

BRUCE LEHRMANN

and

AUSTRALIAN BROADCASTING CORPORATION

DEED OF SETTLEMENT & RELEASE



Australian
Broadcasting
Corporation

DEED OF SETTLEMENT & RELEASE

This Deed is made the 21st day of November 2023.

PARTIES: Bruce Lehrmann of [REDACTED] (Lehrmann).

AND Australian Broadcasting Corporation, ABN: 52 429 278 345, of 700 Harris Street, Ultimo, New South Wales 2007 (the **ABC**).

RECITALS:

- A. On 9 February 2022, Brittany Higgins and Grace Tame gave a joint address and answered questions at an event organised and conducted by the National Press Club of Australia (**National Press Club Address**).
- B. On 9 February 2022 the ABC:
 - a. published a live television broadcast of the National Press Club Address, including a pre-recorded introductory voiceover, in each State and Territory of Australia on the ABC News channel (**First Broadcast**); and
 - b. published live and delayed television broadcasts of the National Press Club Address, including a pre-recorded introductory voiceover, in each State and Territory of Australia on the ABC TV channel (**Second Broadcast**).
- C. On 9 February 2022 the ABC caused the National Press Club Address, including a pre-recorded introductory voiceover, to be live streamed and then made available for streaming and viewing on demand (until 6 April 2023) via the ABC News (Australia) YouTube channel (**YouTube Publication**).
- D. The First Broadcast, Second Broadcast and YouTube Publication defined in Recitals B to C above will be together referred to in this Deed as the "**Publications**".
- E. Lehrmann has brought proceedings against the ABC in the Federal Court of Australia (proceeding number NSD316/2023), by which it is alleged that the Publications are defamatory of Lehrmann (**Proceeding**). The ABC denies any liability to Lehrmann in respect of the Publications.
- F. The parties have agreed to settle the Proceeding on the terms and conditions set out in this Deed.

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

- 1.1 In the interpretation of this Deed, unless inconsistent with the subject or context, each expression defined in Part 1 of Schedule 1 shall have the meaning there assigned to it and the provisions of Part 2 of Schedule 1 shall apply.

2. Settlement Sum

- 2.1 Subject to Lehrmann complying at all times with his obligations under this Deed, the ABC will, within fourteen (14) days of the execution of this Deed by both parties, pay the total sum of **\$150,000** (the **Settlement Sum**) as follows:



- (a) \$143,000 as a contribution towards Lehrmann's costs of the proceeding, to be paid to Lehrmann's solicitor's trust account in accordance with clause 2.6; and
 - (b) \$7,000 to be paid to solicitors acting for Laura Tingle on account of the costs liability incurred by Lehrmann in connection with her compliance with the subpoena to produce documents issued by him to Ms Tingle and dated 28 June 2023.
- 2.2 The parties consider that the payment of the Settlement Sum to be made in accordance with clause 2.1 above is not a taxable supply for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and that therefore no GST is payable in relation to the Settlement Sum.
- 2.3 To the extent that any supply made under or in connection with this Deed is a taxable supply, the parties agree that the Settlement Sum is inclusive of all taxes imposed with respect to the subject matter of this Deed.
- 2.4 If the ABC is obliged to make any deduction or withholding on account of any taxes in connection with this Deed, the ABC may make the withholding or deduction and pay that amount to the relevant taxing authority and reduce the Settlement Sum accordingly.
- 2.5 If Lehrmann is obliged to pay any taxes in connection with the provisions of this Deed, the ABC will not be obliged to reimburse, indemnify, or otherwise compensate Lehrmann for any such payment or obligation to pay.
- 2.6 The ABC will pay the amount specified in clause 2.1(a) above by way of EFT into the Mark O'Brien Legal trust account, the details of which are as follows:

Account name: Czar Holdings Pty Ltd trading as Mark O'Brien Legal – Trust Account

Bank: Commonwealth Bank of Australia

BSB: 062-000

Account number: 1681 0303

3. Publication of Statement, Removal of Facebook video, and YouTube Publication

- 3.1 This clause 3 is subject at all times to Lehrmann complying with his obligations under this Deed.
- 3.2 The ABC will, within seven (7) days of execution of this Deed by both parties:
- (a) publish a statement in the form set out in Schedule 2 to this Deed on the ABC's Corrections and Clarifications website at <https://www.abc.net.au/corrections>; and
 - (b) remove the Facebook video currently published at the following link: <https://www.facebook.com/watch/?v=475561204146714>.
- 3.3 The ABC agrees not to reinstate the YouTube Publication, which was removed from the world wide web on 6 April 2023.
- 3.4 Except as expressly stated in this clause 3, nothing in this Deed is intended to restrict the publication of matter consistent with the ABC's statutory obligations as a national public broadcaster.



