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A handwritten signature in blue ink, reading "Sia Lagos".

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MOIRA DEEMING

Applicant

JOHN PESUTTO

Respondent

APPLICANT'S CLOSING SUBMISSIONS

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A. INTRODUCTION

1. On 19 March 2023, Mrs Deeming was a mother of four, formerly a schoolteacher and then City of Melton City Councillor, and, from November 2022, the newly elected Liberal Party Member for the Western Metropolitan Region in the Legislative Assembly.
2. Prior to the first of the respondent's publications about her, on the evening of 19 March 2023, the evidence establishes that Mrs Deeming had a promising future as a Member of Parliament – there was unchallenged evidence that she was regarded as ‘an exciting young candidate who had great potential to become a major voice within the Liberal Party and a rising star within the Liberal Party’ (CB:8, 160[11] Gorman), as ‘someone who had a bright career within the Liberal Party’ (CB:14, 206[6] Hughes), and as ‘a potential leader’ within the Liberal Party (CB:17, 225[17] Mundine).
3. Over the following days, Mr Pesutto undertook a relentless and ongoing campaign to convince fellow parliamentarians, the media and the public, that Mrs Deeming was associated with and shared platforms with Nazis, Nazi sympathisers and persons who associated with and shared platforms with Nazis and white supremacists. By these allegations, the further message that was conveyed about Mrs Deeming was that she herself was a Nazi sympathiser or a person who shared or agreed with views espoused by Nazis, or who stood with and supported them, such that she could be fairly described as a Nazi herself.
4. Mrs Deeming sues on five of Mr Pesutto's publications about her:
 - (a) a Media Release which on 19 March 2023 he caused to be emailed to hundreds of members of the press and then uploaded to his own website and the website of the Victorian Liberal Party (**Media Release**) (CA:6; CA:7), in which he announced that he proposed to move a motion to expel Mrs Deeming from the Victorian Parliamentary Liberal Party;
 - (b) an interview he did at approximately 8.55am on 20 March 2023 with Neil Mitchell on 3AW (**3AW Interview**) (CA8; CA:9);
 - (c) an interview he did at approximately 9.39am on 20 March 2023 with Michael Rowland of the ABC (**ABC Interview**) (CA:10; CA:11);

- (d) a press conference he held at around midday on 20 March 2023 (**Press Conference**) (CA:12; CA:13; CA:14); and
- (e) a document which he sent to members of the Victorian Parliamentary Liberal Party on 20 March 2023 and then released publicly including to many journalists (**Expulsion Motion and EMD**) (CA:15), which purported to contain the ‘evidence’ and reasons said to support the proposed expulsion of Mrs Deeming from the Victorian Parliamentary Liberal Party,
- (collectively, **Publications**).
5. The Publications had an extreme emotional impact on Mrs Deeming. Mrs Deeming gave unchallenged evidence of her profound emotional and physical reaction to the Publications, including that she was ‘broken’ and withdrew ‘into a state of absolute loneliness and misery’ and lost her ‘sense of connection’ with everyone in her life. Mr Deeming described that their ‘life fell apart’: CB:4, 130[99]. As Ms Walton put it, the Publications ‘brought her to the brink’, causing her life to become ‘an ongoing horror’: CB:26, 293[16].
 6. Each of the Publications was very widely republished – by mass media publications, and elsewhere, including on social media.
 7. The only issue on liability is the question of serious harm, the respondent having admitted that each matter was defamatory of Mrs Deeming. Given the definition of “defamatory” is something that causes a right-thinking member of the public to think less of Mrs Deeming, there is no question that each publication caused harm to her reputation. The only issue is therefore the severity of that harm.
 8. The defences are, frankly, a kitchen-sink approach, with every publication said to be defensible as contextual truth, honest opinion, public interest and common law qualified privilege as described in *Lange*. It is clear that many of these defences, for the reasons set out below, are untenable and in any event must fail.
 9. As to relief, the respondent points to cases in which political opponents defamed each other. Those cases serve to emphasise why a large sum by way of damages is appropriate here. Politicians expect to be criticised by their opponents, often in strident terms, and such criticism does not always impact upon that person’s reputation, or if it does, the impact is not severe: e.g. *Palmer v McGowan (No 5)* [2022] FCA 893; 404 ALR 621.

10. The damage to reputation might mitigate an otherwise serious defamation: e.g. *Hanson-Young v Leyonhjelm (No 4)* [2019] FCA 1981. In other cases, the defamation by a political opponent has been found to cause serious harm to reputation: e.g. *Greenwich v Latham* [2024] FCA 1050.
11. Here, Mrs Deeming was not defamed by a political opponent, but by the leader of her own party in circumstances where she held a leadership position in that party, where the leader sought to expel her from the Party Room on the basis of what he claimed was careful consideration and investigation. Given his position, the allegations made, the extent of publication, and the severe hurt suffered by Mrs Deeming, this is “*a most serious case*” within the meaning of s35 of the *Defamation Act 2005 (Act)*. In order to vindicate Mrs Deeming’s reputation against the ongoing slurs against her by Mr Pesutto, a substantial award of damages is therefore necessary.

B. WITNESSES

12. Aside from her own evidence (CB:1, CB:2), Mrs Deeming relied on by twenty-two other witnesses – namely:
 - (a) Andrew Stephen Deeming, her husband, CB:4;
 - (b) Geoffrey Campey, Principal, Social Media Experts, CB:EE;
 - (c) Raewyn Louise Clark, a member of the Liberal Party who attended the LWS Rally: CB:3;
 - (d) Angela Dennis, a woman who attended the LWS Rally: CB:5;
 - (e) Christopher Duke, a Senior Minister of the Presbyterian Church: CB:6;
 - (f) Rukshan Fernando, a videographer and independent journalist who filmed the LWS Rally and the other groups and protestors in the vicinity of Parliament House: CB:7;
 - (g) Renee Simone Gorman, who works part-time as an Electoral Officer for Mrs Deeming: CB:8;
 - (h) Renee Heath MP, the Liberal Member for Eastern Victoria Region in the Victorian Legislative Council: CB:9 and CB:10;

