

Federal Court of Australia
Registry: New South Wales

Bruce Lehrmann

Applicant

Network Ten Pty Ltd

First Respondent

Lisa Wilkinson

Second Respondent

APPLICANT'S NOTE ON LIVE STREAMING OF TRIAL

1. The applicant's preference is for the forthcoming trial to be livestreamed on the Court's YouTube channel.
2. To do so is simply to continue in the course which the Court has consistently followed from the outset of the proceedings, noting that the application under s 56A of the *Limitation Act 1969* and each of the case management hearings since have been livestreamed. The first respondent's submissions of 9 November 2023 ("RS"), with respect, do not identify any compelling reason to depart from this practice.
3. As the Court noted in its email to parties on 6 November 2023, livestreaming of matters of general public interest has become the practice of the Court. For example, in defamation matters, that practice has been followed this year in *Russell v Australian Broadcasting Corporation* and *Al Muderis v Nine Network Australia Pty Ltd*. When or why that practice started (cf. RS [3]) does not matter very much. The point is that it is the practice now, and members of the public would have a reasonable expectation of being able to watch proceedings in matters of public interest by that means.

4. It would be anomalous to limit such access now, not only because of the very high level of interest in this proceeding, which is arguably greater than the interest in other matters which have been livestreamed, such as *Russell* and *Al Muderis*, but particularly because up until now, hearings in this matter *have* been livestreamed. Members of the public would rightly wonder why access was being limited now, at the point of greatest interest (the trial), when it had previously been available.
5. The effect of the regime proposed by the first respondent (cf. RS [2]) will be to restrict access to the hearing in a material way. The first respondent's proposed regime of permitting AVL access only upon the making of an application to the Court and the giving of an undertaking will in practical terms privilege access by journalists. While the media does have a social role as the eyes and ears of the public, journalists enjoy no special rights over and above ordinary members of the public. There is no principled justification for the imposition of a regime which facilitates media access while imposing a barrier to access by everyone else.
6. The fact that the physical courtroom will remain open is not an answer, for the simple reason the interest in the matter is national, whereas the trial will take place in the Sydney CBD. Curtailing AVL access will have the effect of privileging access to the proceedings by those in geographical proximity to the Court. This is undesirable.
7. The first respondent's answer, in part, is that there will be no shortage of scrutiny of the proceedings because it will be reported on by mainstream media: RS [17]. Another way of characterising that outcome is that the public perception of the proceedings will be filtered through the editorial priorities and biases of the media. This is problematic in the context of a defamation case where a media organisation is the defendant, and experience shows that media reporting of proceedings in which they are involved is not always accurate, impartial or proper: cf. *Russell v Australian Broadcasting Corporation* (No. 3) [2023] FCA 1223 at [430]-[431].
8. In a different case, the fact that this proceeding concerns an alleged sexual assault might carry some weight: cf. RS [12]-[14]. However, in this case, the assertion that live-streaming would "*inevitably increase the stress and trauma experienced by Ms Higgins*" needs to be evaluated in light of the fact that she extensively courted media attention to tell her story both before and during the pendency of the criminal proceedings. This is

a relevant consideration: cf. *Lehrmann v Queensland Police Service* [2023] QSC 238 at [81]-[92] per Applegarth J.

9. As to the Ten's submissions at [15]-[16], Ten was one of the media parties that argued against any suppression of Mr Lehrmann's identity in that case. If that is a risk, it is one it assisted to create, and in any event it does not tip the balance in view of the other considerations discussed above.
10. Concerns about the risk of misuse of the livestream and abusive behaviour by third parties (cf. RS [5]-[6], [9], [11]) should not determine the Court's approach. Some of those things may happen, but there is always a risk of them occurring, and if they do, the law of contempt is the appropriate sanction. The legitimate interest of members of the public nationwide in being able to observe a trial of significant public interest should not be curtailed on account of the hypothetical risk of abuse by bad actors.
11. It should be borne in mind that the applicant's cross-examination on the application under s 56A of the Limitation Act was livestreamed, without objection from any party and without substantial evidence of the kinds of problems feared by the first respondent at RS [5]-[6], [9], [11]. In the interests of parity, a different course should not be adopted at the trial on the basis of protecting Ms Higgins.

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M Richardson SC

(02) 9132 5716
richardson@153phillip.com.au

N G Olson

(02) 9151 2242
olson@level22.com.au

Counsel for the Applicant