

NOTICE OF FILING

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Sia Lagos

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Important Information

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Affidavit

VID1023 of 2023

Federal Court of Australia
District Registry: Melbourne
Division: General Division

MOIRA DEEMING

Applicant

JOHN PESUTTO

Respondent

Affidavit of: **David Southwick MP**
Address: [REDACTED]
Occupation: Deputy Leader of the Liberal Party in Victoria
Date: 19 July 2024

I, **David Southwick**, State Member for Caulfield and Deputy Leader of the Victorian Liberal Party, of [REDACTED] in the State of Victoria, solemnly and sincerely affirm:

1. On 24 May 2024 I affirmed an affidavit in this proceeding (**my First Affidavit**). I adopt the terms defined in my First Affidavit.
2. I understand that between 27 May 2024 and 29 May 2024 a number of affidavits were filed on behalf of the Applicant in this proceeding. I have not received copies, nor read any of those affidavits in full, but have been shown parts of the following affidavits that relate to me:
 - (a) affidavit sworn by Moira Deeming on 27 May 2024 (**Deeming Affidavit**);
 - (b) affidavit sworn by Richard Riordan on 24 May 2024 (**Riordan Affidavit**);

Filed on behalf of (name & role of party) John Pesutto, Respondent
Prepared by (name of person/lawyer) Peter Bartlett
Law firm (if applicable) MinterEllison
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(include state and postcode)

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- (c) affidavit sworn Andrew Stephen Deeming on 27 May 2024 (**Andrew Deeming Affidavit**);
 - (d) affidavit sworn by Kim Wells on 24 May 2024 (**Wells Affidavit**); and
 - (e) affidavit sworn by Ryan Smith on 21 May 2023 (**Smith Affidavit**).
3. This affidavit responds only to the parts of those affidavits that directly refer or relate to me or my evidence, where I have a recollection of those events or something to add. Any failure to address any assertion does not mean I necessarily agree with that assertion, particularly where I have previously given evidence on that matter.

Telephone call with Moira Deeming on 18 March 2023

4. Paragraphs [46]-[51] of the Deeming Affidavit refer to a telephone call between myself and Moira on 18 March 2023, which was the subject of paragraph [10] of my First Affidavit. I do not consider Moira's evidence regarding that conversation to be an accurate reflection of what occurred and stand by my previous account of that conversation.
5. In particular, contrary to paragraph [51] of the Deeming Affidavit I never said that "it was not my job" to put out a statement on behalf of every Liberal MP. Rather, I advised Moira that she should put out a statement clarifying that the neo-Nazis had nothing to do with the Rally and that she should work with the Rally organisers to do so, as it was her Rally. Also contrary to what is said in paragraph [51] of the Deeming Affidavit:
- (a) Moira did not state or otherwise imply that she was unable to make a statement herself due to some limitation preventing new MPs doing so;
 - (b) I did not mention Ms Keen's name at any stage - I referred only to the organisers of the Rally generally needing to denounce and distance themselves from the neo-Nazis who turned up at the Rally; and
 - (c) I stated that I was happy to assist Moira to write the statement, or if she preferred, she could contact the media unit of the Leader's office for help.
6. As I said at paragraph [10] of my First Affidavit, I had the distinct impression following the call with Moira that she would be putting out a statement and that she would come back to me or others should she need help in doing so.
7. At paragraph [47] of the Deeming Affidavit, Moira says, "*at that time, I did not know for sure that they were Nazis" despite having seen them "do the Nazi salute as they were leaving..."*".

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At paragraph [10] of my First Affidavit, I said that I found it strange that Moira described the neo-Nazis as "*men in black*" during our phone call. I found it strange at the time of our phone call, and find it strange now, that Moira appeared and appears to be hesitant to label them as neo-Nazis even when it is obvious they are neo-Nazis.