- (i) Senator Sarah Henderson, a Federal Liberal Senator: CB:11;
 - (j) David Hodgett MP, the Liberal Member for Croydon in the Victorian Legislative Assembly: CB:12 and CB:13;
 - (k) Anna Hughes, a staffer working for Mrs Deeming: CB:14;
 - (l) Joseph John McCracken, the Liberal Member for Western Victoria Region in the Victorian Legislative Council: CB:15 and CB:16;
 - (m) Nyunggai Warren Stephen Mundine AO, a senior member of the Liberal Party: CB:17;
 - (n) Susannah Oddi, a woman who attended the LWS rally: CB:18;
 - (o) Helen Papadimitriou, a woman who attended the LWS rally who works at the Victorian Legal Services Board: CB:19;
 - (p) Richard Riordan MP, the Liberal member for Polwarth in the Victorian Legislative Assembly: CB:20 and CB:21;
 - (q) John Ruddick MP, a Member of the New South Wales Legislative Council and a Member of the Libertarian Party (formerly the Liberal Democratic Party): CC:22;
 - (r) Ryan Smith, the former Liberal Member for Warrandyte in the Victorian Legislative Assembly: CB:23 and CB:24;
 - (s) Dayna Thompson, an accountant who is a member of the Liberal Party: CB:25;
 - (t) Naomi Walton, a paramedic who attended the same Church as Mrs Deeming: CB:26;
 - (u) Kim Wells MP, the Liberal Member for Rowville in the Victorian Legislative Assembly: CB:27 and CB:28; and
 - (v) Rachael Wong, the CEO of Women's Forum Australia: CB:29;
13. Of those witnesses, only Mr Campey, Mr Duke, Ms Heath, Mr Hodgett, Mr McCracken, Mr Riordan, Mr Smith, Ms Walton, Mr Wells and Ms Wong were cross-examined.

C. FACTUAL NARRATIVE

Moira Deeming's early life

14. Mrs Deeming was born in 1983 in Timboon, Victoria: CB:1, 2[4]. Her family were supporters of the Australian Labor Party and had no affiliation with the Liberal Party of Australia. Her family had a long history of public service – her great grandfather, for example, was John Joseph Holland, a Labor MP for over thirty years who had been a Councillor for the City of Melbourne: CB:1, 2-3[5]. Her father was a high-school teacher and a member of the unions, and her mother, who is a qualified nurse, previously worked as a senior official at the Australian Nursing Federation: CB:1, 3[6].
15. She attended a Catholic High School, St Francis Xavier College in Beaconsfield, Victoria. She finished school and obtained her Victorian Certificate of Education in 2001: CB:1, 3[7]. She was awarded a scholarship to study at La Trobe University, and studied there from 2002 to 2005, obtaining a Bachelor of International Relations in 2005: CB:1, 3[8]. While she was at school and university, she worked various part-time jobs including at Coles, McDonalds and Safeway (now Woolworths): CB:1, 3[11]. She also did volunteer work – including at Sacred Heart in St Kilda with her Aunt, from approximately 2000 to 2004, where they spent time with and prepared meals for the homeless. Around this time, she also did some work for the Australian Nursing Federation.
16. She met her husband, Andrew, in 2003 at La Trobe University where they were both studying: CB:1, 3[9] (Deeming); CB:4, 115[9] (Mr Deeming). Even at that time in 2003, Mr Deeming observed that other people also thought highly of Mrs Deeming – he observed that she had a way of connecting with people from all walks of life and that she took to leadership roles in the university soccer club, captaining and running the outdoor and indoor women's soccer teams, despite never having played before she got to university: CB:4, 116[10]. They started dating in mid-2003, got engaged in early 2005, and married in October 2005: CB:1, 3[9] (Deeming); CB:4, 116[12] (Mr Deeming).
17. In approximately 2005, Mr and Mrs Deeming joined the Liberal Party: CB:4, 116[13] (Mr Deeming). They had started a branch with others associated with the La Trobe University Liberal Club and would have meetings at Liberal Party headquarters in the city or over at Highett.

18. In 2006, Mrs Deeming obtained a Post-Graduate Diploma of Education from the University of Melbourne: CB:1, 3[10]. From 2006, she worked at various private and secondary schools as a teacher in Victoria, teaching English, Literature, Legal Studies, Philosophy, Science and Psychology: CB:1, 3[12]. She worked intermittently and part-time as a teacher whilst raising her four children, who were born in 2008, 2012, 2016 and 2018. She is still a registered teacher but has not taught since she was elected as a Member of Parliament in November 2022.
19. In February 2008, Mr and Mrs Deeming had their first child: CB:4, 116[16]. At around that time, in 2008, with a new-born baby and other various commitments, they let their membership of the Liberal Party lapse as they could no longer commit enough time: CB:1, 3[14]; CB:4, 116[17]. By 2009, Mrs Deeming had begun a permanent teaching role: CB:4, 116[19]. They had their second child in 2012: CB:4, 117[21].

2014-2018

20. Inspired by a talk which Mr and Mrs Deeming attended by John Anderson AC, they rejoined the Liberal Party in early 2014: CB:1, 4[15]; CB:4, 117[22]. Also in 2014, Mrs Deeming was asked to run for the Liberal Party for either the seat of Sydenham or the new seat of St Albans: CB:1, 4[16]. In September 2014, she was preselected for the seat of St Albans: CB:1, 4[17]. She ran for the seat for the Liberal Party in the 2014 Victorian state election. Mrs Deeming fell in love with campaigning during that election. Mr Deeming observed that she was a natural at speaking to voters and that they responded well to her. Some voters expressed to him that they were excited and pleasantly surprised to see a young female who was a working class teacher and a local and someone with a strong Labor pedigree who was now a Liberal. Mrs Deeming did not win the seat, but she achieved 32.5% of the two party preferred vote: CB:1, 4[17].¹ Many Liberals who Mr Deeming spoke to, both locals and Liberals in the wider party, told him they were impressed with how well she conducted herself and her result: CB:4, 117[25].

¹ The Liberal Party two party preferred vote for St Albans was subsequently reduced to 28.46% at the 2018 state election when Mr Trung Luu, now current MLC for the Western Metropolitan Region, ran there for the Liberal Party. As the lead Upper House candidate in the 2022 state election, Mrs Deeming was able to help the next St Albans candidate, Councillor Maria Kerr, achieve a two party preferred vote of 40.44%. (CC:1, 4 at 17)

21. In about September 2014, Mrs Deeming resigned from her teaching role to home-school their daughter and care for her toddler son: CB:4, 117[26]. In December 2014, Mrs Deeming invited a Vietnamese asylum-seeker called Manh to live with her family: CB:4, 117[27]. They already had one boarder and their two kids living with them at the time; they moved their kids into one room so Manh could live with them. Mrs Deeming arranged for Manh to get free enrolment at Catholic Regional College Sydenham and persuaded the school to give him free equipment and uniforms. Mr and Mrs Deeming would take him to and pick him up from school. He lived with them for approximately a year.
22. In November 2014, John Pesutto was first elected into Parliament in the seat of Hawthorn: CB:30, 327[2].
23. In 2016, Mrs Deeming gave birth to her third child: CB:4, 117[28]. In 2018, she gave birth to her fourth child: CB:4, 117[29].

