



Form 59
Rule 29.02(1)

Affidavit

No. NSD 103 of 2023

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

Bruce Lehrmann

Applicant

Network Ten Pty Limited ACN 052 515 250 and another named in the schedule
Respondents

Lisa Wilkinson

Cross-claimant

Network Ten Pty Limited ACN 052 515 250

Cross-respondent

Affidavit of: **Lisa Wilkinson AM**

Address: c/- Gillis Delaney Lawyers, Level 40, 161 Castlereagh Street, Sydney in the
State of New South Wales

Occupation: Journalist

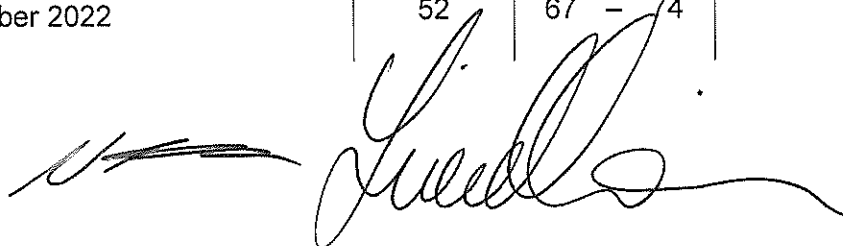
Date: 16 January 2024

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Filed on behalf of	Lisa Wilkinson, Second Respondent/Cross-claimant
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I, Lisa Wilkinson AM, c/- Gillis Delaney Lawyers, Level 40, 161 Castlereagh Street, Sydney in the State of New South Wales, journalist, affirm:

1. I am the cross-claimant.
2. I have affirmed an affidavit in this proceeding on 5 December 2023 to which I refer in this affidavit (*my December Affidavit*).
3. Exhibited to this affidavit and marked "LW-1" is a bundle of documents I refer to in this affidavit. If I refer to page numbers in this affidavit, unless otherwise specified, those references are to page numbers in Exhibit LW-1.

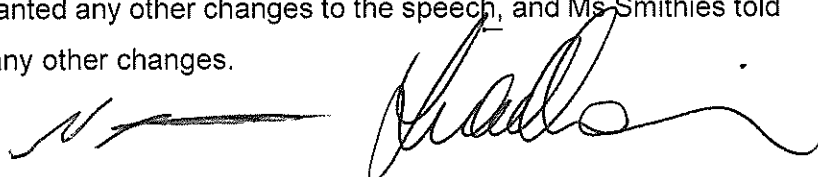
Exchanges with Myles Farley on 15 June 2022

4. In or about early June 2022, I was, to the best of my recollection, asked by Sarah Thornton, the cross-respondent's (*TEN*) executive producer for *The Project*, that I should think about preparing an acceptance speech to be given on behalf of TEN in the event that TEN was awarded a Logie for Most Outstanding News Coverage or Public Affairs Report (2021/2022) at the Logie Awards on 19 June 2022 for the Brittany Higgins Interview. I told her that I would put something together and run it by TEN's lawyers.
5. On 15 June 2022 I exchanged emails with Myles Farley, Senior Legal Officer with TEN, in relation to the draft I had sent him of a proposed acceptance speech for the Logie Awards. Copies of those emails are at **pages 2–5** .
6. On the same day, shortly after the email exchange, I spoke with Mr Farley. I told him that I had an upcoming meeting with Tasha Smithies, TEN's Senior Litigation Counsel, and Mr

Shane Drumgold, the ACT's DPP, regarding the criminal trial *R v Lehrmann* later that day, and that at that time I would respectfully seek her more senior opinion regarding the use of the word "*enough*" in the proposed speech.

Conversation with Ms Smithies on 15 June 2022

7. In paragraphs 17 to 25 of my December Affidavit, I describe a meeting that I had with Shane Drumgold SC, Ms Jerome and Mr Grieg, accompanied by Tasha Smithies, on 15 June 2022 (***Drumgold meeting***).
8. Ms Smithies and I participated in the Drumgold meeting – which was held on video-link – from the boardroom of TEN. At the conclusion of the Drumgold meeting, Ms Smithies and I talked about what had been said during the Drumgold meeting and about the speech I had been asked by TEN to prepare for the Logie Awards. I was acutely aware that the trial in *R v Lehrmann* was due to commence on 27 June 2022 and that if TEN did win the award, anything I said at the Logies on 19 June 2022 would be closely scrutinised. We were sitting at the boardroom table. Ms Smithies had her computer in front of her and I had my iPad open in front of me. During that conversation:
 - a. Ms Smithies reiterated, and I confirmed, that, as it was proposed that I be a witness in the criminal proceedings *R v Lehrmann*, I should not make any reference in the speech to the trial or the evidence I might give;
 - b. We went through the draft speech together, reviewing it on my iPad screen;
 - c. At Ms Smithies' request, I deleted a reference to a specific date in the draft speech to make the timing more general;
 - d. I asked Ms Smithies specifically about the use of the word "*enough*" in the draft speech, and Ms Smithies said in response that she thought it was okay.
9. I recall that I asked Ms Smithies, in that conversation, about the word "*enough*", because I had previously had some discussion (with Myles Farley) about its use and wanted a clear confirmation from Ms Smithies that its use was approved by TEN. If it had not been approved, I would have removed the word "*enough*".
10. I asked Ms Smithies if she wanted any other changes to the speech, and Ms Smithies told me that she did not require any other changes.

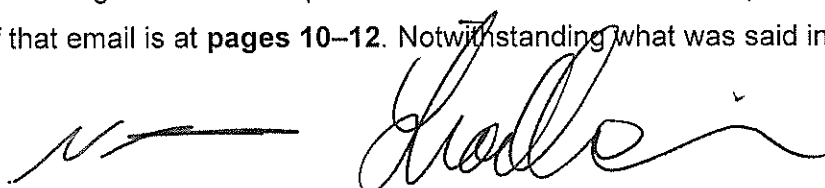


Events of 19 June 2022

11. In paragraph 26 of my December Affidavit, I depose to a request from Ms Thornton in the early afternoon of 19 June 2022 for a copy of the approved Logies speech so that she could show it to TEN CEO Beverly McGarvey and TEN Head of PR Cat Donovan so that they could check through the speech for any "*red flags*". During that conversation, I also asked Ms Thornton to get Ms Smithies to review it one further time to be absolutely sure that there were no changes that she considered should be made.
12. I then emailed Ms Thornton a copy of the approved Logies speech as deposed in paragraph 27 of my December Affidavit. After I had done so, I received a text message from Ms Thornton saying: "*Have speech x.*" A copy of a screenshot of that text message chain is at **page 6**. A little while after that, I had another conversation with Ms Thornton during which she said that Ms McGarvey and Ms Donovan had seen the speech and that they were both happy with it.
13. At 4:37pm, I received a further text message from Ms Thornton saying: "*Tasha says speech all good x.*" A copy of a screenshot of that message is in the text message chain at **page 6**.
14. Based on the above, I believed that the speech which I then gave at the Logie Awards had been reviewed and approved by TEN's senior legal counsel, TEN's CEO and TEN's head of PR. Following my delivery of the speech at the Logie Awards, I received a text message from Ms McGarvey at 11:07pm that night which stated: "*Beautiful speech*". A copy of a screenshot of that message is at **page 7**.