Meeting with Moira on 19 March 2023

8. Paragraphs [59]-[88] of the Deeming Affidavit relate the meeting between Moira and the Leadership Team on the evening of 19 March 2023 which is the subject of paragraphs [36]-[38] of my First Affidavit. Generally, I do not consider Moira's account of the tenor and focus of the meeting to be accurate. Moira's account suggests that the focus of the meeting was on her advocacy for sex-based rights, and that the Leadership Team's real purpose was to stop her agitating those views and to 'denounce' or 'condemn' generally LWS and the organisers of the Rally. That is not the case and I do not understand how Moira could have perceived that from what was said at the meeting.
9. For example, at paragraph [60] of the Deeming Affidavit, Moira says that: "*Mr Pesutto said that, if I wanted to advocate for 'fringe' issues like sex-based rights, he and the Leadership Team were of the view that I would be better suited to be an Independent rather than a Liberal MP*".
10. I do not recall John saying that and do not believe he used those words, as that was not the intention of the meeting. The intention of the meeting with Moira on 19 March 2023 was to highlight to Moira that it was important for her to denounce the actions of the neo-Nazis who arrived at the Rally so as to clarify that she had no association with them, and by extension, clarify that the Liberal Party does not condone neo-Nazism. The meeting was not about Moira's views on sex-based rights. My recollection is that the words John used were far more consistent with that intention.
11. At paragraph [63] of the Deeming Affidavit, Moira states: "*The Leadership Team continued to attack my advocacy for sex-based rights and child safeguarding, describing them as 'fringe' views*". That statement is not correct. The Leadership Team did not attack Moira's advocacy for sex-based rights at any point. The Leadership Team sought to help Moira to understand that it was incumbent upon her to denounce the neo-Nazis that arrived at the Rally. The Leadership Team did not ask her to make a statement denouncing the Rally or LWS more broadly.

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12. At paragraph [70] of the Deeming Affidavit, Mrs Deeming states the following: *"I asked if I could see what was on the screen. At that point, Mr Pintos-Lopez turned the laptop further away from me. They refused to show me the evidence."*
13. That statement is not correct. Rod did not turn his laptop away. While I do not recall whether Moira was shown images in hard copy or on a computer screen, I am very confident that she was shown various images one way or another. I am confident of this because I recall Moira specifically responding to our concerns about various images in a manner which would not have been possible unless those images had been shown to her.
14. At paragraph [74] of the Deeming Affidavit, Moira states: *"I reminded them that I had already denounced the men on social media myself because Mr Southwick had refused to issue a media press release for the whole team, and that I had even managed to arrange for Ms Keen to put it on the public record that those men had nothing to do with us and that we rejected them, their behaviour and Nazism in general"*.
15. I do not recall Moira saying that and I believe I would remember it if she did, as I did not believe that Moira had already denounced the neo-Nazis on social media. In particular, I did not and do not consider Moira's tweet of 18 March 2023 to be a denouncement of the neo-Nazis, but rather a criticism of the Police. In that tweet she stated:

Disappointed with @VictoriaPolice, who let a bunch of masked men into the LWS buffer zone, terrifying women who were just trying to speak about their rights. Police managed to stop hordes of TRAs, but somehow could only walk masked men past us they did a horrible Nazi salute.

Moreover, during the meeting Moira refused to describe the men as Nazis or neo-Nazis.

16. I do not recall Moira saying that she had arranged for Ms Keen to clarify on the public record that she rejected Nazism. Further, Moira did not say that Ms Keen had made such public statements. I am certain of this as, had those two things occurred - Moira having denounced the neo-Nazi presence, and Ms Keen having publicly rejected Nazism - I would have asked to be shown those statements, as they would have resolved most of our concerns.
17. At paragraph [75] of the Deeming Affidavit, Moira states: *"I said I sympathised but that it was not my fault or the fault of any of the women at the LWS Rally"*. I recall Moira repeatedly saying this was not her fault. This statement highlighted that Moira simply could not grasp our concern, and was why we kept going in circles. My main concern, as I communicated in the meeting, was [REDACTED]

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that there was no connection between Moira and the neo-Nazis. Separately, I was concerned that Moira had also failed to condemn Ms Jones and Ms Keen for the use of Nazi symbols or language on their social media. The purpose of the meeting with the Leadership Team was not to blame Mrs Deeming for the neo-Nazis' attendance at the Rally but to ensure she understood that any association with Nazism must be vehemently eschewed. We said various words to that effect during the meeting and we found it frustrating that Moira either did not seem to understand or care about our perspective.

