

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LTD and another**

Respondents

**FIRST RESPONDENT'S FURTHER SUBMISSIONS**

1. These submissions respond to a query from the Court in respect of Network Ten's submissions dated 11 March 2024 (**Submissions**) in response to Mr Lehrmann's submissions concerning representations made by Ms Higgins within a Deed of Settlement and Release between Ms Higgins and the Commonwealth of Australia (**Deed**). For transparency, a copy of the query received from the Associate to Lee J is annexed to these submissions.
2. In short, Network Ten's submission was that it would be inappropriate for this Court to make any finding as to the characterisation of Ms Higgins' conduct contended for by Mr Lehrmann - in substance that she was prepared to tell lies, including elaborate lies, in respect of matters that she warranted to be true and correct with the intention of inducing the Commonwealth of Australia to enter into the Deed which provided for the payment of a life changing settlement sum (ACS, [33B], [33C] and [33F]).
3. With respect, Network Ten's position is correctly encapsulated in his Honour's acknowledgement that it would be extraneous to the determination of the issues in this case to make any findings as to the *legal characterisation* of any findings of any false representations in the Deed (should they be made). That is so for the reasons articulated at [146K] and [146L] of the Submissions.
4. Network Ten does not contend that the representations in the Deed cannot be considered as part of an assessment of the general credit of Ms Higgins in the limited relevant sense, which is in short whether it discloses a preparedness to tell lies on solemn occasions that infects the Court's assessment of the evidence she gave in this proceeding.

5. Network Ten does not contend that further steps are required to be taken to provide procedural fairness to Ms Higgins in order for the Court to fairly deal with the submissions as to credit made on behalf of Mr Lehrmann as part of the assessment of her general credit (in that limited sense).
6. Senior Counsel for Mr Lehrmann submitted to the Court that the substance or “gist” of the purportedly inconsistent clauses in the Deed were matters that had been put Ms Higgins (T1253.7-8). This was the basis on which the parties agreed that it was unnecessary as a matter of procedural fairness to recall Ms Higgins (T1253.1-21).
7. In Network Ten’s submission, Ms Higgins’ position in relation to the alleged inconsistencies was, with one exception, sufficiently clear from the evidence she gave in cross-examination: see [146R(a)-(k)] of the Submissions.
8. There was one exception, being the matter identified at [146R(i)] of the Submissions in respect of clause 4.22 of the Deed. The relevant representation does not appear to have been the subject of evidence from Ms Higgins either way. That matter should not be found to be an inconsistency, but Network Ten does not submit that as a matter of procedural fairness Ms Higgins needs to be recalled in light of the evidence that she did give on the topic (identified in [146R(i)]) that was substantially consistent with the relevant representations in the clause.

12 March 2024

M J COLLINS

T SENIOR

Counsel for the First Respondent

## Annexure

I have been asked by his Honour to raise a matter arising out of the submissions provided to the Court at 4pm by Network Ten.

In those submissions, Network Ten submits:

1. At [146J] that “*Mr Lehrmann appears to contend that Ms Higgins’ conduct in making false representations constituted a breach of the warranties given by her in clause 7.1 of the Deed, and that they were made for the purposes of securing a life changing payment. Those extremely serious allegations – in substance that Ms Higgins has committed a fraud on the Commonwealth of Australia – ought not to be adjudicated upon in this proceeding*”;
2. At [146L] that “*Critically, it is no part of the responsibility of Network Ten to act in Ms Higgins’ interests in respect of the allegations now advanced against her in respect of the Deed. The Court should not make very serious findings of the kind alleged against an unrepresented witness who has not been heard in respect of them*”;
3. At [146R(i)] that an “*alleged inconsistency does not appear to have been put to Ms Higgins*”;
4. At [146U] that “*The Applicant’s submission that Ms Higgins lied in the Deed to secure a payment ...is extraordinary and without foundation*”.

These submissions seem to hint at, or suggest, that Network Ten contends that a submission is not open or there would be a failure to comply with the dictates of procedural fairness in the event the Court found it necessary to deal with the submissions made by Mr Lehrmann in relation to the Commonwealth Deed (that is, if the Court considered it necessary to make any finding as to whether false representations had been made in the Deed because it is relevant to any general credit finding made in relation to Ms Higgins).

If this is what is suggested (and it is not entirely clear), it should be made plain. In this regard, his Honour accepts it would be extraneous to the issues in this case to make any findings as to the *legal characterisation* of any findings of any false representations (should they be made), as the submission they were made is only relevant to credit.

In any event, the Court needs to assess the merits of any argument that is being made (if it is) that further steps would be required to be taken to provide procedural fairness to Ms Higgins to deal with the submissions as to credit made on behalf of Mr Lehrmann as to the Commonwealth Deed (by, for example, recalling Ms Higgins so any proposition said to be not presently open can be put to her, or allowing any submission to be made on the witnesses’ own behalf in the event Network Ten considers that highly unusual course to be necessary to deal with a submission that is said to go to the general credit of a witness called by a party, when the party has made extensive submissions).

His Honour’s view was that given the agreement between the parties (recorded at T1252-3) the course of recalling Ms Higgins was unnecessary. Nothing in this email indicates a view, one way or another, as to the underlying merit of any credit submission based on the Commonwealth Deed, but his Honour does not want there to be any ambiguity as to any aspect of procedural fairness. Accordingly, his Honour would like to understand, with precision, and by **close of business tomorrow**, what, if any, point is being made by Network Ten about procedural fairness in dealing with a submission as to the general credit of Ms Higgins arising from representations made in the Commonwealth Deed.

The document should be in the form of a very short, separate submission document going only to this apparent issue of procedural fairness and then his Honour will decide how this impacts upon what his Honour had understood was common ground and whether it is necessary to receive any other assistance, or propose any course to address any real issue as to procedural fairness pressed.