2018 State Election

24. In 2018, Mrs Deeming was encouraged by a number of Liberal Party members to run for the number two spot on the Liberal Party ticket for the Western Metropolitan Region for the 2018 Victorian State Election: CB:4, 117[30]. She was not successful but instead accepted the third position on the ticket, even though it had no realistic prospects of winning: CB:1, 4[18]. Although she knew she was not going to be elected personally, she nonetheless campaigned for the Liberal Party in all 11 seats: CB:1, 4[18]. Mr Deeming gave unchallenged evidence that many people from the Liberal Party told him they were impressed that she did not act out as some people do when they lose; that he observed that, like in 2014, she loved speaking with voters and campaigning; that he observed that she was well respected amongst the Liberal Party and in the community from this campaign because she never lost her temper, never used ugly language, and was always polite; and that he observed that while campaigning she managed to win the respect of people who were not Liberal voters because of her polite manner: CB:4, 117[31].
25. At this election Mr Pesutto lost his seat: CB:30, 327[3]. Mr Pesutto gave evidence that, during his time as Shadow Attorney-General (between December 2014 and December 2018), he was generally aware of Mrs Deeming, as becoming active in the Liberal Party of Australia (Victoria Division), but they did not have a lot to do with each other: CB:30, 330[14].

Councillor in Local Government

26. In 2020, Mrs Deeming successfully ran for local council: CB:4, 118[32]. She received the highest first preference vote (21.49%) of any Liberal running in the Western Metropolitan Region; almost double that of the next closest candidate (who had just been Mayor): CB:1, 4[19]; CB:4, 118[32].
27. Mrs Deeming served as a Councillor in the Local Government for the City of Melton from 2020 until 2022: CB:1, 4[20]. During this time, she used her position to seek to foster Liberal Party values in the political sphere, as a known Liberal Party member: CB:1, 4[21]. She networked with many people and organisations across the political spectrum, including to attempt to build a working political consensus around the protection and reinstatement of sex-based rights.
28. Mr Deeming gave unchallenged evidence of Mrs Deeming's prior good reputation during her time as a Councillor for the City of Melton:
 - (a) that he observed at Council meetings and in conversations with Councillors at public events that Mrs Deeming built genuine friendships across party lines and that she had a reputation amongst other Councillors, and in the general community in which he mixed, as someone who was fearless and relentlessly polite in standing up for what she thought was right and in the best interests of her residents: CB:4, 118[33];
 - (b) that her reputation at this time, amongst the people with whom he mixed, was also evident to him in that she was being contacted regularly in his presence by members of the public offering her support; CB:4, 118[33];
 - (c) that he mixed with and had conversations with Mrs Deeming's colleagues on the Council in the City of Melton when I attended Council events with her and that, amongst these Councillors, including many who were Labor or left-leaning, she had a reputation for being caring, competent, across the issues, and as a team player who would put aside party-political issues to work well as a team to deliver for their residents: CB:4, 119[40].

Entry into Parliament

Gorton

29. Senator Sarah Henderson, who had first met Mrs Deeming in her capacity as patron senator for the Federal seat of Gorton where Mrs Deeming was a local Liberal Party member, provided Mrs Deeming with a reference in March 2022 for her nomination for Liberal Party preselection for Gorton: CB:11, 189[7]. Mrs Deeming was pre-selected, but not endorsed because then Prime Minister Scott Morrison was concerned about her views on COVID vaccinations: T1123.27-47 and T1124.10-31 (Crozier). For the same election, Mr Morrison supported the endorsement of Katherine Deves: T1125.33-38 (Crozier). Ms Deves was supported by two former Prime Ministers: T717.46 (Pesutto).

Western Metropolitan Region

30. In 2022, Mrs Deeming ran for the number one spot on the Liberal Party ticket for the Western Metropolitan Region.
31. Mrs Deeming gave evidence that she won her preselection with support across all factions of the Liberal Party: CB:1, 4[22]. She felt honoured to be entrusted by the Liberal Party membership with representing the party in the Western Metropolitan Region. Mr Deeming gave unchallenged evidence that she won her preselection with wide support from the various factions of the Liberal Party, which he took to demonstrate her wide support and appeal in the Victorian Liberal Party: CB:4, 118[34].
32. During the endorsement process Mrs Deeming was opposed by Louise Staley (on behalf of the then Victorian Leader, Matthew Guy) and Michael Kroger who supported another candidate: T1192.29-34 (Staley). That opposition had nothing to do with Mrs Deeming's views on sex-based rights: T1194.1-5 (Staley). Ms Staley had been in Parliament since 2014 and was a long-time advocate for sex-based rights: T1190.40 – T1191.21 (Staley).
33. During the 2022 state election, Mrs Deeming campaigned tirelessly in all 11 Western Metropolitan Region seats during the two weeks of pre-polling: CB:1, 5[24]. She had a lot of people volunteer to campaign for her within the Western Metropolitan Region: CB:1, 5[25]. For years previously, in the western suburbs, many polling booths had been left unmanned for elections; or others were manned by people who had to work a full day shift. For this election, she was able to send volunteers to all seats and every booth in the Western

Metropolitan Region was manned for every single hour, for both the weeks of pre-poll and on election day. As far as Mrs Deeming is aware, this had never previously happened in the western suburbs. She also worked hard to ensure there were scrutineers in key seats, which to Mrs Deeming's knowledge was unheard of in the western suburbs. She was also able to attract donations to the Liberal Party for Western Metropolitan seats and many seats had more money to spend on their campaigns than they ever had before: CB:1, 5[26]. In addition, she organised a campaign launch for the Western Metropolitan Region which attracted over 450 attendees: CB: 1, 5[27]. To the best of Mrs Deeming's knowledge, this was the largest Liberal event that the region had ever seen and was larger than most (if not all) of the Liberal Party campaign launches that year.

34. Dr Matthew Bach had been in Parliament since 2020, occupying a casual vacancy left by a retiring member: T903.4-6 (Bach). Prior to the 2022 State Election, he had attended a campaign rally in Mrs Deeming's electorate, support her candidacy and the candidacy of others in the Western Metropolitan Region: T902.36-43.
35. Dr Bach had held various roles during his time as a Liberal member of the Victorian Parliament between 2020 and 2023. During that time, he had been concerned with the importance of the rights of parents to seek counsel, support and assistance from religious leaders (T901.44-46), he spoke about the importance of the ability of parents to seek counsel, support and assistance when faced with difficult questions concerning their children's sexual and gender identity (T902.1-5), he opposed laws that infringed the liberty of parents, medical professionals, religious leaders and teachers to assist consenting individuals in transition (T902.7-9), he did not consider that his statements or views equated to being anti-trans (T92.11-12), he did not consider that speaking out for the rights of certain groups, like parents and children, to mean or to equate with being bigoted towards other groups like trans people (T902.14-17), he did not think that arguing for safe spaces for women equated with being anti-trans (T902.19-21), as a general matter he did not think that protecting or seeking to protect the rights of one group equated with bigotry against another group (T902.23-27), he understood that in determining rights and obligations in laws there often has to be a balance of the rights and freedoms of different groups (T902.29-31), and he understood that in coming to that balance it may well have resulted in certain groups not being 100 per cent happy with the outcome (T902.33-34).