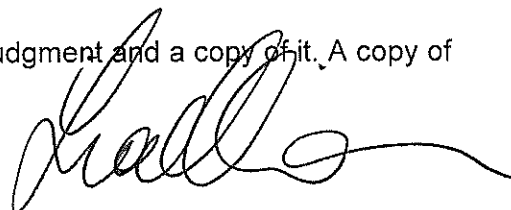

Immediate aftermath of the Logies' speech

15. At 5:04pm on 20 June 2022, I was forwarded by Ms Smithies an email sent to TEN by the Associate to her Honour the Chief Justice of the Supreme Court of the Australian Capital Territory regarding an application for a stay of the trial in *R v Lehmann* due to commence on 27 June 2022. A copy of Ms Smithies' email is at **pages 8–9**. I was not represented before McCallum CJ on 20 June 2022.
16. On the next morning, 21 June 2022, I was copied into an email from Ms Smithies to another TEN executive, advising that a TEN representative would attend the Supreme Court that day. A copy of that email is at **pages 10–12**. Notwithstanding what was said in

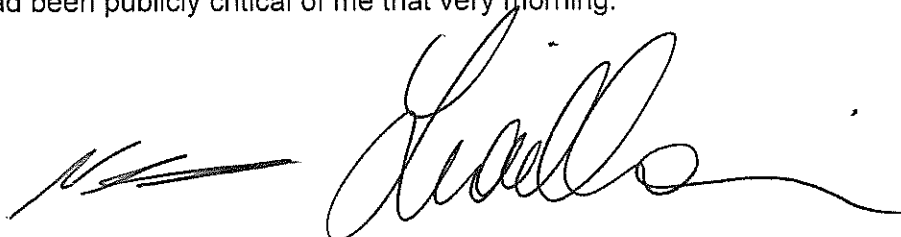
A handwritten signature in black ink, appearing to be 'Tasha', is written over the end of paragraph 16. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

that email, as far as I am aware, TEN did not seek to be represented at the hearing that day, nor arrange for it or me to be represented once the allegations were made that Mr Drumgold had engaged with me in the manner recorded in the Court's subsequent judgment. I was not represented before McCallum CJ on 21 June 2022.

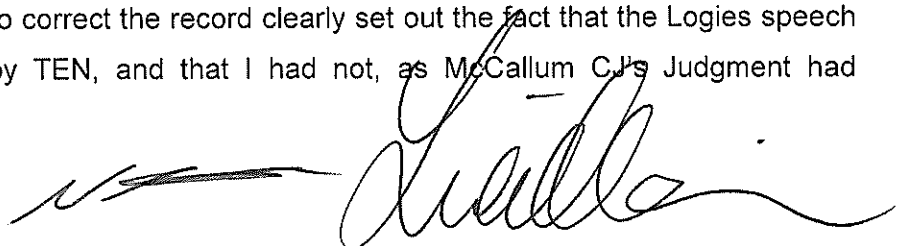
17. Shortly after 4:00pm on 21 June 2022; I received an invitation from Ms Thornton to join a Teams meeting for "*Call link re statement*", and an email from Ms Smithies with a proposed statement to discuss. Copies of the invitation and email are at **pages 13–14**.
18. I participated in the Teams meeting, but do not now recall the detail of what was said, other than TEN had become aware that McCallum CJ had made a statement or ruling that afternoon referring to the Logies speech.
19. At 4:29 pm that day Ms Smithies sent me an email containing what was said to be the final version of a statement TEN proposed to release. A copy of that email is at **pages 15–16**. At that stage, I had not been provided with any detail of what McCallum CJ had said.
20. A little while later, at 4:43pm, Ms Smithies sent me an email containing a version of the statement "*tweaked by Bev*" – which I took to be Ms McGarvey. A copy of that email is at **pages 17–18**. My understanding is that it was this version of the statement which was published by TEN.
21. At 6:00pm on 21 June 2022, I watched the Channel Nine television news. One of the lead items was a report concerning the judgment made by the Chief Justice which I perceived as very critical of me professionally and as a journalist regarding the Logies speech. After watching the report, I rang Ms Smithies and said words to the effect, "*What the hell is going on? Channel Nine is reporting that I was warned by Drumgold not to give that speech. You were in that meeting. I was not warned.*" I also said words to the effect, "*Tasha, was there something that was said in that meeting in legal-speak that I somehow missed?*".
22. Ms Smithies replied with words to the effect, "*No Lisa. He said no such thing. You were not warned.*"
23. Ms Smithies then said words to the effect, "*I'll get back to you about the judgment.*"
24. At 7:13pm, Ms Smithies sent me an email about the judgment and a copy of it. A copy of that email is at **pages 19–23**.



25. I read the judgment of McCallum CJ in *R v Lehrmann (No 3)* [2022] ACTSC 145 (**Judgment**). I was not aware until then of what had been submitted to the Court during the hearing before McCallum CJ. It seemed clear to me that the Judgment was based on an incorrect premise of what had occurred at the Drumgold meeting on June 15 in the presence of Ms Smithies, namely that I had been given a clear warning by Mr Drumgold not to give the speech at the Logie Awards, but had ignored that warning and given the speech anyway. This was not true.
26. The following morning, on 22 June 2022, I became aware of widespread criticism of me contained in mainstream media reporting on the decision of McCallum CJ. At **pages 24–26** are copies of the front pages of the *Daily Telegraph*, the *Courier Mail* and the *Herald Sun* from that morning.
27. Also that morning, I became aware of comments made by Dr Matthew Collins KC during an interview he gave on Channel 7's *Sunrise* program that morning. I was extremely distressed that those comments suggested that I was in contempt of Court in making that TEN-approved Logies speech.
28. My distress about the judgment of McCallum CJ was increased by the criticism I was subjected to in media reporting, which contained factual inaccuracies, and by the remarks of Dr Collins. My professional reputation was being attacked on the basis of an incorrect assertion that I had been given – and then disregarded – a warning as described by McCallum CJ.
29. Following the Judgment, the widespread media commentary on the Judgment and the comments made by Dr Collins, I had a number of conversations with Ms Smithies in which I asked that TEN correct the public record concerning the facts of what had occurred at the Drumgold meeting. I also asked that TEN state publicly that the speech had been approved by TEN's senior legal counsel and other senior executives at TEN including the CEO.
30. Also on 22 June 2022, I became aware that TEN had retained Marlia Saunders of Thomson Geer and Dr Collins to represent TEN and me. I do not recall who told me this. I was not consulted about whether I was agreeable to Dr Collins acting as my legal representative when he had been publicly critical of me that very morning.