18. At paragraph [76] of the Deeming Affidavit, Moira states: *"I told them how Ms Keen had launched a tirade against Nazism just before we had filmed the 18 March Video."*
19. I am confident that Moira never said this statement in the meeting, as a statement of this nature would have stuck with me as it related to my core concern, being that neo-Nazi behaviour be condemned absolutely. In any event, a private "tirade" by Ms Keen would not have addressed our concerns. We wanted Moira to publicly distance herself from the commentary and posts by Ms Keen and Ms Jones.
20. At paragraph [83] of the Deeming Affidavit, Moira states: *"To the best of my recollection, they did not ask me to condemn the Nazis or Nazism, just the three women and LWS."*
21. That statement is incorrect. The aim of the Leadership Team was to encourage Moira to condemn two things. First, to condemn the neo-Nazis who attended the Rally and performed the Nazi salute on the steps of Parliament and second, to condemn the words and images used by Ms Keen and Ms Jones that contained reference to Nazi symbols or rhetoric. The Leadership Team did not encourage Moira [REDACTED] to condemn the Let Women Speak organisation as a whole. [REDACTED]
[REDACTED]
[REDACTED]
22. I otherwise reiterate the statements made at paragraphs [37] to [38] of my First Affidavit.

Phone call with Richard Riordan on 19 March 2023

23. At paragraph [10] of the Riordan Affidavit, Richard refers to a telephone conversation between me and him on 19 March 2023. He alleges I stated "We have a problem. Moira has organised a Nazi event. She's been hanging out with Nazis and partying with them. We've documented it all. We have all the evidence. We're going to move to get rid of her".
24. That is not correct for the following reasons:

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workspace, which includes a space for a staff member to work. In the corridors outside MPs offices, there are some shared areas with couches. As Deputy Leader, colleagues often want to speak with me. If they want to do so privately, I will ask my staff to work on their laptops in that shared space with couches in the corridors. The nearest available seats to my office happen to be not far from Moira's office.

- 31. To be clear, John did not ask me to ask my staff to sit outside Moira's office to intimidate or monitor her or her visitors. Nor did I ask my staff members to work anywhere near Moira's office for that or any other reason. In my view, the suggestion we would do so is ridiculous and delusional.

27 March 2023

- 32. At paragraph [29] of the Wells Affidavit, Kim states: "*[Moira] wanted a joint statement from Pesutto and herself, exonerating her from all accusations regarding the rally. Smith and I went back to Pesutto and Southwick and explained Deeming's position*".
- 33. Similarly, at paragraph [30] of the Wells Affidavit, Kim states: "*[Moira] flatly refused to accept any deal unless there was a full exoneration of everything in the Dossier including that she had brought the Parliamentary Party into disrepute, and any insinuations that she was in any way associated with or guilty of any kind of bigotry or Nazism*".
- 34. Similarly, at paragraph [31] of the Wells Affidavit, Kim states: "*Pesutto, Southwick and Georgie Crozier orally agreed to the compromise that included a full exoneration in a joint public statement between Deeming and Pesutto*."
- 35. I do not know what Moira said to Kim in their discussions (which occurred at the other end of the room) but Kim did not use those words in his discussions with John and I, and we did not agree to any compromise on that basis.
- 36. In particular, the words "exoneration" and/or "full exoneration of everything in the Dossier" were not used in any of our discussions with Kim. As Ryan Smith suggests at [36] of the Smith affidavit, the focus of those discussions was to negotiate the length of the term of the suspension for Mrs Deeming – be it 12 months, 6 months or 9 months. My understanding was that suspension was to be based on the material in the Dossier. It would have been completely illogical to suspend Moira and then "fully exonerate" her at the same time.
- 37. To be clear, at no stage in our discussions with Kim did John or I say anything that I consider could reasonably have been regarded as us agreeing to "exonerate" Moira.

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38. We did discuss a “joint statement” as well. However, my understanding of the nature of that “joint statement” was explained in paragraph [62] of my First Affidavit. I remain of the view that it would have made no sense to suspend Moira and then issue a public statement from both John and her – let alone one fully exonerating her.

Drafting of Moira’s statement on 27 March 2023

39. Paragraphs [195] to [203] of the Deeming Affidavit relate to a meeting to prepare her statement. That is the subject of paragraphs [65]-[70] of my First Affidavit.

