let me know*". A copy of my texts with Ms Wilkinson is set out at pages **268 to 270 of Exhibit MRS-1**. I did not tell Ms Wilkinson she was a named respondent when I messaged her that evening for the reasons outlined above at paragraph 102.
104. On 8 February 2023:




- (a) At 7:29am, Ms Wilkinson sent an email to Ms Smithies and me providing an article to a link from *The Australian* indicating that Ms Wilkinson was being sued. A copy of this email is exhibited at page **271** of **Exhibit MRS-1**.
- (b) At 7:39am, Mr Fordham sent an email in response asking that Network Ten's crisis communication, PR, or legal team email the Australian to correct the reports. A copy of this email is exhibited at page **272** of **Exhibit MRS-1**.
- (c) At 7:45am, I emailed Ms Wilkinson stating that we haven't yet been served with documents, but the online court listing indicates that other respondents had been sued in addition to Network Ten. I said that we should receive the documents that morning, and that I would update her further. A copy of this email is exhibited at pages **273** to **274** of **Exhibit MRS-1**.
- (d) At 7:46am, Ms Smithies emailed Ms Wilkinson stating that the claim document was likely provided to the press before being served, and that it is likely she may also have been named in the proceedings. A copy of this email as part of an email chain is exhibited at pages **275** to **276** of **Exhibit MRS-1**.
- (e) At 11:48am Mr Connor O'Beirne (Mr O'Beirne) from my office emailed Mr Svilans confirming we held instructions to accept service on behalf of Network Ten and Ms Wilkinson. A copy of this email is exhibited at pages **277** to **278** of **Exhibit MRS-1**. As we had been advising Ms Wilkinson in relation to the matter for almost eight months, it did not occur to me that we should not accept service on behalf of Ms Wilkinson, or that we should expressly ask her if we can accept service. I did not consider this to be more than a practical step to avoid Ms Wilkinson being personally served by a process server. It did not prevent her from later deciding to be represented by different lawyers.
- (f) At 12:22pm, Thomson Geer received an email from Mark O'Brien Legal, serving the originating application and statement of claim in this proceeding. A copy of this email as part of an email chain is exhibited at pages **279** to **314** of **Exhibit MRS-1**.
- (g) At 12:25pm, I provided a copy of the court documents received from Mark O'Brien Legal to Ms Wilkinson. I said I would review them, and call Ms Wilkinson to discuss them that afternoon. A copy of this email is exhibited at pages **315** to **348** of **Exhibit MRS-1**.
- (h) At 12:49pm, Ms Wilkinson responded to my email and said "Thanks Marlia. Would it be possible to have Nick in on that call given it is personal defamation against me now? Perhaps a Zoom?". A copy of this email is exhibited at page **349** of **Exhibit MRS-1**.



- (i) At 1:07pm, I confirmed with Ms Wilkinson that was fine, asking if 2:00pm was a suitable time for a call and stating that Mr O'Beirne would circulate a zoom link. A copy of this email as part of an email chain is exhibited at page **350** of **Exhibit MRS-1**.
- (j) At 1:45pm, Mr Fordham emailed and said "*I unfortunately have another call at this time but it will only be quick, so I will join this call once I am off.*" A copy of this email as part of an email chain is exhibited at pages **351** to **352** of **Exhibit MRS-1**.
- (k) At 2:00pm, I attended a conference with Ms Wilkinson, Mr Fordham and Mr O'Beirne (being the conference referred to in paragraph 81 of Ms Wilkinson's Affidavit). The conference concluded at 3:00pm. A copy of Mr O'Beirne's file note of this meeting is exhibited at pages **353** to **354** of **Exhibit MRS-1**. I note in relation to the conference that:
- i. the purpose of the conference was to explain to Ms Wilkinson the proceeding and next steps to be taken, and to provide an opportunity for her to ask any questions. For those reasons, I did not consider there was a need for Network Ten to be on the call. We discussed a range of topics concerning the proceeding;
 - ii. I recall that I reiterated twice that we would file a notice of address for service on Ms Wilkinson's behalf early the following week, in order to confirm that we are on the record as acting for her. Ms Wilkinson confirmed this course. Towards the end of Mr O'Beirne's file note it says "*Happy for us to file address for service. We'll do that next week*". I do not recall whether there was any other discussion of us accepting about service of the documents, but I accept it is possible;
 - iii. we also discussed sending a letter to Mr Lehrmann's lawyers setting out the deficiencies in the pleading. Ms Wilkinson said she was going to France on the weekend, but she would still like to see the draft letter. I said I would email it to her and would text her when I sent the email so she knew to check her inbox. Ms Wilkinson said "that sounds good"; and
 - iv. Ms Wilkinson did not raise in the conference any issues about separate representation and did not ask any questions about my ability to represent both Ms Wilkinson and Network Ten.
- (l) After this conference, Ms Wilkinson sent me a text message saying "*Thanks for everything today Marlia. I can't tell you how much I appreciate all your advice and assistance*". A copy of this text message is exhibited at page **355** of **Exhibit MRS-1**.