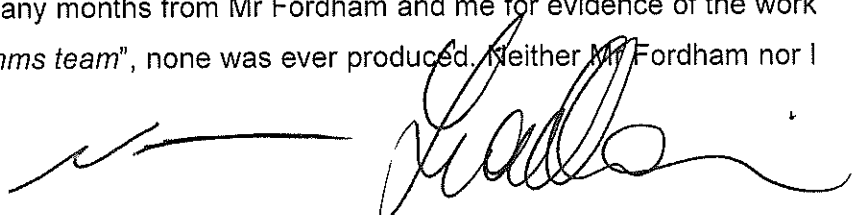
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31. After being told of Dr Collins' appointment, I had a conversation with Ms Smithies. I made clear to her that I could not understand why Dr Collins had been engaged to act for me when he had only just publicly criticised me on national television. Ms Smithies said that, if he was engaged, he would not be able to make further comments of this kind.
32. I did not want Dr Collins acting for me given what had happened, but felt that I had no choice in the matter.
33. I could not understand why that appointment had been made. At **pages 27–30** is a copy of an article in *The Australian* newspaper expressing a similar view on the appointment of Dr Collins as my legal representative.
34. A copy of an email from Ms Thornton to me, copied to Ms Smithies, of 22 June 2022 at 10:51 am confirming that Ms Smithies was to attend Court the next day is at **pages 31–33**.
35. Later that day, I asked Ms Thornton whether I should be accompanying Ms Smithies to Court in Canberra. Ms Thornton told me that Ms Smithies thought it was best that I stay away and not attend Court. I accepted this legal instruction of Ms Smithies.
36. A few hours the email referred to in paragraph [34], I was told by TEN to meet with Dr Collins, Ms Saunders, Ms Smithies and Ms Thornton by video-link that afternoon. I was uncomfortable attending a meeting with a lawyer who had been so publicly critical of me. I attended because I was asked to do so by TEN. I was joined in that meeting by my husband, Peter FitzSimons, and by my agent, Nick Fordham. I found the experience distressing. I recall informing Dr Collins in that meeting that Ten had asked me to give the speech, TEN had legalised the speech, and Ms McGarvey had also approved it. Once informed of those facts, which were unopposed by anyone in that meeting, Dr Collins indicated he was sympathetic to the position I had now been placed in and of the "hostile press" the speech was now garnering.
37. Despite my persistent requests and those of Mr Fordham, no decision was made at that meeting to take any steps to correct the public record or address the factual inaccuracies in the growing media commentary. In particular, I asked that any proposed communication to the Court intended to correct the record clearly set out the fact that the Logies speech had been approved by TEN, and that I had not, as McCallum CJ's Judgment had

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suggested, been reckless or indifferent to my obligations as a journalist in the preparation and delivery of that speech.

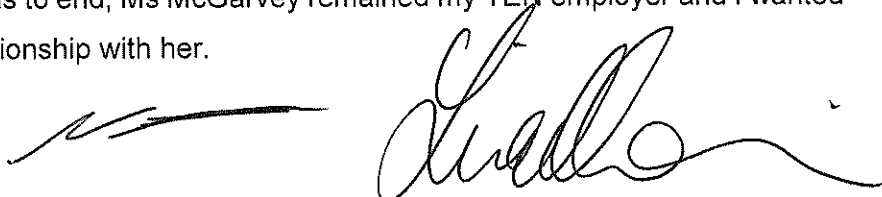
38. Later that day, at about 4:23 pm, Ms Smithies sent me a copy of a letter addressed to McCallum CJ from Ms McGarvey. A copy of the letter and the email attaching it are at **pages 34–35**. This letter did not address my request for clarification of the issues as set out in the preceding paragraph.
39. I also became aware that evening that Ms Saunders had spoken to Mr Drumgold that afternoon. I was informed that, during that conversation, he "*said unprompted that he thinks the media has misrepresented the evidence that was tendered by the defence in the application yesterday*" and had said, "*The media have reported that I told her [Lisa] not to give a speech. I didn't say that.*" I was further informed that he had said he would give some thought as to how he could deal with what had happened and that he might say something in open court. A copy of an email from Ms Thornton to me is at **pages 36–38**.
40. After that initial meeting, I was not asked to meet with Dr Collins again. I received no advice from him about what steps I could take in order to have TEN correct the public or the Court record, or to respond legally to the inaccuracies being reported.
41. I was not represented on 23 June 2022 or at any subsequent hearing in *R v Lehrmann* by Dr Collins, Ms Saunders, Ms Smithies or any other legal representative.
42. During the period June 2022 until November 2022, media criticism of the Logies speech and me – both professionally and personally – continued and intensified. Because the trial in *R v Lehrmann* was ongoing, I had no ability to make any public statement to correct the record regarding the Drumgold meeting and the truth behind the Logies speech.
43. During this period, Mr Fordham and I continued to make requests for TEN to take real steps to clarify what had occurred. At **pages 39–59** are a number of email chains, principally between Mr Fordham and me on the one hand, and Ms Smithies, Ms Saunders and Ms McGarvey on the other, recording such requests. TEN promised me the assistance of an external specialist "*crisis comms team*" to help deal with the adverse publicity and repeated factual inaccuracies being reported on a regular basis in the press. Mr Fordham and I were told that this was happening behind the scenes. However, despite repeated requests over many months from Mr Fordham and me for evidence of the work of this external "*crisis comms team*", none was ever produced. Neither Mr Fordham nor I



was ever introduced to, told the name of, or otherwise had any communication with any external "crisis comms team". A copy of that correspondence is at **pages 60–66**.