40. At paragraph [195] of the Deeming Affidavit, Moira alleges that her husband was told he could not join the meeting. I was not privy to any conversation in which Moira's husband was denied attendance at the meeting, nor would I have denied his attendance if I had been asked, and I certainly had no difficulty with him attending the subsequent meeting referred to at paragraph [67] of my First Affidavit.

41. At paragraph [195] and [196] of the Deeming Affidavit, Moira describes being handed a draft statement, which caused her to be furious and walk out of the meeting. It is true that Moira reacted in the way she has described. Moira's reaction suggested to me that she misunderstood the purpose of the meeting. In my view, the purpose of the meeting was to discuss and workshop a possible statement. The initial draft statement I provided her was a starting point for discussion rather than some mandated final statement. I was therefore surprised when Moira's reaction was one of fury and anger; particularly when I understood the draft statement reasonably reflected the compromise reached.

42. At paragraph [196], Moira further states:

(a) She told me that the Nazi’s had not “attended” the Rally. Moira did not say that to me. Moira has never previously suggested to me that they were there for another rally or some other purpose. My understanding has always been that they were there to support the LWS rally, even if they were not invited or welcomed by the organisers;

(b) She asked me “*where was the exoneration I had been promised*”. She asked me no such thing. As I have explained, the concept of an exoneration was completely at odds with the fact Moira had been seriously sanctioned by a suspension;

(c) She states I referred to her having to get her “*half*” of the statement “*done first*”. I never said anything about “her half” of the statement. No such “half” of a statement was ever agreed to, and that concept does not make any logical sense to me; and

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(d) She states that I said words to the effect that if Moira didn't sign the draft statement "they would have to recall all of the MPs back into the party room for another vote. He said everyone would be furious at me and I would definitely be expelled this time. He said my career would definitely be over if that happened". This is only partially accurate. First, as I have explained the draft Moira was presented with was only a starting point for discussion and workshopping if she was not happy with it. There was never any suggestion that she had to sign that version or face expulsion. Second, I never said Moira's career would be over if that was what happened. I did however say words to the effect that if a statement couldn't be agreed, or if Moira didn't put out a statement, we would need to go back to the Party Room. That was simply a consequence of what had been resolved in the Party Room, and if Moira had been in breach of those matters that is the reality of what would need to occur. In my opinion, I did not "threaten" Moira's career, I just stated the facts.

43. At paragraph [199] of the Deeming Affidavit, Moira states: "*During this further meeting, Mr Southwick kept trying to pressure me to denounce LWS, Ms Keen and Ms Jones.*"

44. That statement is incorrect. At no stage in my discussions with Moira, including the meeting referred to at paragraphs [198] to [203] of the Deeming Affidavit, did I request or otherwise imply that Moira was to denounce LWS or Ms Keen or Ms Jones more broadly. At all times, my sole concern was that Mrs Deeming unreservedly denounce any commentary adopting Nazi symbols, rhetoric or analogy. That was reflected in the first draft statement I provided to her, which Moira has discovered.

45. In that paragraph, Moira says that she referred to her email of that morning and said "*I had very carefully chosen generic phrases in those documents in order to be gracious to the Leadership Team, who I thought were in fact to blame for the entire mess, but that I had never conceded I had done anything wrong or worthy of any type of punishment, and that I had never condemned LWS, nor Ms Keen and Ms Jones as being Nazi sympathisers in any way, shape or form. I said I had only agreed to a sanction in order to help Mr Pesutto save face for the sake of the team and to get a full exoneration. I said that if full exoneration was off the table, then it was over*". Save that I recall she may have denied doing anything wrong during the meeting, I do not believe she said any such thing. She certainly did not say anything about being "*gracious*" to the Leadership Team, or use the term "*full exoneration*".

46. At paragraph [200] of the Deeming Affidavit, Moira states that she had not seen the social media posts we asked her to condemn because the Leadership refused to show those

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images to her in the 19 March 2023 meeting with the Leadership. Moira states that I said *"this was because they didn't have the evidence organised at the time of the 19 March Meeting"*.