4. Discontinuance of Proceeding

- 4.1 Lehrmann will, at his cost, within one (1) business day of the amount in clause 2.1(a) above being received into the Mark O'Brien Legal trust account in accordance with clause 2.6 above, discontinue the Proceeding with no order as to costs by filing a Notice of Discontinuance in the Proceeding in the form set out at Schedule 3 to this Deed.
- 4.2 The Parties will do all things reasonably necessary to permit Lehrmann to comply with clause 4.1 of this Deed, including exchanging a Notice of Discontinuance signed on behalf of each party, within seven (7) days of the execution of this Deed.
- 4.3 The Parties acknowledge and agree that clause 4.1 is an essential term of this Deed.

5. Release & Indemnity

5.1 With effect on and from the execution of this Deed:

(a) Lehrmann releases absolutely and forever discharges:

- (i) the ABC; and
- (ii) the ABC's current and former officers, employees, and agents (together, **ABC Personnel**) (the parties acknowledge however that ABC Personnel does not include Lisa Wilkinson or Angus Llewellyn)

from any and all existing and future claims wherever, whenever and however arising, known or unknown, which arise out of, are incidental to, or are in any way connected with:

- (iii) the publication of all or part of the National Press Club Address or the Publications by any persons in any medium;
 - (iv) any republication that first took place (which means, in the case of online publication, by way of first upload) prior to 15 November 2023 of all or part of the National Press Club Address or the Publications by any persons in any medium; or
 - (v) otherwise, the matters raised in dispute in the Proceeding (as identified in the pleadings or the evidence relied upon by a party to the Proceeding), including the Proceeding itself, and to the extent that any such claim relates to a publication, this release only applies to publication that first took place (which means, in the case of online publication, by way of first upload) prior to 6 April 2023.
- (b) Lehrmann indemnifies and will keep indemnified the ABC and the ABC Personnel from any and all existing and potential future claims by or on behalf of Lehrmann or any person claiming under or through Lehrmann wherever, whenever, and however arising, known or unknown, which arise out of, are incidental to, or are in any way connected with the matters released in clause 5.1(a) above.

5.2 The parties acknowledge and agree that clause 5.1 is an essential term of this Deed.

5.3 The ABC holds the benefit of clause 5.1:

- (a) as an agent for any ABC Personnel; and
- (b) on trust for any ABC Personnel.

5.4 Nothing in this clause 5 operates to:

- (a) prevent a party from taking any action to enforce, or otherwise, in relation to any alleged breach of, the terms of this Deed;



- (b) release a party or any other person from his or her obligations under this Deed; or
- (c) release or indemnify any person other than the ABC or the ABC Personnel.

6. Bar To Proceedings

- 6.1 The parties agree and acknowledge that this Deed may be pleaded by the ABC and ABC Personnel as an absolute bar to any claim or proceeding in any Court or Tribunal if the claim or proceeding concerns, or is related to, the matters released in clause 5.1(a) above.
- 6.2 The parties acknowledge and agree that clause 6.1 is an essential term of this Deed.
- 6.3 The ABC holds the benefit of clause 6.1:
 - (a) as an agent for any ABC Personnel; and
 - (b) on trust for any ABC Personnel.

7. Costs

- 7.1 The parties agree that the Settlement Sum is a contribution towards Lehrmann's costs of the Proceeding and no further amounts are payable to Lehrmann.
- 7.2 The parties agree not to seek to enforce against the other party any costs orders in their favour or any other entitlement to costs in the Proceeding or arising from any claim by Lehrmann against the ABC in relation to the Publications, other than as arising from steps taken by either party to enforce, or otherwise in relation to any alleged breach of the terms of this Deed.
- 7.3 Subject to clause 7.1 of this Deed, each party will bear its own costs of the Proceeding (including legal and any stamp duty costs) including:
 - (a) The costs of and incidental to the preparation, negotiation and execution of this Deed; and
 - (b) The costs of and incidental to performing any of the obligations under this Deed.