36. The 2022 Victorian state election result was generally bad for the Liberal Party despite there being a 2.30% two-party preferred swing to the Liberal/National Parties Coalition: CB:1, 5[28]. However, the results for the Western Metropolitan Region were an exception. All 11 seats in the region had a larger swing towards the Liberal Party than the state-wide average, and 8 of 11 seats had more than twice the swing towards the Liberal Party than the statewide average. Mrs Deeming gave unchallenged evidence that, due to the preference deals and multitude of parties in the Legislative Council, there was a 0.19% swing against the Liberal Party for the total Metropolitan Region (East, South, North and West) but that in the Western Metropolitan Region there was a swing to the Liberal Party of 3.65% which was the largest swing to the Liberal Party out of all the Victorian regions: CB:1, 5[29]. The 'below the line' first preference vote for Mrs Deeming was the second highest of the newly elected MPs, behind Renee Heath MP (Member for Eastern Victoria Region), and much higher than some established Liberal MLCs: CB:1, 5[29] (Deeming); CB:9, 167[4] (Heath). Significantly, the result in the Legislative Council was achieved despite former Liberal Party and sitting member Bernie Finn MP (Ex 249) running for the DLP and resulted in two Liberal Party members being elected for the Western Metropolitan Region for the first time since 2010 (Ex A239, A242).
37. On 26 November 2022, Mrs Deeming was elected as a member of the Victorian Parliament for the Western Metropolitan Region: CB:1, 6[30] (Deeming); CB:4, 118[34] (Mr Deeming).
38. Mrs Deeming was excited and honoured to have been elected, proud of all the hardworking lower house candidates in her region, and excited for the future of the Liberal Party in the western suburbs of Melbourne: CB:1, 6[30]. She thought she could now make an impact on the issues that mattered to her and her region. She was looking forward to being a part of the Victorian Parliamentary Liberal Party team, and to demonstrating all the ways she could contribute to the team. She was excited about what her political career might look like. She felt she was starting an exciting new chapter of her life. She was also honoured to find out she was the first Māori Australian Member of the Victorian Parliament.
39. In the same election, Mr Pesutto was elected to the seat of Hawthorn. There was a swing back to him of in the order of 2.3% which was on par with the state average for the Liberal Party: T588.13-17 (Pesutto). Louise Staley lost her seat of Ripon in the election: CB:41, 486[3].

Discussion between Mrs Deeming and Mr Pesutto (December 2022)

40. On 5 December 2022, Mrs Deeming and Mr Pesutto had a conversation over coffee at the Watergardens Hotel in Taylors Lake: CB:2, 60[10]. Mrs Deeming does not recall Mr Pesutto raising any concerns in relation to her views as alleged by Mr Pesutto in his affidavit: CB:2, 60[13]. Rather, she raised her views about sex-based rights and safeguards for women and children and her desire to work constructively with the Victorian Parliamentary Liberal Party team to convince them that the issue was important and a vote winner. She recalls telling him, in effect, that she realised these could be controversial issues but that she had massive grass roots support for her position on these issues and that she was good at speaking about them and winning people over in relation to them: CB:1, 6[32]. She told him she thought she had a reputation for being persuasive across political boundaries on these issues including because she always tried to express her views respectfully: CB:2, 60[13]. She told him he could ask her anything he wanted about her views, at any time, and they could discuss them. She said she was confident he would see she was a hard worker and a team player. In general, her recollection was that he was trying to gain her support and win her vote to be Leader of the Party. She understood his advice was that she could advocate on these issues provided she did so respectfully.
41. Following this conversation, Mrs Deeming sent Mr Pesutto, by text on 6 December 2022 a video of an excerpt from a Senate enquiry interaction that she had participated in with then Senator Janet Rice: CC:110. Mr Pesutto responded with a text saying "*Very calmly done Moira. Thanks too for your time and consideration yesterday. I know it's a tough decision and I appreciated the opportunity. Cheers, JP*": CC:110. Mrs Deeming understood his reference to 'a tough decision' to be a reference to the upcoming decision as to who to vote for Leader of the Party: CB:2, 62[15].

Mr Pesutto is voted Leader of the Victorian Liberal Party

42. On 8 December 2022, Mr Pesutto was voted Leader of the Victorian Liberal Party.
43. Mrs Deeming exchanged the following texts (CC:113) with Mr Pesutto in which he said she would 'be great in the Parliament':

Thu, 8 Dec at 2:09 pm

Congratulations on the win! I'm looking forward to working with you :)

Thu, 8 Dec at 10:39 pm

Likewise Moira. You'll be great in the Parliament. I'll touch base to organise a time when we can catch up as we discussed over coffee. I hope you enjoyed today. Cheers, JP

Upper House Whip (December 2022)

44. Mrs Deeming was voted the Liberal Party Whip in the Legislative Council in December 2022. Mr Pesutto had previously asked her to apply for the role: CB:1, 6[31]; CB:2, 62[16(b)]; T649.44-45 (Pesutto). Mr Pesutto gave evidence that he supported her candidacy and that, in doing so, he was expressing to the Parliamentary Party that he was 'happy to be associated with Mrs Deeming': T650.4-8. In accordance with the Victorian Parliamentary Liberal Party Constitution (**Constitution**), the role of Whip was filled by election, by a vote of members of the Parliamentary Party who are members of the Legislative Council: CB:21, 259[25]. She was unanimously voted to the position: CB:1, 6[8]. She was happy and honoured to have been voted Whip. This was particularly because she thought it indicated that she was supported by the Leadership Team including Mr Pesutto and by the members of the Legislative Council who had voted for her: CBL2, 63[16(c)]. The also position came with a substantial increase in her pay.
45. That she was unanimously voted to be Whip was an indication that she had a good reputation and was supported by Mr Pesutto and the Leadership Team. Mr Riordan gave evidence that the role of Whip 'is a prestigious role', and that the fact that Mrs Deeming was voted into the position indicated to him that she had the backing of the Leadership Team and the support of the majority of members of the Parliamentary Party who were members of the Legislative Council: CB:21, 259[25]. Warren Mundine – who has been involved in Australian politics since the 1990s (CB:17, 223-224[1]-[10]) was not surprised to learn that, upon her election to the Victorian Legislative Council in November 2022, Mrs Deeming was given 'a leadership role' as the Upper House Whip. In his experience, the role 'is a very powerful position which carries authority within the party' and that 'one is not appointed whip unless the party (and the party leader) thinks highly of the candidate in relation to their integrity and trustworthiness': CB:17, 225[15].

