

NOTICE 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



Sia Lagos

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.

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DEFENCE OF SECOND RESPONDENT

No. NSD103 of 2023

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

BRUCE LEHRMANN

Applicant

NETWORK TEN PTY LIMITED & LISA WILKINSON

Respondents

A. RESPONDENTS

1. In answer to the allegations in paragraph 1 of the Statement of Claim (**SOC**), the second respondent (**Wilkinson**):
 - 1.1. admits the facts alleged in subparagraphs (a) and (c); and
 - 1.2. does not know and does not admit the facts alleged in subparagraphs (b), (d), (e) and (f).
2. In answer to the allegations in paragraph 2 of the SOC, Wilkinson:
 - 2.1. admits that she is a journalist;
 - 2.2. admits that she is employed by the first respondent (**Network Ten**);
 - 2.3. admits that Network Ten is vicariously liable for her conduct as a reporter, and host of the Project in 2021; and
 - 2.4. says that she is an employee for the purposes of the *Employers' Liability Act* 1991 (NSW).

Filed on behalf of	Second Respondent, Lisa Wilkinson		
Prepared by (name of person/lawyer)	Anthony Jefferies		
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B. FIRST MATTER

3. In answer to the allegations in paragraph 3 of the SOC, Wilkinson:
 - 3.1. admits the facts alleged in subparagraphs (a) and (b);
 - 3.2. admits that the first matter was broadcast to audiences via the television station Channel 10;
 - 3.3. does not know, and cannot admit the facts alleged in subparagraphs (d) and (e);
 - 3.4. does not plead to subparagraphs (f) and (g) because they contain no allegations against her; and
 - 3.5. otherwise denies the allegations in paragraph 3.
4. In answer to the allegations in paragraph 4 of the SOC, Wilkinson:
 - 4.1. does not know and cannot admit that the applicant (**Lehrmann**) was reasonably identified by any viewer of the first matter on 15 February 2021;
 - 4.2. notes that she sought particulars of identification from Lehrmann through her solicitors on 15 February 2023 and those particulars have not been sufficiently supplied;
 - 4.3. admits that if Lehrmann was so reasonably identified by any viewer on 15 February 2021, the first matter carried an imputation that Lehrmann raped Brittany Higgins (**Higgins**) in Parliament House in 2019 (or any such imputation that does not differ in substance);
 - 4.4. admits that an imputation that Lehrmann raped Brittany Higgins in Parliament House in 2019 (or any such imputation that does not differ in substance) is defamatory;
 - 4.5. says that the imputations pleaded in subparagraphs 4(a), (b), (c) and (d) do not differ in substance and contain gratuitous and irrelevant rhetorical flourish that adds nothing to the defamatory sting of rape; and
 - 4.6. otherwise denies the allegations in paragraph 4.

C. SECOND MATTER

5. In answer to the allegations in paragraph 5 of the SOC, Wilkinson:

- 5.1. denies that she uploaded or caused to be uploaded the second matter to the 10 Play website;
- 5.2. admits the facts alleged in subparagraph (b);
- 5.3. admits that the second matter was made available for download from about 15 February 2021;
- 5.4. says that she was informed by Network 10 that the second matter was removed from the 10 Play website and not available for download from on or about 16 May 2021;
- 5.5. does not know, and cannot admit the facts alleged in subparagraph (d);
- 5.6. does not plead to the allegations in subparagraphs (e) and (f) because they contain no allegations against her; and
- 5.7. otherwise denies the allegations in paragraph 5.

6. In answer to the allegations in paragraph 6 of the SOC, Wilkinson:

- 6.1. does not know and cannot admit that Lehrmann was reasonably identified by any viewer of the second matter on 15 February 2021;
- 6.2. notes that she sought particulars of identification from Lehrmann through her solicitors on 15 February 2023 and those particulars have not been sufficiently supplied;
- 6.3. admits that if Lehrmann was so reasonably identified by any viewer on 15 February 2021, the second matter carried an imputation that Lehrmann raped Higgins in Parliament House in 2019 (or any such imputation that does not differ in substance);
- 6.4. admits that an imputation that Lehrmann raped Brittany Higgins in Parliament House in 2019 (or any such imputation that does not differ in substance) is defamatory;

- 6.5. says that the imputations pleaded in subparagraphs 6(a), (b), (c) and (d) do not differ in substance and contain gratuitous and irrelevant rhetorical flourish that adds nothing to the defamatory sting of rape; and
- 6.6. otherwise denies the allegations in paragraph 6.