8. Warranties

- 8.1 Each person signing this Deed as attorney for any party by so doing warrants to the other parties that as at the date of execution he or she has not received any notice or information of the revocation of the power of attorney appointing him or her.
- 8.2 Each person signing this Deed warrants to the other parties that as at the date of execution he or she has full authority to execute this Deed on behalf of that party.
- 8.3 Each party warrants that, prior to signing this Deed, that party was afforded the opportunity to obtain independent legal or financial advice regarding the execution of this Deed.
- 8.4 Lehrmann warrants that the Settlement Sum is less than his actual legal costs of the Proceeding (**Actual Costs**) and that his Actual Costs relate solely to the Proceeding and not to any other legal proceeding to which Lehrmann is a party.

9. No admission of liability

- 9.1 The parties acknowledge and agree that the ABC makes no admission of liability in relation to the Publications or the Proceeding by executing this Deed or otherwise.

10. Confidentiality

- 10.1 Save for the fact of settlement, the discontinuance of the Proceeding, and any publication or statement made in accordance with clauses 3.2(a) above or 11.1 below, the terms of this Deed are confidential and will not be disclosed by the parties, their agent(s), or their representative(s), either directly or indirectly, other than:
- (a) to the extent required by law;
 - (b) if disclosed by the ABC in response to a request to do so from a House or a Committee of the Parliament of the Commonwealth, or to any Minister, his or her advisers or department (for the avoidance of doubt, this exception does not prevent the ABC from seeking to resist such a request on the basis that the settlement is confidential (or any other basis), which it may seek to do in its absolute discretion);
 - (c) to the extent necessary for the purposes of receiving professional legal or accounting advice or to claim from an insurer or other indemnifying party; or
 - (d) to the extent necessary for the purpose of giving effect to or enforcing this Deed.
- 10.2 If disclosure is made in accordance with clauses 10.1(a) to (d), the disclosing party will make reasonable efforts to ensure that the information is disclosed on the basis that it is to remain confidential to the receiving party.
- 10.3 The parties acknowledge and agree that clauses 10.1 and 10.2 are essential terms of this Deed. The obligations in this clause 10 survive termination of this Deed.

11. No Publicity

- 11.1 Without any limitation upon clause 10.1 above, the parties agree not to publicise the settlement of this matter, except that either of the parties may make the following statements (or any part thereof provided the meaning does not change) to any third party:
- (a) "The proceedings have settled on mutually acceptable, confidential terms, without admission of liability."
 - (b) "As part of the settlement, the ABC paid an amount as contribution towards [Mr Lehrmann's] legal costs."
 - (c) "No amount for damages or compensation was paid by the ABC as part of the settlement."
- 11.2 If Lehrmann makes a public statement in accordance with clause 11.1 above, any reference to the Settlement Sum may only be in the form of the words specified in 11.1(b) above (or any part thereof provided the meaning does not change).
- 11.3 The parties acknowledge and agree that clauses 11.1 and 11.2 are essential terms of this Deed.

12. Jurisdiction

- 12.1 This Deed is subject to, and shall be governed by, the laws of the State of New South Wales.
- 12.2 The parties irrevocably submit to the jurisdiction of the Courts of Sydney in New South Wales in relation to any dispute that may arise concerning the contents of this Deed.
- 12.3 The parties agree and acknowledge that this clause 12 survives termination of this Deed.



13. General Provisions

13.1 Enurement

This Deed shall be binding upon the parties and their respective successors and permitted assigns and shall enure to their benefit.

13.2 Variations

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, will be in any event of any effect unless the same is in writing signed by the parties, or in the case of a waiver by the party giving it, and then any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

13.3 Waivers

No failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon such party in terms of this Deed shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right nor any single failure to do so, preclude any other or future exercise thereof, or the exercise of any other power or right under this Deed.

13.4 Further Assurances

Each party to this Deed shall do, sign and execute all court forms, deeds, schedules, acts, documents and things as may reasonably be required by the other parties so as to carry out and give effect to the terms and intentions of this Deed effectively and to perfect, protect and preserve the rights of the other parties hereunder whether before or after completion.