Mrs Deeming’s knowledge of and involvement with the Let Women Speak rally

46. In late 2022, Mrs Deeming learned that Ms Keen and Standing For Women (**SFW**) would be doing an international Let Women Speak (**LWS**) tour and that the Melbourne event would be hosted on 18 March 2023 (**LWS Rally**): CB:2, 69[40].

47. She gave evidence (CB:2, p69-70[41]):

My understanding at the time was that SFW was an organisation run by Ms Keen which advocates for the preservation and/or reinstatement of reasonable biological sex-based rights (such as female only bathrooms and changerooms) as well as against the irreversible and harmful medical transitioning practises used on gender non-conforming, autistic and gay minors. My understanding was that the organisation and its goals were mainstream and global, and supported by high profile members of every mainstream political party in the world. I was excited that SFW was coming to Australia. I thought it was an opportunity to shine light on these issues in Australia. They were, and are, issues about which I am passionate.

48. At some stage after this, Mrs Deeming reached out to Ms Keen to introduce herself and ask if there was anything she could do to help: CB:2, 70[42]. Ms Keen already had a Melbourne team organising the LWS Rally, but she suggested that Mrs Deeming get in contact with Ms Jones, one of the key organisers, to see if she could help her.

49. On 10 January 2023, Mrs Deeming messaged Ms Jones to see if she could ‘help out in the background in any way’: CB:2, 70[44(a)]. After that, Mrs Deeming played a part in the organisation of the LWS Rally although she was not one of the official organisers: CB:2, 74[45]. She gave evidence that she provided assistance to Ms Keen and Ms Jones, but that she did not consider herself an official ‘organiser’ of the LWS Rally.

January – February 2023

Coalition Conference (January 2023)

50. In January 2023, Mrs Deeming attended a two-day Coalition Conference (**January Coalition Conference**): CB:1, 8[39]. During a break in the conference, Mrs Deeming raised with Mr Pesutto, for a second time, her advocacy for sex-based rights. She told him she wanted to advocate for these issues, about which she felt strongly, but that she never wanted to do it in such a way as to cause trouble within the team. She asked if he would

meet with her in the near future to give her advice as to how she should advocate for these issues without dividing the team (as she had just witnessed in a disagreement between Mr Newbury and Mr Walsh about duck hunting). He agreed, but subsequently never contacted her to set up the meeting.

51. She also told Mr Pesutto that she planned on attending Ms Keen's LWS Rally in March 2023. He said he did not know who Ms Keen was and she encouraged him to look her up. She said it would be good if he met with her, and some of the other women, to hear their views. She understood from the discussion that he was open to this.
52. At some stage after this, Mrs Deeming had another conversation with Mr Pesutto in which she again raised that she planned on attending the LWS Rally and again invited him to meet Ms Keen, on 18 March 2023, privately before the LWS Rally, so he could hear her views and perspectives: CB:1, 8[40]. Mrs Deeming gave evidence that he agreed and asked her to book in the meeting with his office. She called his office to book in the meeting.
53. Mr Pesutto accepted in cross-examination that he had a conversation with Mrs Deeming in which she told him there were people coming to Melbourne and she may have mentioned Ms Keen and asked whether he could meet with them: T651.14-21 (Pesutto). He gave evidence that he did not agree to meet them but rather gave 'a non-committal' response to the effect of 'Just talk to my office': T651.23-26 (Pesutto).

Western Metropolitan Meet & Greet (4 February 2023)

54. Mrs Deeming and Mr Pesutto attended a 'Western Metropolitan Meet & Greet' event on 4 February 2023.
55. Mrs Deeming had arranged this event: CB:2, 63[17]. She had started arranging it in early 2023, as a thank you to the candidates and the communities within the western suburbs who had supported her and the Liberal Party in the lead up to the election in late 2022. She had planned on Warren Mundine AO being a main speaker, as he had been a supporter of hers and was extremely well liked and regarded in the western suburbs. She used some of the money she had raised during her campaign to put on the event for free. She sent special invitations to community leaders, and others, within the western suburbs to come and meet members of the Liberal Party. She invited Mr Pesutto to attend, as well as Greg Mirabella, the Liberal Party President. They both asked if they could be speakers, and she agreed.

56. On 20 January 2023, Mrs Deeming sent Mr Pesutto a proposed flier for the event for him to approve: CB:2, 63[18]. This indicates Mrs Pesutto thought she needed Mr Pesutto's approval to issue a Liberal Party press release. Mr Pesutto asked Mrs Deeming to take Mr Mundine's face off the flyer, Mrs Deeming did so and sent Mr Pesutto a revised flier, and he approved it: CB:2, 64[20].
57. The event was a success. Mrs Deeming gave evidence that the attendees were a very diverse group of people - for example, there were leaders from the Chinese community, Islamic communities, and Vietnamese communities: CB:2, 64[21]. She had met many of these people during the lead up to the election. She witnessed several of these people approach Mr Pesutto to praise her and say they supported her views about sex-based categories in law. He responded positively to them all - and she recalls on one occasion him saying words to the effect 'Yes, she's very good'. She did not observe him telling any of these people that he did not support her advocacy for sex-based legal safeguards for women and children. Mrs Deeming gave evidence that she had been given no indication, by this point in time, that Mr Pesutto apparently had any 'concerns' about her views or that he apparently considered her views fringe or inconsistent with his goal of modernizing the Victorian Liberal Party.
58. Mr Pesutto accepted in cross-examination that he approved the advertising for this event (T652.15), that Mrs Deeming sent her a first version of the flyer for the event which had a photograph of her, Mr Mundine and Mirabella on it (T652.17-22), and that he asked her to remove Mr Mundine from the flyer because he did not want to be pictured with him on the flyer because of his standpoint on the Voice (T652.24-28). He was at that time happy to be pictured with Mrs Deeming: T652.35. He had no concerns about being photographed with her: T652.46-47. He agreed he had a conversation with Mr Mundine about Mrs Deeming in positive terms: T653.18-22).

Mrs Deeming's maiden speech (21 February 2023)

59. Mrs Deeming delivered her maiden speech on 21 February 2023 (**Maiden Speech**): CB:1, 6[33].
60. Mr Deeming gave unchallenged evidence that he attended Mrs Deeming's Maiden Speech and saw the gallery was full of her supporters, and that it was 'as diverse a group of people as you could image - Christians, Muslims atheists, lesbians and gay men, and

detransitioners’, as well as members of the Liberal Party, Labor Party and the Greens: CB:4, 118[37].