Removal from *The Project*

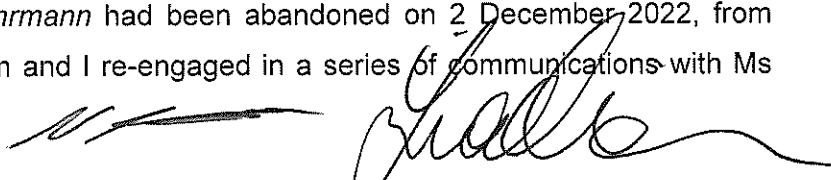
44. On 11 November 2022, five months after the Logies speech, Ms McGarvey informed Mr Fordham that I was to be removed from *The Project*, and asked that I agree to a variation of my employment contract to that effect. I felt I had no choice but to agree to this, since Ms McGarvey had already determined that I was to be relieved of my duties on *The Project*. At that time, my most recent contract as co-host of *The Project* had only been signed 11 months before and still had more than two years to run.
45. I was advised of the above during a telephone call from Mr Fordham at about lunch time on Friday 11 November 2022. In that call, he told me that he had just had a meeting with Ms McGarvey. He told me that Ms McGarvey had informed him that TEN was doing a "rebrand" of *The Project* with a number of hosting changes. He told me that she had said that those hosting changes included me. He also told me that she had said that, because there had been too much heat on me in the months since the Logies speech – and, as a result, too much "brand damage" – it was best that I be removed from my hosting role on *The Project*.
46. I was shocked, embarrassed and deeply disappointed by Ms McGarvey's decision to remove me from *The Project*. It signified to me that TEN had no real interest in publicly correcting any of the damage done to me and my reputation, and were now only making it worse. I felt the decision would indicate to the public that I had in fact done something wrong. I knew that the story of me leaving *The Project* would result in a continuation of significant and humiliating headlines.
47. In order to mitigate my embarrassment and to attempt to reduce further damage to my career and reputation, I felt that the best way to exit *The Project* with dignity was to deliver some remarks on-air which would provide some explanation for me leaving *The Project*.
48. I had a telephone call with Ms McGarvey at about lunchtime on Saturday 19 November 2022, which was the day before my departure. This was the only direct communication I had with her regarding me leaving *The Project*. I was conscious that, although my on-air role with *The Project* was to end, Ms McGarvey remained my TEN employer and I wanted to maintain a good relationship with her.

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49. During that phone call, I told Ms McGarvey that I was sad to be leaving *The Project*, because I had loved the work that I had done there. Ms McGarvey thanked and congratulated me on the important stories I had done there over the past five years.
50. Ms McGarvey then raised the issue of all the damage that had been done to me since the Logies speech, which she described as “relentless”. She said to me words to the effect, “*I don't know how you're coping with the hate and all this bad publicity. I had one bad story, and I was a mess after I read it. I don't know how you're doing it.*”
51. I said to her that this decision to remove me from *The Project* would result in yet more negative publicity for me, for *The Project*, and for TEN, particularly if my sudden departure was without explanation. I suggested that I could possibly deliver some remarks on-air the following night saying that the negative publicity was a significant reason for me leaving. She said she was happy with this suggestion as it would limit the damage to *The Project*.
52. Ms McGarvey then asked me to send her a copy of my proposed remarks prior to the broadcast. I did so the following afternoon. Shortly afterwards, Ms McGarvey approved of the remarks by text, saying, “*sounds very authentic*”. At **pages 67–74** is a copy of the correspondence regarding this.
53. 20 November 2022 was my final appearance on *The Project*.
54. Immediately after the broadcast, Ms McGarvey sent me a text message saying, “*Perfect delivery, you spoke from the heart and it was a beautiful sentiment and you are so generous to your colleagues. Thank you. The media should all be kind, you deserve it. Talk very soon. Bev.*”
55. I engaged Anthony Jefferies, solicitor, in November 2022 to advise me in relation to the variation of my contract with TEN. I recall describing to him, when I was explaining my situation, how isolated, unprotected and abandoned I felt by the treatment of TEN. Although the variation to my contract envisaged that I participate in an interview series during the years of 2023 and 2024, to this date, so far as I am aware, no steps have been undertaken for this to occur at all, despite Mr Fordham's repeated requests.

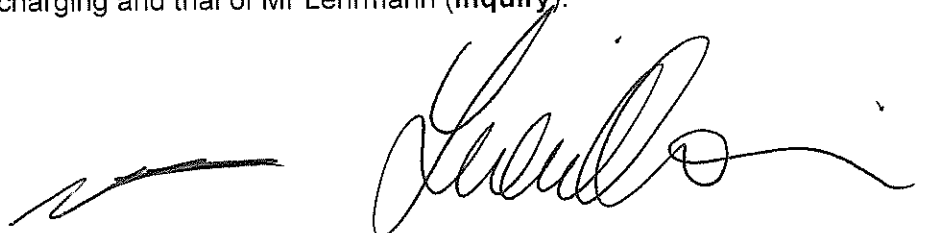
Further attempts to correct the record

56. Because the trial in *R v Lehmann* had been abandoned on 2 December 2022, from around that time Mr Fordham and I re-engaged in a series of communications with Ms



Saunders and others regarding following up with Mr Drumgold about steps he would take to publicly correct the record about the truth of what was said at the Drumgold meeting on 15 June 2022.

57. On 15 December 2022, Mr Fordham sent an email to Ms Saunders and others in relation to this, and enquiring once again about the “*crisis comms*” team that TEN said it had engaged. A copy of that email chain is at **pages 75–84**. Mr Fordham’s email was sent after discussion with me and what he stated reflected my thoughts and feelings. In each of the emails from Mr Fordham to which I refer below, he sent the emails after discussion with me and what he stated in them reflected what I had said to him in those discussions and my thoughts and feelings at the time.
58. The following day, on 16 December 2022, Ms Smithies sent a response to Mr Fordham’s email. In the following days, I spoke by telephone to Ms Smithies about TEN’s position regarding Mr Drumgold and his refusal to engage with Ms Saunders. Ms Smithies told me that TEN had to maintain a good ongoing relationship with the DPP in the ACT, and that my situation was not a priority for TEN as it could damage that ongoing relationship. To me, this indicated that, despite Ms Smithies’ agreeing that Mr Drumgold had acted inappropriately, she was at all times obliged to prefer TEN’s interests over mine. Mr Fordham sent a response to Ms Smithies on 20 December 2022, a copy of which is also in the email chain at **pages 75–84**, regarding TEN’s ongoing refusal to provide a clear and unequivocal public statement regarding the truth of the Logies speech.
59. Also on 16 December 2022, I received an email from Ms Smithies in which she informed me that TEN had received a letter from Mr Lehrmann’s solicitor. I came to learn that the letter was a concerns notice in relation to this defamation proceeding. I was not asked to contribute to a consideration of it. A copy of that email is at **pages 85–94**. After receiving that email, I rang Ms Smithies later that day. She told me she would keep me in the loop on TEN’s actions in response to the letter, but that I would not be kept across the details of the claim as it did not involve me personally. So far as I am aware, a concerns notice from Mr Lehrmann regarding this defamation proceeding addressed to me was never sent to me or to anyone on my behalf.
60. On 21 December 2022, the ACT Government announced that it was establishing a Board of Inquiry to review the charging and trial of Mr Lehrmann (**Inquiry**).