13.5 Liability

If any party consists of more than one person then the liability of those persons in all respects under this Deed shall be a joint liability of all those persons and a liability of each of those persons severally.

13.6 Severability

If it is held by a Court of competent jurisdiction that:-

- (a) any part of this Deed is void, voidable, illegal or unenforceable; or
- (b) this Deed would be void, voidable, illegal or unenforceable unless any part of this Deed were severed from this Deed,

that part may be severed from and shall not affect the continued operation of the rest of this Deed unless to do so would change the underlying principal commercial purposes of this Deed.

13.7 Entire agreement

This Deed constitutes the sole and entire agreement between the parties relating in any way to the subject matter hereof and no oral or written warranties, representations, guarantees or other terms or conditions of any nature not contained in this Deed will be of any force unless they have been reduced to writing and executed by all parties and are expressed to be in modification of this Deed.

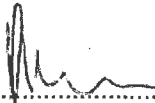
13.8 Counterparts

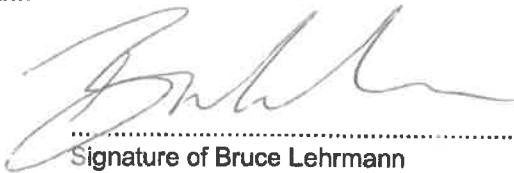
This Deed may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon the same instrument.



Executed as a Deed:

Signed, sealed and delivered by **Bruce Lehrmann**
in the presence of:


.....
Signature of witness



.....
Signature of Bruce Lehrmann

PAUL SULLIVAN
.....
Name of witness (print)

21/11/23
.....
Date

Signed, sealed and delivered by the **Australian
Broadcasting Corporation** in accordance with the
Australian Broadcasting Corporation Act 1983 (Cth)
by its duly authorised officer in the presence of:


.....
Signature of witness


.....
Signature of duly authorised officer

Anna Glen
.....
Name of witness (print)

Ingrid Silver
.....
Name of duly authorised officer

21/11/23
.....
Date



SCHEDULE 1

Part 1 - Definitions

In this Deed, unless the subject or context is inconsistent, each of the following expressions shall have the meaning assigned to it below:-

<i>claim or claims</i>	includes threatened or actual actions, causes of action, claims, complaints, demands, disputes, proceedings, and suits.
<i>party or parties</i>	a party to this Deed or parties to this Deed.
<i>tax or taxes</i>	any tax, levy, charge, impost, duty (excluding stamp duty), fee, deduction, goods and services tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world, including any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

Part 2 - Interpretation

In this Deed, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:-

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (d) words denoting any gender shall include all genders;
- (e) references to Parties, Parts, Clauses, Annexures and Schedules are references to Parties, Parts, Clauses, Annexures and Schedules to this Deed as modified or varied from time to time;
- (f) references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;



- (g) all references to dates and/or times are to the date and/or time in Sydney, New South Wales, Australia; and
- (h) all references to "\$" and "dollars" are references to the lawful currency of the Commonwealth of Australia.

SCHEDULE 2 – STATEMENT

On 9 February 2022, the ABC published a National Press Club of Australia address by Brittany Higgins and Grace Tame. Bruce Lehrmann commenced defamation proceedings against the ABC, claiming that the broadcast of the National Press Club of Australia address accused him of sexually assaulting Brittany Higgins. These proceedings were discontinued and settled on terms satisfactory to Mr Lehrmann and the ABC. The ABC notes that a criminal charge of sexual assault brought against Mr Lehrmann in the ACT was later dropped. The ABC does not suggest that he was guilty of that charge.

SCHEDULE 3 – FORM 48 NOTICE OF DISCONTINUANCE

Form 48
Rule 26.12(1)

Notice of discontinuance

No. NSD 316 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

BRUCE LEHRMANN
Applicant

AUSTRALIAN BROADCASTING CORPORATION
Respondent

Bruce Lehrmann, the Applicant discontinues the whole of the proceeding.

Each party consents to the discontinuance on the following terms:

1. There be no order as to costs.

Date: __ November 2023

Signed by _____
Lawyer for the Applicant

Date: __ November 2023

Signed by _____
Lawyer for the Respondent