D. THIRD MATTER

7. In answer to the allegations in paragraph 7 of the SOC, Wilkinson:

- 7.1. denies that she uploaded or caused to be uploaded the third matter to YouTube;
- 7.2. admits the facts alleged in subparagraph (b);
- 7.3. admits that the third matter was made available for download from about 15 February 2021;
- 7.4. says that she was informed by Network 10 that the third matter was removed from YouTube and not available for download from on or about 7 August 2021;
- 7.5. does not know, and cannot admit the facts alleged in subparagraph (d);
- 7.6. does not plead to the allegations in subparagraphs (e) and (f) because they contain no allegations against her; and
- 7.7. otherwise denies the allegations in paragraph 7.

8. In answer to the allegations in paragraph 8 of the SOC, Wilkinson:

- 8.1. does not know and cannot admit that Lehrmann was reasonably identified by any viewer of the third matter on 15 February 2021;
- 8.2. notes that she sought particulars of identification from Lehrmann through her solicitors on 15 February 2023 and those particulars have not been sufficiently supplied;
- 8.3. admits that if Lehrmann was so reasonably identified by any viewer on 15 February 2021, the third matter carried an imputation that Lehrmann raped Higgins in Parliament House in 2019 (or any such imputation that does not differ in substance);
- 8.4. admits that an imputation that Lehrmann raped Brittany Higgins in Parliament House in 2019 (or any such imputation that does not differ in substance) is defamatory;

- 8.5. says that the imputations pleaded in subparagraphs 8(a), (b), (c) and (d) do not differ in substance and contain gratuitous and irrelevant rhetorical flourish that adds nothing to the defamatory sting of rape; and
- 8.6. otherwise denies the allegations in paragraph 8.

E. DAMAGE

9. In answer to the allegations in paragraph 9 of the SOC, Wilkinson:

- 9.1 denies the allegations in subparagraph (a);
- 9.2 says further in answer to subparagraph (a) that Lehrmann was given multiple opportunities to respond before the first matter was broadcast as follows:
- (a) email from Network 10 on 12 February 2021 to Lehrmann's personal email address;
 - (b) text from Network 10 on 12 February 2021 to Lehrmann's mobile telephone;
 - (c) email from Network 10 on the morning of 15 February 2021 to Lehrmann's work email.
- 9.3 says that each such approach referred to in the preceding subparagraph was timely, fair and reasonable, but despite that, Lehrmann elected not to respond at all;
- 9.4 says that the allegation of recklessness in subparagraph (a) against Wilkinson is baseless, unjustified, unsupported by any fact and should be withdrawn, noting that a request for particulars on 15 February 2023 to Lehrmann's lawyers requesting particulars of this allegation resulted in no facts being provided to support it;
- 9.5 denies the allegations in subparagraph (b);
- 9.6 says further in relation to subparagraph (b) that:
- (a) the evidence of Higgins relied on by Lehrmann as true to support subparagraph (b) was shortly thereafter withdrawn by Higgins in the witness box, in the presence of Lehrmann;

- (b) Wilkinson had no contact with Samantha Maiden (**Maiden**) about Higgins, her allegations, exclusivity or otherwise prior to the broadcast of the first matter or at any other relevant time thereafter;
- (c) at no time did Wilkinson believe that Higgins' allegations about Lehrmann were false;
- (d) a request for particulars supporting this allegation was made on 15 February 2023 which was answered on 27 February 2023 and in which it was confirmed that Lehrmann does not allege that Wilkinson believed that Higgins' claims were false.

9.7 in relation to subparagraph (c) Wilkinson:

- (a) admits the allegation in subparagraph (c) that after seeking approval from Network Ten, she uploaded the Higgins interview to Instagram;
- (b) says that the Instagram post was removed on or about 7 August 2021;
- (c) notes that in a letter of particulars dated 27 February 2023, Lehrmann's lawyers alleged that the post was improper because it took place without giving Lehrmann a reasonable opportunity to respond;
- (d) says that the Instagram post was made after the broadcast of the first matter, and after Lehrmann was given an opportunity to respond to the allegations made by Higgins, as set out in 9.2, above, but elected not to; and
- (e) otherwise denies that such conduct was improper, unjustifiable and/or lacking in bona fides.