61. On 11 January 2023, Mr Fordham sent an email to Ms Smithies requesting an update regarding the situation with the DPP, the Inquiry and Ten's response to the 16 December 2022 letter from solicitors for Mr Lehmann. Ms Smithies responded later that day. Copies of these emails are at **pages 95–97**.
62. On 23 January 2023, I received an email from Ms Smithies providing a "brief update on the Lehmann legal letter". A copy is at **pages 98–99**.
63. On 24 January 2023, I emailed Ms Saunders in relation to me sending a personal letter to the DPP. I copied Ms Smithies into that email. Ms Smithies replied the next day. Copies of the email chain are at **pages 100–102**. I felt this exchange to be obfuscating by TEN, and tone deaf to the distress I was experiencing.
64. On 3 February 2023, Mr Fordham emailed Ms Smithies on my behalf about the "ongoing saga". The things said by him reflected my position accurately. Ms Smithies replied the same day. Copies of these emails are at **pages 103–106**. In those emails, Ms Smithies informed me that she would no longer act for me, and wrote:

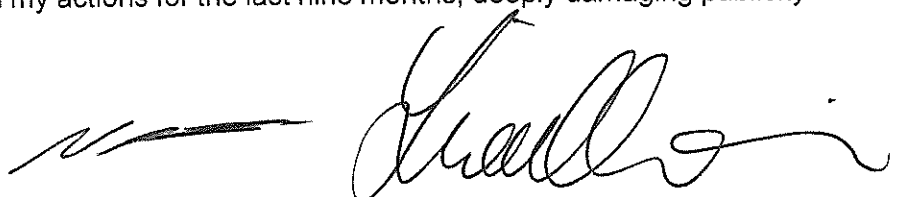
To separate and simplify the roles of Marlia and myself, with immediate effect, Marlia will act solely for Lisa on this matter. In that way, Lisa can have direct recourse to Marlia's advice without network involvement. With that simplification, moving ahead, we suggest that you and Lisa should deal directly 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 [sic] has lodged a personal complaint [sic] 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.



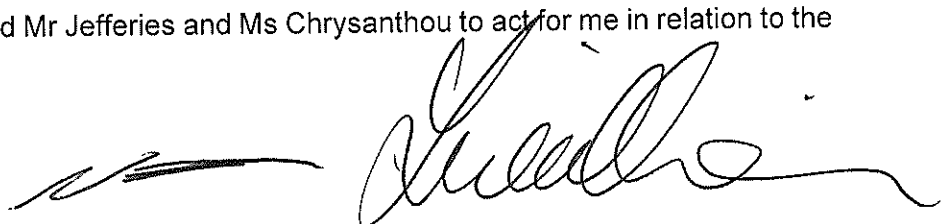
I read Ms Smithies' email at the time and was shocked that TEN was not prepared to make submissions to the Inquiry to finally clear my name and correct the public record. TEN appeared to regard the matter as being only a personal complaint by me. This seemed to me to be a further example of TEN wanting to distance itself from me and not support me publicly, even though I was an employee of TEN and that I had given the Logies speech at the request of TEN, on TEN's behalf, and with TEN's full approval – and TEN was aware of all this.

65. I rang Ms Saunders at this time and spoke to her about TEN's position. During that conversation:
- a. I expressed that I was confused and concerned that TEN had decided that it would not be making a submission to the Inquiry;
 - b. Ms Saunders said to me that TEN did not want to make a submission and she could not go into all of the detail as to why. She added, however, that one of the reasons was that TEN did not want to create any further negative publicity;
 - c. That response concerned me, as I thought that if Ms Saunders was acting solely in my interests, she would be disclosing all of the reasons why TEN would not be making a submission to the Inquiry;
 - d. Ms Saunders continued on to say that although TEN would not stand in my way if I wanted to make a personal submission to the Inquiry, I would have to submit any proposed personal submission to TEN for approval and to ensure there was no waiving of privilege or any risk of contempt;
 - e. I said to Ms Saunders that I had nothing to hide in any of my correspondence with TEN, or in the series of events that had occurred, and further, I was confused as to why TEN would have a problem with full disclosure. I said that I did not understand how I could clear my name unless all the correspondence and detail of what had actually occurred was able to be used by me to support any submission I might make;
 - f. I told Ms Saunders that without TEN actively doing anything to control the narrative around me and my actions for the last nine months, deeply damaging publicity had

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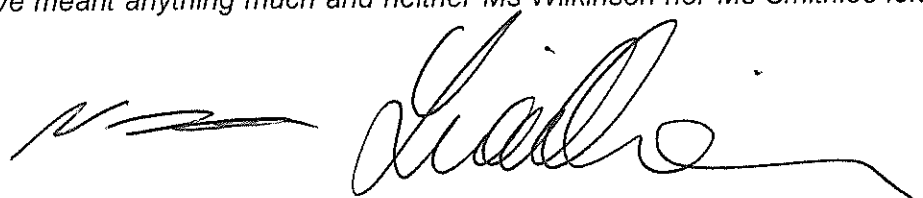
been allowed to run rampant, and reminded her that I would never have given the speech if Ms Smithies or Mr Drumgold had warned me not to;

- g. I said that the Inquiry was the perfect opportunity for TEN to confirm its position on the public record as to exactly what happened;
 - h. Ms Saunders said there was nothing she could do, as that was just TEN's position that it would not make any submission; and
 - i. I then asked Ms Saunders if TEN would consider making a formal complaint to the Bar Association about Mr Drumgold's conduct. Ms Saunders said that TEN would not do that for reasons she was not at liberty to go into with me.
66. From that conversation with Ms Saunders, it was now clear to me that there was a growing conflict of interest between TEN and me and in Ms Saunders acting for both of us.
67. I did not understand how Ms Saunders could act for me and TEN if there were matters relevant to me that Ms Saunders considered she could not disclose because she was protecting TEN's interests. The unease I now felt was a factor which influenced my decision later, as recounted below, to secure separate representation in the defamation proceedings.
68. On 15 February 2023 I sent an email to Mr Fordham in relation to events which had transpired up to that date, including various discussions that I had had with Ms Saunders. A copy is at **pages 107–116**. I sought in this email to express how uncomfortable I was that Ms Saunders was providing me with some information about TEN's decision not to make public statements in defence of me, while at the same time saying that she was not at liberty to provide me with a full explanation. I was mystified as to how Ms Saunders could act for me in my interest when she held information from TEN about these matters which she regarded as confidential and material to my position, and which she would not share with me. Similarly, I was unsettled at the prospect – if I did decide to lodge a complaint to the Inquiry about Mr Drumgold – of being required to run my submissions by TEN, because I now felt that Ms Saunders had a distinct conflict of interest in providing advice to me.
69. Subsequently, I instructed Mr Jefferies and Ms Chrysanthou to act for me in relation to the Drumgold Inquiry.