61. There is an overwhelming weight of evidence to show that Mrs Deeming’s Maiden Speech was positively received –for example:
- (a) Ms Heath sent her supportive text saying ‘Seriously!!!! You!!!! Rock!!!!’ (CC:156 Ex A98) and ‘You were outstanding yesterday!!! I’m still on a high. My family want the link when you get it.’ (CC:174 Ex A107).
 - (b) Beverley McArthur MP sent her a text message (CC:157 Ex A99) saying ‘Wonderful speech. Congrats. It was fabulous’.
 - (c) Dr Bach sent her a text message (CC:158 Ex A59) that said ‘Amazing and powerful speech’.
 - (d) Chris Crewther MP sent her a text message (CC:159 Ex A100) saying ‘Well done on your maiden speech today. I was able to get to the last three-quarters of it. It was very strong, and said a lot of what many people are likely thinking, but are afraid to speak. Well done!’.
 - (e) Nick McGowan MP sent her a text message (CC:175 Ex A108) saying ‘superstar!’.
 - (f) Mrs Deeming’s staffer, Paul Lassig, sent her an email on 23 February 2023 saying ‘So many people have called into [sic] support you. Messages streaming in from everywhere’: CC:178 Ex A110).
 - (g) At the 19 March Meeting:
 - a. Mr Southwick said: ‘95% of that speech was amazing. Brilliant. Amazing. Unbelievable. It was one of the best speeches. And then you wanted to frame it that way, you have chosen to frame it that way’ (lines 781-783); and
 - b. Mr Pesutto described it as a ‘good speech’ (line 784).
 - (h) In his affidavit, Mr Pesutto gave evidence he thought ‘it started as a great speech’ but ‘then took a took when towards the end Mrs Deeming made’ what he described as ‘various controversial statements in relation to transgender people and sex-based rights’: CB:30, 332[29].

- (i) Georgie Crozier gave evidence that she ‘personally thought Moira’s speech was fine and congratulated her on it’: CB:34, 412[20].
- (j) Mrs Deeming gave evidence that:
 - i. she received many emails from members of the public which her staffers told her ‘were overwhelming positive’ and had been sent ‘by people across the political spectrum’: CB:1, 6[34] (some of these emails are in evidence at CC:184 (Ex.113));
 - ii. she received many messages, including on Facebook, which praised her speech and were otherwise supportive: CB:1, 6[35] (some of these messages are in evidence at CC:183 (Ex.112)); and
 - iii. her speech was posted online ‘and went viral’ and that she received positive comments and feedback online where videos of the speech had been uploaded: CB:1, 6[36] (for example, positive comments about Mrs Deeming’s maiden speech in response to a YouTube video about it are at CC:188 (Ex.114)).
- (k) Mrs Deeming posted a Facebook post about her speech on 22 February 2023 (CC:166 Ex A101) which received the hundreds of positive responses which are at CC:167 Ex A102.
- (l) Mrs Deeming published a tweet about her speech on 22 February 2023 (CC:168 Ex A103) which received at least the 87 positive responses which are at CC:169 Ex A104.
- (m) Ms Wong gave evidence that she posted a tweet with an excerpt of a recording of Mrs Deeming’s Maiden Speech, which received 2600 ‘likes’, was ‘reposted’ 750 times’, and received 77 ‘comments’ which were ‘overwhelmingly supportive’ of Mrs Deeming’: CB:29, 318-319[9]-[12]. A copy of a selection of those comments is at CC:171.
- (n) WFA also posted a Facebook post about Mrs Deeming’s Maiden Speech (CC:172 Ex A105), which received approximately 1300 comments which were positive towards Mrs Deeming (at CC:173 Ex A106).

Meeting between Ms Crozier, Mrs Deeming and Mr Pesutto – 23 February 2023

62. In the evening of 21 February 2023, after Mrs Deming’s maiden speech, Mr Deeming told her that her Aunt, Terry Gellert, had died: CB:2, 66[26]. She had been like a second mother to Mrs Deeming, and she was utterly devastated.
63. On 23 February 2023, Mrs Deeming had a meeting with Ms Crozier and Mr Pesutto (**23 February Meeting**).
64. Mrs Deeming recorded the 23 February Meeting. After she swore her second affidavit on 23 July 2024, she discovered the recording of the conversation as part of her second round of discovery on 8 August 2024. She gave evidence that she recorded the 23 February Meeting because she did not think she would be able to remember it properly and she thought her husband was going to ask her questions about it: T267.30-33.
65. The audio recording of the 23 February Meeting is in evidence (the recording is CC:179 Ex R73 and the transcript of the recording is Ex R72), so what was said is now not in dispute. Mr Pesutto was concerned about a press conference that he was holding later that day during which he believed he would be asked about Mrs Deeming’s maiden speech and some documents that had been produced under an FOI application. He was clearly agitated that these questions were going to distract from his planned topics for the press conference. Importantly, twice during the meeting, Mrs Deeming reminded Mr Pesutto that she had asked him for help in relation to her sex-based rights advocacy but he had been too busy to assist her: Ex.72: lines 116-120. Mrs Deeming pointed out during the meeting that she was not homophobic or transphobic and when asked about her views, Mr Pesutto should point that out: Ex R72: lines 56-65, lines 85-87. Mr Pesutto was apparently not concerned about the truth of the matter, but rather how it would be perceived: Ex R72: lines 24-248, 97-100.
66. Later that day, Mr Pesutto held a press conference: CC:180 Ex A11. Mr Pesutto was asked whether Mrs Deeming had his full support; he said she ‘is a member of the Parliamentary Party, and she’ll remain so’ (CC, 1324). He was asked whether he agreed with her views and he said ‘It depends on what views you’re talking about’ (CC:180, 1324; T655.21-22). Later, he was asked whether he condemns Mrs Deeming’s views and he said ‘I don’t agree with those views’ (CC:180, p1328). In response to questions in cross-examination to the effect that it was not true to say that he did not agree with all her views, Mr Pesutto said he does not agree with certain of Mrs Deeming’s views’ and sought to defend his response in

the press conference by saying (T656.15-20):

In the context of a press conference, I was conscious that there are some views I don't agree with in respect of Mrs Deeming, but I didn't want to get into a position where journalists then started cataloguing a whole host of positions and then asking me for my views on those positions. I was, to be quite frank, just trying to close down what had become a very difficult press conference.

67. Mrs Deeming was angry and disappointed because she felt that Mr Pesutto knew from the 23 February Meeting that she would consider a failure to defend her against accusations of hateful views to be an endorsement of the idea that she held those views: CB:2, 67[31]. He did not say, as she had implored him to, that she does not hold homophobic or transphobic views.