9.8 does not plead to subparagraph (d) as it contains no allegation against her;

9.9 says further that she was never sent any letter of demand or concerns notice by or on behalf of Lehrmann before the commencement of these proceedings in relation to any of the publications the subject of these proceedings, or at all;

9.10 notes that by letter dated 27 February 2023 from Lehrmann's lawyers, subparagraph (e) is not pressed as against Wilkinson;

9.11 denies the allegations in subparagraph (f);

- 9.13 says further in answer to subparagraph (f) that:
- (a) the content of the matters sued on was not “*over-sensationalised*”;
 - (b) Lehrmann was not named by Wilkinson as the person the subject of Higgins’ allegations in the matters, or any subsequent time before he was charged in August 2021;
 - (c) to Wilkinson’s knowledge, there was no legal impediment preventing the naming of Lehrmann in the matters, and her decision to not name him indicates the contrary of an intent to injure him; and
- 9.14 otherwise denies the allegations in paragraph 9 of the SOC.
10. In further answer to the allegations in paragraph 9 of the SOC, if Wilkinson is liable to Lehrmann for damages, which is denied, then Wilkinson will rely on the following matters, including pursuant to s38 of the *Defamation Act 2005* (NSW):
- 10.1. the substantial truth of so many of Lehrmann’s imputations as are found to be substantially true;
 - 10.2. the facts, matters and circumstances proved in support of the justification defences relied on by the respondents at trial;
 - 10.3. any damages award made in favour of Lehrmann against Network 10;
 - 10.4. any damages award made in favour of Lehrmann against the respondents in Federal Court Proceedings NSD 104 of 2023;
 - 10.5. concerns notices sent by Lehrmann to Australian Radio Network, the ABC and other persons as yet unknown to Wilkinson in relation to the same or similar imputations complained of in these proceedings;
 - 10.6. the following additional facts and matters, arising as directly relevant background context to the matters:
 - (a) further and in the alternative to the facts and matters set out in paragraph 12 below, Lehrmann took an intoxicated Higgins to Parliament House on 23 March 2019 with the intention of having sexual intercourse with her, despite being in a monogamous relationship with a girlfriend. He engaged in intercourse with Higgins and left her there on her own at about 3am,

effectively naked and in an intoxicated state. In that time, he ignored 8 telephone calls from his girlfriend;

- (b) Lehrmann was terminated from his employment at Parliament House for his conduct in committing a security breach on 23 March 2019;
- (c) Lehrmann gave a record of interview to the AFP on 19 April 2021 despite receiving the caution from police that he had the right to remain silent and that his answers could be used against him in criminal proceedings;
- (d) during that interview Lehrmann falsely denied having sexual intercourse with Higgins. His dishonesty was deliberate and knowing and occurred in the course of the investigation of a crime, which amounted to perverting the course of justice.

F. DEFENCES

If Wilkinson is a publisher of any of the first matter, second matter and/or third matter (collectively, **matters**), and Lehrmann was reasonably identified by any viewer of such matters, or one or more of them, Wilkinson relies on the following defences:

Limitation period

- 11. Each of the causes of action in defamation is statute barred by reason of the operation of s14B of the *Limitation Act* 1969 (NSW) and its counterparts in the other States and Territories (as applied on 15 February 2021):
 - 11.1 each of the matters is alleged to have been published on 15 February 2021;
 - 11.2 in relation to the third matter, publication is said to have continued “*thereafter*”, being a date after 1 July 2021;
 - 11.3 by reason of the operation of the single publication rule in s73A of the *Limitation Act* that is operative in relation to publications on the internet before 1 July 2021 that were available for publication after that date, the relevant date of publication of the third matter for the purposes of the limitation period is 15 February 2021;
 - 11.4 the limitation period expired for each of the matters on 16 February 2022;
 - 11.5 these proceedings are not maintainable having not been commenced until 7 February 2023;

- 11.6 no fact has been pleaded in the SOC to establish that it was not reasonable for Lehrmann to have commenced proceedings within the 12 months after publication of the matters;
- 11.7 further and in the alternative to the preceding subparagraph, the court should not exercise its discretion in the circumstance of the case against Wilkinson to extend time to Lehrmann to commence these proceedings to 7 February 2023.