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70. When I was informed by Mr Jefferies in May 2023 that TEN's position now was that it would not, in fact, cover the costs I incurred in respect of the work undertaken in advancing submissions to the Inquiry, and would instead only cover my costs of giving evidence to the Inquiry in answer to a subpoena that has been issued to me, I considered this to be yet another change in position to that which I had been informed of in January, namely that TEN would pay the costs of Thomson Geer acting for me in the Inquiry.
71. Mr Jefferies and Ms Saunders exchanged correspondences regarding my proposed submission to the Inquiry. Copies of those correspondences, which were given to me by Mr Jefferies, are at **pages 117–128**. In those correspondences, Ms Saunders made remarks on my proposed submission to the Inquiry on behalf of TEN and asserted to my legal team that my proposed submission was “*contrary to [my] best interests*”. I reviewed Ms Saunder’s comments and identified a number of factual inaccuracies in the amendments proposed by Ms Saunders including in relation to the legal advice given by Ms Smithies in respect of the Logies speech. This reaffirmed my view that Ms Saunders was adopting TEN's position in respect of the Inquiry and was now providing advice to me that was contrary to my interests, despite having previously been engaged to act solely for me.
72. I made submissions in an amended form of the draft provided to Ms Saunders. I gave evidence before the Inquiry, as did Ms Saunders, that no warning as asserted by Mr Drumgold had been given. TEN was not represented before the Inquiry and made no submissions to it. I felt this to be a further failure by TEN to publicly support and protect me. Ms Chrysanthou appeared on my behalf at the Inquiry, and cross-examined Mr Drumgold extensively about the events at the Drumgold meeting.
73. The Inquiry delivered its report on 31 July 2023. Its findings demonstrated that the Drumgold meeting had not occurred in the way McCallum CJ had been led to believe by the prosecution. Relevantly, the report found that:

Mr Drumgold accepted that he did not tell Ms Wilkinson not to give a speech or tell her not to use the particular words that she read to him. His evidence was that he said words to the effect that he ‘can’t approve or prohibit public comment’ (which was true but irrelevant) and that ‘any publicity could give rise to a stay’ (which was meaningless in the circumstances). Ms Wilkinson could hardly have understood him to have meant anything much and neither Ms Wilkinson nor Ms Smithies left

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the conference with the understanding that Ms Wilkinson should not give the speech she had prepared.

74. On 3 August 2023, News.com.au published an article with the headline "*Vindication for Lisa Wilkinson in damning report from Sofronoff inquiry*", a copy of which is at **pages 129–145**.

Commencement of these proceedings

75. On the morning of Wednesday 8 February 2023, I read the lead article published on the front page of *The Australian* newspaper, titled "*'Recklessly Indifferent to Truth': Lehrmann Sues Lisa for Damages*", a copy of which is at **pages 146–149**. When I read that article, it was the first I learned that this proceeding had been filed and that I was being personally sued by Mr Lehrmann. A copy of an email of 8 February 2023 at 7:29am from me to Ms Smithies and Ms Saunders seeking information in this regard at **page 150** .
76. Some minutes later on that day, having also seen *The Australian*, Mr Fordham emailed Ms Smithies, Ms Saunders and Ms McGarvey requesting that TEN take action in relation to the newspaper report. Ms McGarvey responded two days later on 10 February 2023. Copies of the email chain are at **pages 151–153**.
77. At 9:25am on 8 February 2023, Ms McGarvey sent me a text message, in which she cancelled our pre-arranged lunch meeting that had been scheduled for that day. I responded at 10:38am, proposing that we meet that Friday 10 February 2023, informing her that I was going to be away for three weeks from Sunday 12 February 2023. I was concerned that there was a 28 day time limit for a defence to be filed for me in response to the claim made by Mr Lehrmann. A copy of that text message chain is at **pages 154–155**.
78. I intended to make clear to Ms McGarvey in that meeting that I was feeling abandoned legally by TEN, and that I was now considering getting separate legal representation.
79. At 11:55am on 8 February 2023, I wrote a note of my contemporaneous views on what was occurring, in which I wrote:

Bev

Questions for Bev if she has the courage to meet on Friday..




**Why have we never met, been given the details of, or opportunity to engage with, Ten's "Crisis Comms team"?*

**What evidence do Ten have to show us of their "crisis comms" work?*

**Why was no effort made to background journalists - in particular repeat offenders such as those at The Australian, Sky News, Daily Mail, News Limited and news.com - to balance reporting done by journalists who repeatedly quoted Justice McCallum's statement about me being warned not to give a Logies speech, but never quoted Bev's letter to the court saying that we did not believe we were warned by the DPP?*

**What is Bev's plan for the "interview series" I am now contracted to do?*

**Who will be EP'ing, what is the timeslot, production budget, marketing budget...what calibre of interview subject does she envisage for the three episodes that will have any kind of ratings cut-through that such a short-lived "series" would justify?*

**What steps is Ten currently taking to protect my reputation in the press?*

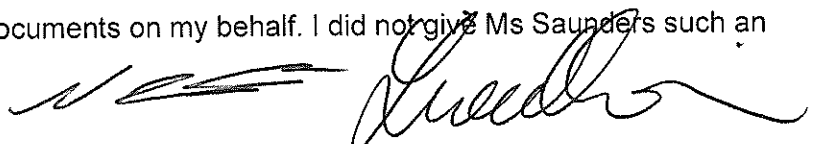
**What steps are being taken in regards to combining with News Corp to fight the defamation action against me and Network Ten?*

**Will I have a say in Ten's decision-making process going forward on this defamation action?*

**Given the ongoing, serious reputational damage done to me whilst following to the absolute letter all advice given to me up to, including and since the Logies speech - a speech cleared by Ten Legal and Bev herself prior to the speech being given - what does she intend to do to fix it?*

80. At 12:23pm, Ms McGarvey replied to my text message, saying that she would respond to Mr Fordham but that any meeting would require TEN's lawyers to be present.

81. On or about that afternoon of 8 February 2023, I participated in a video conference with Ms Saunders and another lawyer, as well as Mr Fordham. Ms Saunders advised that she had accepted service of the documents on my behalf. I did not give Ms Saunders such an

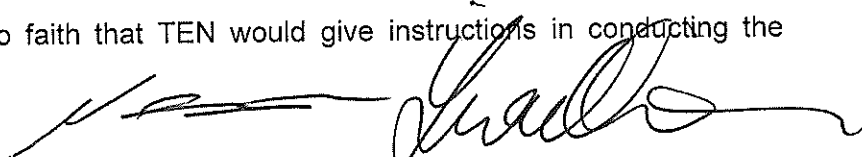


instruction, and I said words to that effect during the conference. Ms Saunders said to me that the only alternative would have been for the process server to come to my home.