Promotion of LWS rally

68. On 8 March 2023, International Women's Day, Mrs Deeming gave a speech in Parliament in which she said she would be attending the LWS Rally and invited the Minister for Women, Natalie Hutchins, to attend too: CB:1, 7[37].
69. Dr Bach alleges in his affidavit that, as they were both leaving the Chamber following Mrs Deeming's speech, she approached him and said 'Sorry. That was the last time': CB:32, 392[9]. He alleged that he understood her comments 'to be an apology for stepping out of line with her speech in a way that was contrary to the interests and stated position of the Party'.
70. Mrs Deeming's evidence about this is that, as they were leaving the Chamber following her speech, she said to Dr Bach words to the effect of 'Don't worry; that's the last one for the year': CB:2, 68[36]. Mrs Deeming gave evidence that, when she said 'the last one for the year', she was referring to women's rights events. The context for this from her perspective was that, at the Party Room meeting that morning, James Newbury had announced that it was International Women's Day and encouraged everyone to do a Facebook post about it, Mrs McArthur asked 'But James, what is a woman?', and Mr Newbury lost his temper, rolled his eyes and threw his hands up, raised his voice, and swore repeatedly at Mrs McArthur including words to the effect 'For fuck's sake, don't do this to me Bev. Not today of all days'. Mrs Deeming was shocked to see Mr Newbury speak like this to a senior, female colleague, in front of the entire team, on International Women's Day. She was also

shocked that Mr Pesutto did not seek to intervene in any way. It was this context that was in her mind when she made her remarks to Dr Bach following her speech. She was not apologising 'for stepping out of line ... in a way that was contrary to the interests and stated position of the Party', as alleged by Dr Bach.

71. On 11 March 2023, Mrs Deeming published the following tweet (at CC:215 Ex R16) inviting Natalie Hutchins MP, Victoria's Minister for Women, 'to attend the 'Let Women Speak' listening post on the steps of Parliament' (**Mrs Deeming's 11 March Tweet**):



72. On 13 March 2023, Mr Pintos-Lopez commenced in his role as Mr Pesutto's Chief of Staff (CB:37, 440[9]) and Mr Johnston commenced in his role as Mr Pesutto's Director of Communications (CB:36, 429[5]).
73. On 14 March 2023, Mrs Deeming published the following tweet (at CC:243 Ex R15)) about the LWS Rally (**Mrs Deeming's 14 March Tweet**):



74. At the time, at least Dr Bach and Mr Southwick followed Mrs Deeming on Twitter: T915.39-41 (Bach); T1003.24-29 (Southwick). Dr Bach gave evidence that he thought ‘all members of the team would have followed each other on Twitter’ (T915.39-41). Mr Johnston may have been following Mrs Deeming on Twitter at the time (T1272.22-26).
75. On 15 March 2023 Mr Woff sent a WhatsApp message to Mr Johnston informing him that Mrs Deeming was attending the LWS rally: CC:246 Ex A64.
76. Dr Bach, Mr Southwick and Ms Crozier were each aware that Mrs Deeming was attending the LWS Rally and promoting it but did not know much about it:
- (a) Dr Bach gave evidence: ‘Prior to Saturday 18 March 2023, I had heard the name ‘Let Women Speak’ and knew generally that there was going to be a rally, but I did not know anything about the movement or the organisation, and I had never previously heard of Kellie Jay Keen’: CB:32, 392 at [12]. He also gave evidence he may have seen Mrs Deeming’s tweets about the LWS Rally but at any rate Mrs Deeming had spoken at least once in the Parliament about it so he had heard of it from her (T916.4-8 (Bach)).
 - (b) Mr Southwick gave evidence he was ‘vaguely aware of the fact a rally would take place at Parliament that weekend’ and that Mrs Deeming ‘was somehow involved’

but it was ‘not really on my radar as something that I ought to take notice of or had much information about’ and he ‘had no real knowledge of the speakers, attendees or the event generally’: CB:39, 454 at [6]. He Mrs Deeming mentioning the LWS Rally in the Party Room prior to 18 March 2023 (T1003.31-33 (Southwick)).

- (c) Ms Crozier gave evidence that prior to 18 March 2023 she was generally aware that Mrs Deeming was going to attend the LWS Rally but did not know the details – she recalls ‘thinking it was okay, and that she was just attending a rally’: CB:34, 412[23].

77. On 16 March 2023, Mr Pesutto' s office contacted Mrs Deeming's office to cancel the meeting which had been scheduled for Mr Pesutto to privately meet with Ms Keen on 18 March 2023: CB:1, 8[41]; CC:247 Ex R134. Mr Pesutto did not contact Mrs Deeming or excuse himself or explain why he would not be meeting Ms Keen on 18 March 2023.

78. Mrs Deeming understood that Mr Pesutto knew she would be attending the LWS Rally (CB:1, 8-10[43]) because:

- (a) she had told him about the LWS Rally and that she would be attending it, she had invited him to meet Ms Keen ahead of the LWS Rally, and he had agreed to meet Ms Keen;
- (b) she had given a speech in Parliament on 8 March 2023 in which she said she would be attending the LWS Rally;
- (c) she had posted the 11 March Tweet; and
- (d) she had posted the 14 March Tweet.

79. Mr Pesutto had never warned Mrs Deeming she should not attend the LWS Rally, or that she should not associate with Ms Keen or the speakers or organisers of the LWS Rally: CB:1, 10[44]. He never directed her, or gave any indication, that she should not do so. He never suggested that, if she did attend the LWS Rally or associate with Ms Keen or the speakers or organisers of the LWS Rally, he and the Leadership Team would consider that she had brought discredit upon the Parliamentary Liberal Party or that he would thereby seek to expel her from the Victorian Parliamentary Liberal Party.

18 March 2023

The LWS Rally

80. On 18 March 2023, Mrs Deeming attended the LWS Rally.
81. She met Ms Keen for the first time just prior to the LWS Rally: CB:2, 75 [50]. She picked up Ms Keen from her hotel and they parked in the Parliamentary carpark: CB:2, 75 [51]. They arrived on the steps of Parliament at about 12.10pm.
82. There were various groups in the vicinity of Parliament House at the same time.
83. One group of people was there to participate in the LWS Rally. Mrs Deeming gave evidence that she was struck by the diversity of the LWS group (CB:2, 75-76 [53]-[54]):

Although they were almost exclusively female, there were some men (including my husband). There were some families. There were Muslims, Christians, Atheists, and politicians across the political spectrum including members of the Greens, Labor, Libertarian and Liberal Parties. They were clearly of different ages and socioeconomic backgrounds. I was moved to see us all there together, uniting peacefully as a new type of political coalition - one that was breaking the old 'Left v Right' political tribalism for the sake of safeguarding sex-based rights for women and children.

We were all there for one simple purpose - to 'Let Women Speak'. We were essentially a group of ordinary women - grieving mothers, sexual assault survivors, feminists, lesbians, doctors, teachers, conscientious objectors, etc - all trying to advocate for sex-based rights and safeguards for women and children.