Justification – s 25 of the *Defamation Act 2005 (NSW)*

12. Each of the imputations of which Lehrmann complains in paragraphs 4, 6 and 8 of the SOC is substantially true, being no different in substance to the imputation that *Lehrmann raped Brittany Higgins in Parliament House in 2019*:
- 12.1. On 22 March 2019 Lehrmann attended the Dock Bar in Canberra with Higgins and others and later went to a nightclub.
- 12.2. Higgins consumed 11 standard alcoholic drinks in 4.5 hours with Lehrmann.
- 12.3. By about 1:00am Higgins was so intoxicated she was stumbling and fell over, and she told the people that she was with that she was going to catch a taxi home.
- 12.4. Lehrmann offered to share a taxi with Higgins having told her that they were headed in the same direction, but once both were in the taxi, Lehrmann told Higgins that he had to stop somewhere first.
- 12.5. Lehrmann directed the taxi to Parliament House, where he exited the taxi with Higgins at the Ministerial entrance at about 1:40am on 23 March 2019.
- 12.6. Lehrmann and Higgins went through security and Higgins was observed by security personnel to be visibly intoxicated.
- 12.7. Lehrmann and Higgins went up the lift and were admitted into Minister Reynolds suite by a security guard, who left them alone in the suite with the door closed.
- 12.8. Higgins fell asleep on the couch in the suite.
- 12.9. Higgins woke some time later at about 2:30am and Lehrmann was on top of her having sexual intercourse with her.
- 12.10. Higgins did not consent to the sexual intercourse with Lehrmann.

- 12.11. Lehrmann knew that Higgins did not consent to sexual intercourse with him given:
- (a) he knew she was intoxicated and unable to consent;
 - (b) she was unconscious when he penetrated her;
 - (c) when she woke, she told him to stop, and he did not;
 - (d) when she woke, she cried while he continued to have intercourse with her, alternatively, he was reckless as to whether Higgins consented or not.
- 12.12. Lehrmann's conduct described in the preceding particulars amounted to rape of Higgins in Parliament House in 2019.

Statutory qualified privilege – s 30 of the *Defamation Act 2005 (NSW)*

13. Wilkinson published the matters in the course of conveying information about:
- 13.1 a rape complaint;
 - 13.2 the Federal Government;
 - 13.3 the conduct of a Federal Minister to a member of her staff;
 - 13.4 the mishandling of a rape complaint at Parliament House;
 - 13.5 the conduct of Linda Reynolds, a Federal Member of Parliament and Minister;
 - 13.6 the treatment of women in Parliament House;
 - 13.7 the lack of an effective, independent and appropriate human resources structure at Parliament House to deal with complaints by staff;
 - 13.8 the treatment of sexual assault complainants in Parliament House;
 - 13.9 the statement by the Prime Minister in Parliament in answer to questions to him on 15 February 2021 about Higgins and the allegations made by Higgins.
14. The recipients of the matters had an interest or apparent interest in receiving information about the topics referred to in the preceding paragraph, having regard to their connection to government and political matters in Australia and Wilkinson's belief on reasonable grounds that such recipients had that interest.

15. Wilkinson's conduct in publishing the matters was reasonable in the circumstances including by reason of the following facts and circumstances:

Wilkinson's qualifications, experience and awards

- 15.1. Wilkinson is an experienced, accomplished and careful journalist of more than 40 years' experience:

- (a) 1978 - Editorial assistant, cadet journalist *Dolly Magazine* (Fairfax);
- (b) 1979 - Deputy Editor, *Dolly Magazine*;
- (c) 1980 - 1985 Editor, *Dolly* magazine;
- (d) 1985 - 1988 Editor, *Cleo* magazine, ACP;
- (e) 1988 - 1995 Editor in Chief, *Cleo & Dolly* magazines;
- (f) 1996 - 2000 regular talk show panellist, *Beauty & The Beast*, Foxtel;
- (g) 1999 - 2007 Editor At Large, *Australian Women's Weekly* magazine, ACP;
- (h) 2000 - Host, *The Morning Shift* chat TV program, Network 7;
- (i) 2001 - 2003 regular talk show panellist, *Beauty & The Beast*, Network 10;
- (j) 2004 – News Contributor and regular fill in host, *Sunrise* breakfast program, Network 7;
- (k) 2005 - 2007 Host, *Weekend Sunrise*, fill-in host *Sunrise*, Network 7;
- (l) 2004 - 2007 Devised and launched *Madison* magazine and remained Editor At Large, ACP;
- (m) 2000 - 2007 Wilkinson's international magazine consultancy business;
- (n) 2007 - 2017 Host, *Today* breakfast show, helping to take the show to number one in 2016, Network 9;
- (o) 2017-2022 Host, *The Project* primetime news and current affairs program, Network 10;

- (p) Over the course of her lengthy career, Wilkinson has interviewed 10 Australian Prime Ministers and various other world leaders, reported from disaster zones, and reported on live breaking news on a daily basis.