105. On 13 February 2023, I instructed our team manager Rachel Stellas to file a notice of address for service for Ms Wilkinson and Network Ten for the Defamation Proceeding.
106. From 8 February 2023 to 14 February 2023, I prepared the letter to Mr Lehrmann's lawyers which I discussed with Ms Wilkinson on 8 February 2023. I sent the letter to Ms Wilkinson on 14 February 2023 at 12.25pm, and texted her when I sent it. Copies of the email and text to Ms Wilkinson are set out at pages **356 to 360** of **Exhibit MRS-1**. I did not receive any response from Ms Wilkinson.

Ms Wilkinson's separate representation

107. On 14 February 2023 at 1:23pm, I received an email from Gillis Delaney attaching a letter and a notice of change of solicitor which had been filed on behalf of Ms Wilkinson. I did not receive any prior notice that Ms Wilkinson had sought separate representation. A copy of this letter is exhibited at pages **361 to 366** of **Exhibit MRS-1**.
108. In the afternoon of 14 February 2023, I had a discussion with Anthony Jefferies from Gillis Delaney. To the best of my recollection, he said:
- (a) he has been the Fordham family lawyer for decades and has advised Ms Wilkinson previously. He said he has had a watching brief in this matter.
 - (b) his instructions were that Ms Wilkinson had not instructed us to appear for her or file a notice of address for service on her behalf. I told him that was not the case and we had a 1 hour conference with her and Mr Fordham on 8 February 2023 in which we confirmed we would file the notice of address for service on her behalf. Mr Jefferies said that all he was told is that the pleadings had been sent to her.
 - (c) he was mortified and apologised profusely. He said if he had known he would have picked up the phone and would have handled things completely differently. He said he will be making some calls now because he believes he has been misadvised.
 - (d) he had a lengthy conference with Ms Wilkinson on Saturday before she left for France along with Sue Chrysanthou SC who is briefed as counsel.
 - (e) he wants to work collaboratively on the matter and did not intend to do anything to jeopardise that.

My notes of this conversation are set out in an email sent to Ms Smithies on 14 February 2023 at 3:12pm, exhibited at pages **367 to 368** of **Exhibit MRS-1**.

109. From 28 February 2023 to 1 March 2023, I corresponded with Gillis Delaney lawyers regarding Ms Wilkinson's defence. Ms Wilkinson elected to file her defence one week in advance of the deadline, despite the fact that it did not contain the detail from Network Ten's defence which we were still preparing. Copies of these emails are exhibited at




pages **369** to **375** of **Exhibit MRS-1**. Thomson Geer provided all relevant documents promptly to Gillis Delaney to assist them in preparing Ms Wilkinson's defence.

110. On 1 March 2023, Mr Jefferies emailed me and appeared to allege that I was conflicted in acting for Network Ten in relation to the indemnity issue. I responded to Mr Jefferies email later that day denying any conflict because at no stage had I acted for Ms Wilkinson in relation to an indemnity claim against Network Ten, nor had I advised Ms Wilkinson or discussed any such claim with her. Copies of these emails are exhibited at pages **376** to **377** of **Exhibit MRS-1**.
111. On 1 March 2023, Justin Quill (partner at Thomson Geer) responded to Mr Jefferies' email earlier that day in relation to the indemnity issue with reasons why Network Ten will not pay for Ms Wilkinson's costs. A copy of this email is exhibited at page **378** of **Exhibit MRS-1**.
112. On 3 March 2023, Gillis Delaney sent Thomson Geer a letter stating Network Ten had been inconsistent with its "promise of indemnity", and seeking to justify Ms Wilkinson's choice to be separately represented. A copy of this letter is exhibited at pages **379** to **381** of **Exhibit MRS-1**.
113. From 6 March 2023, Network Ten instructed Baker McKenzie to act for it in relation to the indemnity issue, which was not an acceptance that Thomson Geer had a conflict.