82. By 10 February 2023, Ms McGarvey had not agreed to a meeting with me as I had proposed. On the morning of 10 February 2023, Ms McGarvey sent me the email referred to above, proposing a meeting "*later in the month*". No such meeting took place. In that email, she specifically acknowledged the "*brand damage*" that had been done to me since the Logies speech.
83. In the days following 8 February 2023 and the commencement of the proceeding, the media reporting of the proceeding was, to my mind, focused on me and not TEN. The reporting such as that expressed in *The Australian* increased the damage to my reputation, particularly in the absence of any public statement by TEN as to what actually had occurred at the Drumgold meeting and in the preparation of the speech I gave at the Logies.
84. By the afternoon of 10 February 2023, I felt that I did not want to be represented in the defamation proceeding by the lawyers that TEN had retained. I did not have confidence that Ms Saunders would be able to act exclusively in my own interests while still acting for TEN. I did not want to be represented by a barrister, Dr Collins, who had publicly criticised me. I did not have confidence that Ms Smithies would give instructions to TEN's lawyers which would have my own interests in mind. I considered that any instructions that Ms Smithies gave would be directed solely to TEN's commercial, legal or other objectives. I thought it inevitable that I would be left to bear continued criticism which, if the truth were made known, should, in fact, rest with TEN.
85. Given Ms McGarvey's refusal to meet with me without lawyers present – or at all – I did not have any confidence that TEN would make legal decisions with any regard to my interests. To my mind, there was now a clear dividing line between my interests and those of TEN.
86. In light of all of the above, I proposed to engage Mr Jefferies to act for me in relation to this proceeding. That weekend, I had a conference with Mr Jefferies in which I told him of the relentlessly critical and widespread public reporting of the Logies speech, the Judgment, the public comments by Dr Collins, and Ms Saunders' actions before and after the commencement of the defamation proceedings. I further outlined the detail of my removal from my on-air role with *The Project*.



87. Mr Jefferies advised me that I should obtain independent legal advice concerning the proceedings and seek specialist defamation advice from a leading silk in that area. He arranged a conference for me with Ms Sue Chrysanthou SC for Saturday 11 February 2023 at my home.
88. On Saturday 11 February 2023, Mr Jefferies and Ms Chrysanthou came to my home for that conference. I explained in detail to Ms Chrysanthou:
- a. The background to the Logies' speech, including that TEN had requested I make the speech, that senior executives at TEN and TEN's legal team had approved the speech, and that TEN had then failed to respond to media enquiries to confirm its approval;
 - b. How devastated I was at being taken off-air, remaining off-air for several months, and the lack of plans for me to return to air;
 - c. My distress at the public commentary by Dr Collins following the Logies speech, and my confusion when Dr Collins was briefed on my behalf by TEN without any prior input from me, and my concerns over whether he would be constrained from acting in my best interests as a result of those matters;
 - d. My concern that TEN recommended against me attending Court on 22 June 2022 to explain my version to McCallum CJ and address the misstatements made by the DPP about the meeting;
 - e. The failure by TEN to make good on its promise to engage an external specialist "crisis comms" company to address the damage continuing to be done to my reputation as a result of the Logies' speech;
 - f. My awareness of the Inquiry, and TEN's refusal to participate in that Inquiry, which highlighted to me that TEN was content to leave me isolated to take the sole blame for the Logies' speech; and
 - g. The shockingly negative press that I had received including dozens of highly critical articles in *The Australian* and hundreds in the *Daily Mail*, and the fact that nothing had been done by TEN to address the many factual inaccuracies and defamatory statements that were regularly being published about me.
89. I told Ms Chrysanthou and Mr Jefferies that, having regard to all of the circumstances of the last 8 months, I had no faith that TEN would give instructions in conducting the

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proceedings with my separate interests taken into consideration. I said that I did not have confidence in Dr Collins KC and Ms Saunders, and was not comfortable with them representing me. I was acutely concerned that they would prefer TEN's instructions to mine, or seek to persuade me that the position taken by TEN should be accepted by me, even if my instructions differed. I was also concerned that they might not inform me of matters that TEN had instructed them about that might be relevant to my position but might remain undivulged to me.

90. I said that I felt that given I was constrained from making any public statements without the approval of TEN, that being similarly constrained in defending myself and my interests and reputation in the proceedings would cause further reputational harm.

91. As best I can now recall, during that conference Ms Chrysanthou advised me:

- a. that Thomson Geer legalised *The Australian* (that is, acted for it in giving pre-publication advice in preference over News Limited in-house lawyers), and asked me if I had been informed of that by TEN or Thomson Geer, when they were initially engaged on 21 June 2022 or since. (I had not and was shocked and upset to learn this to be so);
- b. that it was typical in defamation proceedings for the external lawyers engaged by a media company to be instructed by the in-house counsel of the media company;
- c. that she was aware of cases in which journalists had been asked by their employer to give evidence or take particular steps in relation to a case, in circumstances where it appeared that it was not in their personal interest to do so, but rather suited the employer's interests;
- d. of some of the ways in which the claims against TEN did not necessarily raise the same issues as the claims against me. She said that there were potentially different arguments available to me on the question of the extension of the limitation of time; my "*section 30 defence*" being different and reliant upon TEN's systems including their in-house legal team; and the way in which independent counsel might approach admissions about publication and defamatory meaning differently to TEN. Ms Chrysanthou said that the other looming issue was the Logies' speech which could be sought to be deployed in the proceedings by the applicant against me.

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92. At the conclusion of the conference, Ms Chrysanthou advised me that it was in my best interests – legally, reputationally, professionally and personally – to have an independent legal team acting for me in the defamation proceedings. She also advised that, in addition to my right to have independent legal representation, in the circumstances TEN was obliged under employment law to meet the cost of such representation. Mr Jefferies concurred with what Ms Chrysanthou said.
93. Following that conference, and in light of the legal advice I had received, I told Mr Fordham to advise TEN that I had decided to be separately represented in the defamation proceedings. A copy of the email chain containing his email to Ms McGarvey of 14 February 2023 so advising is at **pages 156–158**.
94. Ms Smithies replied to Mr Fordham's email on 15 February 2023. A copy is in the email chain at **pages 156–158**. I was distraught on reading this. I felt that I would have to abandon my own independent legal team if the outcome of retaining such representation was that I might be liable not only for my own costs, but also the costs of Mr Lehrmann and the payment of any damages award.
95. Subsequent to that email and despite Ms Smithies' earlier statement that TEN would not meet any of my costs for separate legal representation, Mr Jefferies showed me correspondence between him and Ms Saunders regarding the costs of separate representation. This correspondence did little to ease my concerns.

Advice from Mr Walker SC

96. On 7 March 2023, I received an email from Ms McGarvey in which she continued to assert TEN's position that I did not require independent legal representation. However, she then proposed that I obtain a separate opinion "*on the question of whether your interests are best served by maintaining separate defence arrangements*" from one of a list of preferred independent and pre-eminent barristers and instructing solicitors identified by her. Ms McGarvey advised that TEN would reimburse me for the costs of obtaining such advice. A copy of that email and Mr Fordham's reply to her of the same day are at **pages 159–161**.
97. I took this correspondence to be an indication that TEN would abide by the advice of an independent barrister to quell the dispute between us regarding representation and costs.