15.2. Wilkinson has been recognised for her exemplary journalism by the following awards and accolades:

- (a) 2013 - Delivered the prestigious Andrew Olle Media Lecture, only the second female journalist in 17 years since Jana Wendt (1997) to do so;
- (b) 2016 - Appointed a Member of The Order of Australia in the 2016 Australia Day Honours List for significant service to the print and broadcast media as a journalist and presenter, and to a range of youth and women's health groups and charities;
- (c) 2018 - Awarded by the Anti-Defamation Commission its inaugural *Light Unto the Nation Award* for her championing of equality and for speaking out against bullying;
- (d) 2019 - Awarded an honorary Doctor of Letters from the University of Wollongong, recognised for services to journalism on a national and international level, and for her advocacy for issues affecting young women;
- (e) 2022 - Awarded Logie for Outstanding TV Journalism (peer-group voted).

Enquiries and Sources

15.3. Wilkinson understood and confirmed that enquiries were made in relation to the allegations made by Higgins to the Prime Minister, Linda Reynolds, Michaelia Cash, Fiona Brown, AFP officers, the Canberra Rape Crisis Centre, Lehrmann and other parliamentary staffers and advisors.

15.4. Wilkinson had the following sources of information at the time of publication of the matters:

- (a) Higgins;
- (b) photo taken by Higgins on 3 April 2019 of her leg;
- (c) timeline document provided by Higgins;

- (d) contemporaneous emails and text messages from March and April 2019 supplied by Higgins;
- (e) statement in Parliament of Prime Minister Morrison on 15 February 2021;
- (f) statement from the Prime Minister's Office;
- (g) statement from Fiona Brown;
- (h) statement from Linda Reynolds;
- (i) statement from Michaelia Cash;
- (j) statement from the Australian Federal Police;
- (k) www.aph.gov.au in relation to Parliamentary precincts and the exercise of authority;
- (l) Channel 9 news story from 2019 about Liberal Party sexual assault allegations which included an interview with Michaelia Cash and the Vice President of the Federal Liberal Party;
- (m) the information included in the matters from the sources attributed therein;
- (n) other sources, documents and material discussed with Wilkinson that were sourced and supplied by other employees at Network 10 between about 19 January 2021 and the time of broadcast on 15 February 2021;
- (o) information obtained by producer Angus Llewellyn (**Llewellyn**), who Wilkinson understood in his role as Senior Producer in relation to the matters, was spending many hours working on the investigation, which information was conveyed to Wilkinson in person or by telephone on an almost daily basis during the 4 week investigation period leading up to broadcast of the matters.

Reliability of Brittany Higgins and her allegations

15.5. Higgins first spoke to Wilkinson on or about 20 January 2021 in a phone call lasting approximately 90 minutes where Higgins outlined her situation to Wilkinson.

- 15.6. Shortly after the phone call Wilkinson was emailed a timeline which included a list of people who had been informed of Higgins' allegations in 2019, a timeline of events, contemporaneous documents, emails and text messages from March and April 2019 confirming that she complained of the rape at that time.
- 15.7. Wilkinson spoke to Higgins again via telephone on or about 23 January 2021 for approximately 30 minutes in order to further question her to test the veracity of her allegations, and to obtain details that could be checked by Wilkinson and Network 10.
- 15.8. Higgins came to Sydney to meet privately with Wilkinson and Network 10 Producer Llewellyn on or about 27 January 2021 so that further discussions could take place to enable Wilkinson and Network 10 to consider the reliability of Higgins' allegations. The meeting lasted approximately six hours and was recorded.
- 15.9. To Wilkinson's knowledge, extensive fact checking of the allegations made by Higgins was undertaken for some weeks by Network 10 including by at least two of its senior legal counsel, Executive Producer Craig Campbell, Co-Executive Producer Chris Bendall, Llewellyn, Senior news and current affairs executive Peter Meakin (**Meakin**), and Laura Binnie, the project's head of longform feature stories.
- 15.10. At the conclusion of that fact checking and review of the matters by an experienced team of news and current affairs professionals, Wilkinson understood that there was a consensus amongst those persons and Wilkinson that Higgins was a credible witness.
- 15.11. To Wilkinson's mind, Meakin's input and extensive news and current affairs experience was particularly crucial to the preparation and publication of the matters. Meakin had been running newsrooms at all the major free to air networks for more than five decades and was, in Wilkinson's view, the most respected news executive in the country. Meakin had been Executive Producer on an extensive array of news and current affair programs including 60 minutes, the Sunday program, Sunrise, Sunday Night, and the Today Show, among others. Meakin informed Wilkinson that he strongly believed Higgins and that in his view her story was credible.