Ms Wilkinson's Affidavit

114. I have reviewed Ms Wilkinson's email to Mr Fordham dated 15 February 2023 which contains Ms Wilkinson's comments regarding our 7 February 2023 conversation and her comments on other issues and note the following:
- (a) Network Ten's position was consistently that it would not be commenting publicly, releasing a statement or lodging a formal complaint about Mr Drumgold's conduct, so its position not to make a submission to the Board of Inquiry was consistent with this. This was a commercial decision by Network Ten and I did not have any further detail about the reasons for this decision that I could have shared with Ms Wilkinson.
- (b) There was joint privilege over the legal advice concerning the Logies Speech, so Network Ten would have needed to consent to any waiver. This was not a matter in
which I had a conflict.
- (c) Thomson Geer accepted service of the court documents on behalf of both Network Ten and Ms Wilkinson as a matter of general practice given we had been acting for both parties since June 2022.
- (d) I explained to Ms Wilkinson that the reason why she could be sued without having received a concerns notice is that the broadcast pre-dated the July 2021




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amendments to the defamation law, such that a concerns notice is not a prerequisite to commencing proceedings.

115. At paragraph 71 of Ms Wilkinson's Affidavit affirmed on 16 January 2023 Ms Wilkinson stated that she "found a number of factual inaccuracies" in amendments I proposed to Ms Wilkinson's submissions to the Board of Inquiry. My position in relation to those alleged inaccuracies is set out in an email I sent on 17 April 2023 which is exhibited at page 127 of **LW-1**.
116. Paragraph 91(a) of Ms Wilkinson's Affidavit states that Ms Chrysanthou advised Ms Wilkinson that Thomson Geer legalised *The Australian* (that is, acted for it in giving pre-publication advice). I have abstained from legalling any stories about Ms Wilkinson since I was retained in relation to her in June 2022.

Duplication of work in the Defamation Proceedings

s 136 limitation

117. I continued to act for Network Ten in the Defamation Proceedings. From February 2023 when Gillis Delaney was appointed to act for Ms Wilkinson, to the end of the trial, I observed duplication of work between Thomson Geer and Gillis Delaney:
- (a) Ms Wilkinson served a separate notice to produce on Mr Lehmann in the extension of time application in addition to the notice to produce that had already been served jointly on behalf of Network Ten and News Life Media Pty Limited (**News Life Media**). The categories of documents sought in Ms Wilkinson's notice to produce were largely duplicative of the earlier notice to produce, but were framed slightly differently. Ms Wilkinson wanted an extra category of material that his Honour disallowed and made a costs order against her for;
 - (b) Ms Wilkinson filed separate written submissions in the extension of time application to the joint submissions filed on behalf of Network Ten and News Life Media;
 - (c) Ms Wilkinson filed separate affidavit evidence in the extension of time application to the affidavit evidence jointly relied on by Network Ten and News Life Media;
 - (d) Ms Wilkinson prepared her defence independently of Network Ten and filed her defence a week early before seeing the detailed particulars of truth prepared collaboratively on behalf of Network Ten and News Life Media or the detailed qualified privilege particulars prepared by Network Ten by reference to the substantial material in its possession which Lisa did not have. There were a number of errors in her draft defence as a result;
 - (e) Ms Wilkinson was represented by senior counsel, junior counsel, a partner, a special counsel and a lawyer at the two day hearing of the extension of time application. Ms

Chrysanthou's cross-examination of Mr Lehmann canvassed many of the same issues as had already been covered by Dr Collins;

(f) Ms Wilkinson's legal representatives reviewed all of the subpoenaed documents and discovered documents in the proceeding despite not calling separate evidence in the truth case to the evidence prepared by Network Ten;

(g) during the substantive hearing, Mr Jefferies was present in Court every day, including during the truth evidence when he had no role to play. He did not sit with Ms Wilkinson;

(h) during the substantive hearing, Ms Chrysanthou relied on Thomson Geer for information and documents – I received multiple calls and text messages from her with requests, and she would ask me for information in court (rather than Mr Jefferies);


(i) during the substantive hearing, Ms Chrysanthou asked Thomson Geer lawyers to sit next to Ms Wilkinson so she was not on her own, which was facilitated; and

(j) Ms Wilkinson filed separate written opening and closing submissions in the substantive proceeding.

Affirmed by the deponent)
 at)
 in NSW)
 on 25 January 2025)
 Before me:)



 Signature of deponent



 Signature of witness
 Andrew Gavin Stewart
 Solicitor
 Level 46, 100 Barangaroo Avenue
 Barangaroo NSW 2000