47. This statement is incorrect. I did not state that we did not have the evidence organised on 19 March 2023. I was aware that Rod organised the evidence that ultimately informed the dossier *prior* to the 19 March 2023 meeting. That evidence was presented to Moira in the 19 March 2023 meeting. Hence, I would not have stated that we did not have the evidence organised.
48. At paragraph [199] of the Deeming Affidavit, Moira also states: *"I said I had only agreed to a sanction in order to help Mr Pesutto save face for the sake of the team and to get a full exoneration. I said that if full exoneration was off the table, then it was over."*
49. This statement does not accord with my recollection. I do not recall Moira referencing "exoneration" at any stage during this meeting. At this point in time, it had become apparent that Moira had failed to promptly and clearly denounce the neo-Nazis who turned up at the Rally (despite request) and further failed to denounce the pro-Nazi rhetoric as outlined in the Dossier until that morning – and then only in her email to MPs. The Party Room had just voted to suspend Moira for 9 months; it would make no sense for her to be exonerated in any statement. She had just received a very serious sanction from the Party.
50. At paragraph [200] of the Deeming Affidavit, Moira states *"Did you hear that? He just admitted that they decided to expel me before they even had evidence and they had to make it up later."*
51. I do not recall Moira saying this. This statement also does not align with the fact that Moira was shown the evidence that ultimately informed the Dossier. I find this construction of events to be entirely at odds with my recollection.
52. At paragraph [201] of the Deeming Affidavit, Moira refers to me saying her tweet of that day, in which she stated that she had never condemned Ms Keen, Ms Jones or Ms Deves, was a problem because by doing so she had "contradicted the Leader". I do not recall saying that to Moira. While I do not recall raising Moira's tweet of that afternoon with her, I do recall being angered by it. When I became aware of it, I recall I called Kim Wells. I raised the tweet with him and said words to the effect that it was appalling, and that she was tweeting publicly while we were trying to sort out the matter privately. I do not recall precisely what he said, but I do recall that Kim agreed.

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53. At paragraph [202] of the Deeming Affidavit, Moira again states: "*Mr Southwick kept trying, over and over again, to include in the draft statement my personal condemnation of the three women (Ms Deves, Mr Jones and Ms Keen).*"
54. This statement is incorrect. Again, at all times, I was concerned about Moira condemning the commentary and posts by Ms Jones and Ms Keen that used Nazi symbols and rhetoric, not them personally.
55. Moira's account of what I said is also inconsistent with and goes further than the proposed first draft of words that was put to Moira. That draft proposed statement only condemned the commentary of Ms Keen and Ms Jones, in the context of Nazism and hurt to the LGBTQI+ community. In circumstances where Moira had rejected that draft (which I considered and still consider to be a reasonable statement), it would make no sense for me to have pressed for her to make a statement that went even further than our initial draft, which she had already rejected.
56. At paragraph [203] of the Deeming Affidavit, Moira constructs the idea that the "joint statement" was to be one half her words and one half John's words, with the two ultimately being "merged". Moira also suggests that the Leadership blind-sided her by publishing only her 'half' of the statement.
57. That is not correct. To my knowledge at no point in time was it communicated to Moira, directly or implicitly, that John would write his own form of words and that those would be merged with Moira's. Moira was consistently and repeatedly told by me and others in my presence that the statement would be one made by her with the assistance and support of John's office and the Leadership Team. Moira never asked to review John's statement, or his "half" of the statement., in my presence. Had she done so, I would have remembered it as it would have been inconsistent with my understanding of the "joint statement" and the drafting process.
58. By way of explanation, the words in Moira's statement were negotiated and worked through within an inch of their life by both John's office and Moira. Moira went through the words again and again. As I said in my First Affidavit at [68], Nick and Moira took turns working on the statement on Nick's computer. Moira was very involved in every word that was put into the statement, which she later approved to be released by Alex Woff under her own name. For those reasons, I do not understand Moira's assertions to the effect that she was not involved, blindsided and falsely promised that her words would be merged with a separate form of words prepared by John.

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59. At paragraph [73] of the Andrew Deeming affidavit Andrew reiterates the same narrative regarding the "joint statement". Andrew specifically alleges that I stated that "they just needed to get her half done". I did not say this. As stated above, the word "half" was never used. John's "half" did not exist and hence, there was absolutely no basis for me to say what Moira and Andrew respectively allege.
60. I otherwise reiterate my statements made at paragraph [62] of my First Affidavit.