- 15.13. Wilkinson understood that Llewellyn specifically confirmed that Higgins had reported the rape in March and April 2019 to the Parliamentary Police and the AFP, which bolstered the credibility of the allegations made by Higgins in Wilkinson's mind, as they were not of recent invention.
- 15.14. After that fact checking occurred, Wilkinson and Network 10 agreed to recording an interview with Higgins.
- 15.15. Higgins participated in a recorded interview that lasted over 2 hours on 2 February 2021.
- 15.16. Legal Counsel for Network 10 Tasha Smithies attended and viewed the entire interview referred to in the preceding subparagraph. Wilkinson understood that Smithies was an experienced in-house media lawyer with over 20 years' experience in advising in relation to news, print and television.
- 15.17. Shortly after the filmed interview a transcript of it was prepared and Higgins, on 10 February 2021, declared by statutory declaration that its content was correct.
- 15.18. Wilkinson believed that Higgins' allegations remained consistent each time she spoke to her.
- 15.19. Wilkinson closely observed Higgins' demeanour each time she saw her and carefully reviewed the recordings of the interviews with Higgins before the matters were broadcast.
- 15.20. Subsequent to the final filmed interview, Wilkinson was told and understood that Llewellyn continued to make enquiries and check the veracity of the allegations made by Higgins over the next two weeks and he informed Wilkinson that he was satisfied that her claims were truthful at the conclusion of that process and before the matters were broadcast.
- 15.21. Wilkinson was told and understood that as part of those enquiries Llewellyn spoke to police who informed him that they were concerned that a "cover-up" had occurred in relation to the allegations made by Higgins and that they had been met with "roadblocks" from Parliament House in seeking to obtain information necessary to their investigation.

- 15.23. Prior to the broadcast of the matters Wilkinson was informed that Lehrmann's employment was terminated by Minister Reynolds' Chief of Staff Fiona Brown (on secondment from the Prime Minister's Office) nominally "*for a security breach*" early the previous Saturday morning. Wilkinson was of the view that Brown believed that Lehrmann had raped Higgins and that "*security breach*" was not the real reason for his dismissal given Lehrmann was such a highly valued member of Minister Reynolds' senior staff at the time, with full security clearance. Further, Higgins was with Lehrmann in the office on 23 March 2019 and was not terminated for the same "*security breach*".
- 15.24. Statements given to Network 10 and Wilkinson prior to broadcast of the matters by the Federal Government and the AFP confirmed that Higgins had complained about the rape in March and April 2019 which again confirmed the credibility of the allegations made by Higgins in Wilkinson's mind, as they were not of recent invention.
- 15.25. Including by reason of the facts and circumstances set out above, Wilkinson believed that Higgins was truthful and that her allegations, including about Lehrmann, were true.
- 15.26. To the extent the matters made allegations about Lehrmann, they were presented to viewers directly by the interview of Higgins such that viewers could assess her directly and form their own view as to the credibility of her allegations against Lehrmann and others.

Fairness

- 15.27. Wilkinson together with Llewellyn decided that it was fair and necessary to give Lehrmann an opportunity to respond to the allegations made about him by Higgins, and on about 10 and 11 February 2021 drafted an email to him for that purpose.
- 15.28. Wilkinson understood and confirmed that her producer, Angus Llewellyn, approached Lehrmann on multiple occasions before the broadcast of the matters to give him the opportunity to respond to the rape allegation, including as follows:
- (a) email to his personal email address on 12 February 2021 with detailed questions;
 - (b) text to his mobile phone number on 12 February 2021 directing his attention to the email referred to in the preceding subparagraph;