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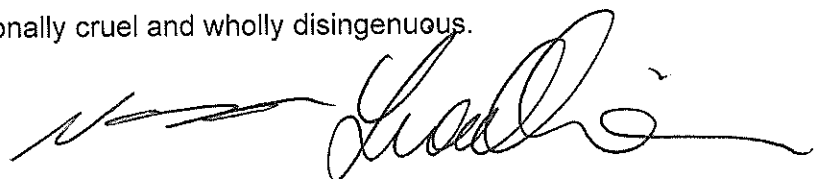
98. Following that email, I took the steps suggested by Ms McGarvey and instructed Patrick George, solicitor, to obtain advice from Bret Walker SC on the question identified by Ms McGarvey.
99. On 15 March 2023, Ms McGarvey sent an email to Mr Fordham. A copy of her email and its attachment are at **pages 162–168**. I found the apparent weaponisation of an alleged rape victim in this correspondence put forward by Ms McGarvey in the course of a dispute between us over issues of employment and the payment of bills to be grossly inappropriate, ill-advised and offensive.
100. On 17 March 2023 Mr Walker and Mr George provided me with a joint advice. A copy is at **pages 169–177**. I read the advice as soon as I received it and understood that it was to the effect that it was not reasonable to expect me to retain the same lawyers as TEN in the defamation proceedings brought by Mr Lehrmann, and that I was entitled to be indemnified by TEN in respect of my defence costs in those proceedings. This advice strongly influenced my decision to maintain separate representation in the Lehrmann proceedings, particularly given that it was Ms McGarvey who had requested that I seek that advice.
101. I authorised Mr Fordham to communicate with Ms McGarvey on my behalf in relation to the advice from Messrs Walker and George. At **pages 178–188** is an email chain between Mr Fordham and Ms McGarvey commencing on 17 March 2023 and ending on 21 March 2023. All these emails were read by me at around the times they were sent.
102. In reading Ms McGarvey's email of 21 March 2023 to Mr Fordham, I understood TEN's position to be that it did not approve of my chosen legal representatives, who TEN asserted might not be able to best represent my interests. I did not understand her to be saying that if I acted on the basis of Mr Walker's advice – that I should be separately represented at TEN's cost – that TEN would consider as a result that it had no obligation to indemnify me for the costs I incurred in taking that course.
103. On 24 March 2023, Mr Jefferies sent me a copy of a letter from Baker McKenzie of that date. I read that letter and understood it to be confirmation that TEN had now agreed that it would reimburse me for costs '*properly incurred and reasonable in amount*', but that that reimbursement for costs would only be made by TEN at the conclusion of the defamation proceedings. I initially felt enormous relief on reading that letter, but also knew that legal proceedings could go on for many years. A copy of that letter is at **pages 189–190**.

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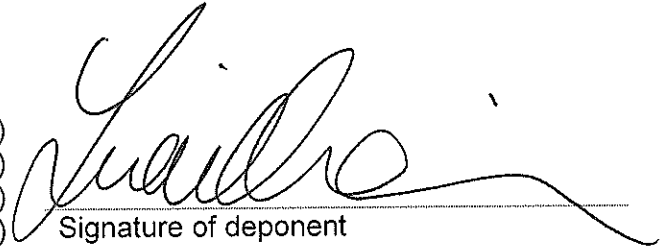
104. Because this letter came so soon after the correspondence between Mr Fordham and Ms McGarvey and because it spoke in terms of an agreement by TEN to reimburse me and of the timing of that reimbursement, I did not understand the letter to be expressing a position by TEN that separate representation was not a cost '*properly incurred and reasonable in amount*' and would therefore not be reimbursed. To the contrary, I took the letter to express a distinct change of TEN's position to one where TEN would now meet the reasonable costs of my chosen legal team in the Lehrmann proceedings.
105. After reading the 24 March Baker McKenzie letter and discussing it with Mr Jefferies, I instructed him to indicate to TEN that I would not proceed with a cross-claim against TEN seeking an indemnity in respect of any damages and costs awarded against me and in respect of my separate defence costs. If I had understood the 24 March 2023 letter to be saying that TEN considered that the whole of the cost of separate representation was either not "*properly incurred*" or not "*reasonable in amount*" or both, I would not have given Mr Jefferies those instructions. I would have instructed him to file a cross-claim, and I would have reconsidered my decision to retain separate representation for the balance of the defamation proceedings.
106. On Wednesday 7 June 2023, I had a telephone call with Ms McGarvey regarding my distress over TEN's legal position on the payment of costs and my separate legal representation. During that phone call:
- a. Ms McGarvey said to me that she accepted that I had a right to separate legal representation;
 - b. I told Ms McGarvey I was extremely distressed over the outstanding issue of the payment of my legal expenses in defending myself as a direct result of me simply doing my job for TEN;
 - c. I asked Ms McGarvey if I had done anything wrong that would result in the failure by TEN to pay my outstanding legal costs as they were being incurred, and she said in reply that I had done nothing wrong and that I had done great work for *The Project*, but that I had chosen the "*last lawyers in Australia*" that she wanted me to work with;


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- d. I asked Ms McGarvey if she was therefore saying that, if I had chosen a different legal team, TEN would happily pay my legal costs as they were being incurred. She told me that she could not answer that;
 - e. I asked Ms McGarvey if TEN was paying Thomson Geer's legal costs for these proceedings as they were being incurred. I do not recall her response to this question;
 - f. Ms McGarvey also said that if I needed more legal advice, Tasha Smithies could speak with me; and
 - g. When I further asked Ms McGarvey about payment of my costs, Ms McGarvey said to me words to the effect that the "*fee situation is with Stuart and Nick*", and that she would try to find out and speak to Stuart (Thomas, TEN's in-house general counsel) and have him respond to Nick Fordham.
107. After that call, I proceeded on the basis that Ms McGarvey had now accepted my right to separate legal representation and our respective representatives were in the process of determining reimbursement of my legal costs.
108. As at the date of swearing this affidavit, I have received no reimbursement from TEN in respect of any legal costs incurred by me in this proceeding.
109. On 19 October 2023, because no payment had been made by TEN despite repeated requests, I filed a claim against TEN seeking reimbursement of legal costs incurred.
110. In November 2023, just days prior to the commencement of the trial of these proceedings, I was told by Mr Jefferies that TEN had now contended in a pleading filed in the Supreme Court that it did not have any obligation to indemnify me for defence costs because I was separately represented. I was gutted. I felt it unbelievable that TEN could now adopt such a position, given: the suggestion of TEN to obtain independent advice; the content of that advice; the correspondence from Baker McKenzie in March 2023 following TEN's receipt of that advice; the conversation with Ms McGarvey in June 2023 referred to above; the subsequent correspondence between lawyers discussing legal cost accounts rendered to me; and the collegiate atmosphere adopted by, and the cooperation between, my legal team and TEN's legal team in preparation for the trial of Mr Lehrmann's claim. I thought TEN's new position was intentionally cruel and wholly disingenuous.

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Affirmed by the deponent
at Sydney
in New South Wales
on 16 January 2024
Before me:

)

) _____
) Signature of deponent
)



 Signature of witness

Nicola Rebecca Sanchez, solicitor.
 Name and qualification of witness

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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Date Accepted for Filing: 16/01/2024 4:35:54 PM AEDT
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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.

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