Meetings and discussions in April 2023

61. I refer to paragraph [73] of my First Affidavit. Exhibit DS-9 did not contain the messages between Kim and I on 25 April 2023 in which Kim said "*David I'm ok to meet at 2. I still think it's a waste of time but the development of the legal aspect of the deeming case is something u need to b aware of*". That day I copied and sent that message from Kim to John.
62. I refer to my First Affidavit at paragraph [74] in which Kim raised Moira's requirement of a letter. I understood that the letter Kim raised in that meeting was to be a letter attached to the minutes of the 27 March 2023 Party Room meeting.
63. On 27 April 2023 at 12:57pm I received an email from Kim setting out proposed conditions and expectations of Moira while she was suspended (**suspension conditions**). That email noted "The letter to the Minutes is proving significantly more difficult".
64. At 3:18pm Kim forwarded me an email from Moira regarding that letter (**letter conditions**).
65. I recall speaking to Kim on the phone that evening. To the best of my recollection I took a phone call from him at about 8pm. While I do not remember the detail of that conversation, I recall conveying to Kim that there was no way that John would agree to the letter conditions proposed by Moira because they were ridiculous. I also recall Kim saying to me words to the effect that we need to sort this out because Moira has engaged lawyers and it will get very messy for John.
66. My view was the letter conditions proposed by Moira did not reflect the reality of what was said in the expulsion motion, what was said about Moira, or that Moira had been seriously sanctioned by being suspended. However, I thought the suspension conditions could be resolved, and in the interim we could work on a letter that gave Moira some comfort in respect of her alleged concerns that she thought she had been labelled a Nazi or Nazi sympathiser.

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3 May 2023 meeting

- 67. At paragraph [226] of the Deeming Affidavit, Moira states that during a meeting on 3 May 2023, *"I informed Mr Southwick of my position, as I had relayed it to Mr Wells, emphasising that I wanted my exoneration by the next day"*. Later on in the same paragraph, Moira states: *"Mr Southwick agreed and assured me that tomorrow my promised exoneration would be delivered."*
- 68. That statement does not accord with my recollection. My recollection of the meeting is that the purpose of the meeting was for Moira and Kim to get clarity on the conditions of the suspension, including what Moira could and could not do during her suspension. That discussion involved what the suspension would look like, Moira's duties, obligations, and ability to use the 'Liberal brand' (being Liberal Party logos and letter head) during the suspension period. It was clear to me at the time that there would be no 'exoneration' and I thought that I made that clear to Moira too.
- 69. However, I did say that John would clarify that Moira was not a Nazi nor a Nazi sympathiser. I knew this was important to Moira and to her family. I did not and do not consider this to be the same as an exoneration, as no one was ever accusing Moira of being a Nazi or Nazi sympathiser, and that was not why the expulsion motion was brought or why she was suspended.

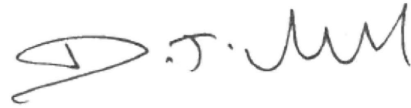
4 May 2023 meeting

- 70. At paragraph [82] of my First Affidavit I set out my recollection of my meeting on 4 May 2023 with Kim and Moira.
- 71. I have now read Moira's account of that meeting at paragraph [230] of her affidavit. I stand by my account of that meeting. I had been trying to find a middle ground to resolve the escalating dispute. My view then, which is still my view now, is that Moira wrote the email to the Leadership Team for the purposes of the media or lawyers, which I considered to be a stunt. This made me believe that Moira was not attending or engaging in this meeting in good faith.
- 72. I otherwise reiterate the statements made in my affidavit sworn on 27 May 2024.

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Affirmed by the deponent
at Melbourne
in Victoria
on 19 July 2024
Before me: Deanna Ficatas

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Signature of deponent

Deanna C. Ficatas

Signature of witness

*An Australian Legal Practitioner within the meaning
of the Legal Profession Uniform Law (Victoria)*

*This affidavit was affirmed and witnessed remotely
using an electronic copy of the affidavit in
accordance with the Oaths and Affirmations Act
2018 (Vic)*

David Southwick
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