- (c) email to his work address on the morning of 15 February 2021 directing his attention to the email sent on 12 February 2021 referred to in (a), above.
- 15.29. The communications referred to in the preceding subparagraph included a list of questions to Lehrmann after informing him that Higgins had alleged Lehrmann had raped her on 22/23 March 2019. He was also offered an opportunity to be interviewed about the allegations.
- 15.30. Lehrmann was given a deadline of 10am on 15 February 2021. Wilkinson understood that Lehrmann did not respond to any of the communications at all, nor did he seek further time to do so.
- 15.31. Wilkinson elected not to name Lehrmann in the matters even though she understood there was no legal impediment preventing her from doing so.
- 15.32. Wilkinson did not name Lehrmann in any publication prior to him being charged in August 2021.
- 15.33. Network 10 did not name Lehrmann in any publication prior to him being charged in August 2021.
- 15.34. When Lehrmann was charged in August 2021, Network 10 removed the second and third matters from the internet.
- 15.35. The Prime Minister and each of the Prime Minister's main advisers from his office involved in the handling of the Higgins allegations including Fiona Brown, Linda Reynolds, Michaelia Cash and the Australian Federal Police were approached for comment prior to the broadcast of the matters.
- 15.36. Representatives of the Government and the Prime Minister, Fiona Brown, Linda Reynolds, Michaelia Cash and the Federal Police made statements in response to questions posed by Network 10 that were made available to viewers on the *Project* website and to which their attention was drawn at the end of the matters.
- 15.37. Wilkinson used fair and measured language throughout the matters, such that they were not sensational or tabloid.
- 15.38. Wilkinson included in the matters the responses by various persons and did not in her language or demeanour undermine any of those responses in the matters.

- 15.39. Wilkinson throughout the matters referred to Higgins' assertions as *allegations* or *claims* and noted near the conclusion of the matters during the interview with Higgins "*if everything that you say is true...*".
- 15.40. Wilkinson did not seek to impugn Lehrmann in the matters by informing viewers that he had been approached with questions that he did not answer.

Fact checking

- 15.41. The investigation resulting in the matters was ongoing for four weeks.
- 15.42. Wilkinson was told and believed that each of the allegations in the matters was fact checked by producer Llewellyn and other employees of Network 10 prior to first broadcast.
- 15.43. Wilkinson relied on and had full confidence in Llewellyn who she believed to be an experienced, careful and competent senior producer, with many years' experience in radio and television news journalism.
- 15.44. Wilkinson was told and believed that Executive Producer Chris Bendall was carefully checking the matters prior to broadcast to ensure that the content was fair and balanced and accurately reflected the information available to Wilkinson prior to broadcast.
- 15.45. Wilkinson also relied on Bendall who she believed to be an experienced, careful and competent producer, with many years' experience in journalism and news television.
- 15.46. Wilkinson was told and believed that Senior News Executive Peter Meakin was carefully checking the matters prior to broadcast to ensure that the content was fair and balanced and accurately reflected the information available to Wilkinson prior to broadcast.
- 15.47. Wilkinson relied on Meakin who she believed to be an experienced, careful and competent expert in news production, with many years' experience in journalism and news television.
- 15.48. Wilkinson was told and believed that News Limited, and journalist Samantha Maiden (**Maiden**) were also publishing Higgins' allegations on 15 February on news.com.au (**Maiden article**) such that the content of that publication would be to the same effect as the matters in so far as the allegations about the rape of Higgins were concerned.

- 15.49. Wilkinson believed that Maiden was an experienced journalist having worked in news and politics for about 20 years.
- 15.50. Wilkinson understood that News Limited would be conducting its own fact checking and legalling in relation to the allegations made by Higgins before publication of the Maiden article.
- 15.51. The Maiden article containing the Higgins allegations was published in the early morning of 15 February 2021, more than 12 hours before the matters were broadcast.
- 15.52. Wilkinson did not become aware of any complaint or comment about the accuracy of the Maiden article by Lehrmann prior to the broadcast of the matters.

Legalling

- 15.53. Wilkinson is not a lawyer and is not familiar with the specifics of defamation law.
- 15.54. Wilkinson at all relevant times understood that Network 10 employed an expert legal team with experience in pre-publication advice, including defamation and contempt.
- 15.55. Wilkinson was informed and understood that the matters would be thoroughly checked by Network 10 lawyers prior to broadcast.
- 15.56. Wilkinson was informed and understood that the matters were reviewed by more than one lawyer, a number of times prior to broadcast.
- 15.57. Wilkinson understood that any legal change or request that was necessary in relation to the matters would have been notified by the lawyers to her producer Llewellyn and any necessary changes, additions or further enquiries made as a result.
- 15.58. Wilkinson would have complied with any and all advices or requests made by the Network 10 lawyers to alter the matters or to make further enquiries or additions to them.
- 15.59. Wilkinson did not receive any request or advice by Network 10 lawyers prior to the broadcast of the matters in relation to the allegations against Lehrmann in the final version broadcast.

Allegations

- 15.60. Wilkinson intended to allege that Higgins claimed to have been raped at Parliament House by a colleague in 2019 when she was an employee there.
- 15.61. Wilkinson intended to allege that Higgins' complaint was mishandled by the Minister and her staff when it was reported to them shortly after the assault occurred.
- 15.62. Wilkinson believed that Higgins had been raped by Lehrmann in 2019 at Parliament House.
- 15.63. Wilkinson believed that the treatment of Higgins after she reported the rape to the Minister was deplorable and an important matter that needed to be brought to the public's immediate attention.
- 15.64. Wilkinson believed that each of the topics summarised in paragraph 13 above, was an important issue of public interest that warranted the publication of the matters.
- 15.65. The matters were removed from the internet when Network 10 was informed that Lehrmann was charged with sexually assaulting Higgins in August 2021.

Timing

- 15.66. It was necessary that the matters be published expeditiously because the toxic environment in Parliament House towards women was a topic of significant public interest and concerned governmental and political matters.

Public interest

- 15.67. The matters concerned subjects of public importance and public interest, including those summarised in paragraph 13, above.
- 15.68. The matters concerned conduct of public servants in Parliament House.
- 15.69. The matters concerned the performance of public functions and activities of:
- (a) law enforcement,
 - (b) federal politicians; and

- (c) public servants including Lehrmann who was a senior advisor to Minister Reynolds working in Parliament House at the time of the events the subject of the matters.
- 15.70. The publication of the Maiden article the morning of the broadcast of the first matter caused the Prime Minister to answer questions in Parliament that day (15 February 2021) about the allegations by Higgins, making them of national interest and importance.
- 15.71. The matters caused the Prime Minister to call a press conference the following morning on 16 February 2021 to further address the importance of workplace safety for women.
- 15.72. The matters caused the Government to instigate an investigation into workplace culture at Parliament House, resulting in the Jenkins Report commissioned on 5 March 2021 and published on 30 November 2021 which demonstrated that a disturbing number of women had experienced sexual harassment working at Parliament House.
- 15.73. The matters caused the Prime Minister to address Federal Parliament on 8 February 2022 in order to apologise – both personally and on behalf of the government – to Higgins who was present in the chamber, for “*the terrible things that took place here*”.

Common law qualified privilege

16. By reason of the publication of the Maiden article, the statement of the Prime Minister in Parliament on 15 February 2021, and the statements of other politicians, together with the extreme public interest in the allegations made in the Maiden article:
- 16.1. viewers of the matters who reasonably identified Lehrmann had an interest in viewing and assessing the interview of Higgins, which formed part of the matters, to hear the allegations first-hand including to assess the credibility of those allegations;
- 16.2. Wilkinson had an interest in conveying the information in the matters having conducted the interview with Higgins and investigated the allegations including as pleaded in paragraph 15, above.

18. Further and in the alternative, to the extent that the recipients of the matters who reasonably identified Lehrmann as alleged in the SOC fall within the classes particularised in paragraphs 4(h)(i), 6(h)(i) and 8(h)(i) of the SOC:
 - 18.1. those persons, as politicians and/or employees working in Parliament House, had a duty and/or an interest in receiving the information in the matters which included the topics summarised in paragraph 13, above;
 - 18.2. Wilkinson had an interest in conveying that information to those persons having regard to her role investigating Higgins' allegations as a journalist including as particularised in paragraph 15, above.
19. Publication to any such person who reasonably identified Lehrmann as alleged paragraph 4, 6 and 8 of the SOC was on an occasion of qualified privilege at common law.
20. Any publication of the matters to any such other person who reasonably identified Lehrmann was incidental to the privileged occasions referred to in the preceding paragraphs.

Date: 1 March 2023



Signed by Anthony Jefferies
Lawyer for Wilkinson

This pleading was prepared by Sue Chrysanthou SC and Barry Dean, barrister.

Certificate of lawyer

I Anthony Jefferies certify to the Court that, in relation to the defence filed on behalf of the second respondent, Lisa Wilkinson, 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: 1 March 2023



Signed by Anthony Jefferies
Lawyer for Wilkinson