84. Notably, Mr Deeming gave unchallenged evidence that he observed that there was a number of different groups in front of Parliament on 18 March 2023, including 'a children's right's group': CB:4, 120 at [45(b)]. The Applicant submits that this was the Protect the Children rally (see paragraphs 90 to 93 below).
85. **Annexure A** to these submissions is the Applicant's chronological narrative of the LWS Rally on 18 March 2023. One of the primary sources for the Annexure A chronology is Mr Fernando. Mr Fernando swore an affidavit dated 27 May 2024 which is at CB:7. He was not cross-examined and therefore his evidence was unchallenged.
86. Shortly before the LWS Rally, on or around 16 or 17 March 2023, Mr Fernando became

aware that a number of protests were scheduled to take place in front of Parliament House on 18 March 2023: CB:7:146 Fernando [4]. He understood there would be ‘*a women’s rights rally*’ (i.e. the LWS Rally), ‘*a pro-trans protest organised by the Socialist Alternative*’, and ‘*a protest organised by the ‘Freedom Protesters’*’: CB:7:146 Fernando [4]. He decided to attend and record the groups outside Parliament House on 18 March 2023 because he ‘*was intrigued by the fact that such distinct and potentially large groups of protesters were likely to occupy the same space at the same time*’: CB:7:146 Fernando [8].

87. Mr Fernando arrived outside Parliament House at approximately 11.40am on 18 March 2023: CB:7:146 Fernando [9].
88. He made two audio-visual recordings: the first filmed using a high-definition handheld single-lens reflex camera which was mounted to a handheld camera mount (**Fernando HD Footage**); and the second filmed using an iPhone mounted on the same handheld camera mount which was directly streamed via Facebook Live to his Facebook page² (**Fernando Stream**): CB:7:147 Fernando [10]. Mr Fernando commenced recording the HD Footage at approximately 11.41am, and he commenced the Stream at approximately 11.42am. A copy of the Stream is at CC:254 and a copy of the HD Footage is at CC:255.
89. The other primary source for the Annexure A chronology is the audio-visual recording taken by Ms Keen which was livestreamed on and then subsequently uploaded to her YouTube page (**Keen Footage**), which is at CC:253 Ex A137).

Protect the Children rally

90. Prior to 18 March 2023, there were social media posts promoting a ‘Protect the Children’ rally (**PC Rally**) to be held in Hyde Park in Sydney starting at 10am and at the steps of Parliament House in Melbourne starting at midday. These included the following material:
 - (a) On 2 March 2023, a Twitter post promoting the Sydney rally (CC:206 Ex A116).
 - (b) On 4 March 2023, a Twitter post promoting the Melbourne rally (CC:208 Ex A117).
 - (c) On 12 March 2023, a Facebook post published by Bec Freedom (CC:218 Ex A118)) which includes a video (which is at CC:219 Ex A119)) of her talking about

² At <http://www.facebook.com/therealrukshan/>.

and promoting the Melbourne PC Rally in which she says the following (a transcript of this video is Ex.254):

March 18th. I've been asked by multiple people if Victoria will be holding its own protest. Yes, we will. Let me be clear. It is by no means a hate rally. That is not what it is about. Myself, along with many others have been asked to speak. I'll be talking about the oversexualisation of children and the damage that it is doing to them, as well as society. Share this around, far and wide, we need to have as many people on the streets as possible saying that we don't agree with this. We need to raise awareness, we need to make people see the damage that this is doing to our children. Hope to see you all there.

The 'protest' to which Ms Freedom is referring is plainly not the LWS Rally - including because: A) there is no mention in her post of women's rights or safe spaces, which was the primary focus of the LWS Rally; and b) Ms Freedom states that she 'with many others have been asked to speak', whereas the LWS Rally did not have special invited speakers but rather invited all female participants to speak and at any rate Ms Freedom did not ultimately speak at the LWS Rally (i.e. she is not one of the speakers recorded in the Keen Footage).

- (d) On 12 March 2023, a similar Instagram post by Ms Freedom (CC:220 Ex A120)). Other similar posts from Ms Freedom (or sharing Ms Freedom's posts) are at CC:221 Ex A121), CC:222 (Ex.122), CC:223 Ex A123), CC:233 Ex A126), CC:234 Ex A127), CC:237 Ex A46), CC:238 Ex A129), CC:239 Ex A130), CC:240 Ex A131), CC:245 Ex A133).
- (e) Of note is that the post at CC:223 Ex A123) is posted to the Facebook group of 'Melbourne Freedom Rally'. This document shows that this group describes itself as follows: 'Melbourne Freedom Rally is dedicated to the preservation of Freedom in Victoria. We stand for Individual Freedom, Economic Freedom, and Grass Roots Activism'. Given this context, the Applicant submits that, when Mr Fernando refers to 'Freedom Protesters' in his affidavit (see, for example, [4(a)], [7], [15], [17], [28], [31], [33] (the reference to the Nazis interacting with the Freedom protesters), [50] (the reference to the Nazis standing 'behind the Freedom Protesters, who now had displayed a banner that read 'PROTECT OUR CHILDREN')), [53]-[55]), he is likely to be referring to a group which included participants in the PC Rally.

- (f) On 13 March 2023, a Tik Tok post (CC:231 Ex A124)) promoting a ‘Grass Roots March’. Although referring to a ‘Grass Roots March’ instead of a ‘Protect the Children Rally’, the post includes an image which says ‘Save The Children’, and is likely about the same event. It states that the event starts at midday on 18 March 2023, the same time as the PC Rally.
- (g) On 15 March 2023, an Instagram post by ‘standfourchildren’ (CC:244 Ex A132)) promoting a rally described as ‘It’s Time To Stand United And Fight For The Future Of Our Children’ in Sydney.
- (h) On 17 March 2023, a Facebook post by Joel Jammal (CC:248 Ex A135)) promoting the PC Rally in Melbourne and Sydney.
- (i) A Facebook post by Reverend Fred Nile on 17 March 2023 (CC:249 Ex A136)) promoting the ‘It’s Time To Stand United And Fight For The Future Of Our Children’ rally in Sydney.

91. As set out in the Annexure A chronology, the Fernando Stream shows a bald man wearing a black t shirt and black shorts who can be heard saying ‘We are here to protect the children’ and ‘Today’s purpose is protecting children’. When the Nazis stand on the steps of Parliament and unfurl their banner (reading ‘Destroy Paedo Freaks’), they do so directly in front of a group of people – men and women – who are holding a sign saying ‘Protect Our Children’.



92. This group is plainly the PC Rally group. They are clearly from the footage, separate from and unrelated to the LWS Rally group.

93. It is far more likely that the Nazis were in the vicinity of Parliament House on 18 March

2023 to support the PC Rally (given what is shown in the footage, and given the apparent link between the Nazis' banner relating to paedophilia and the 'Protect Our Children' banner relating to the protection of children and because people in both groups were carrying Australian flags) than to support the LWS Rally. Also, the Nazis did not approach the perimeter of the LWS Rally that was protected by female marshals wearing visibility vests. They were only ever near them when being escorted from the precinct by police.

Other evidence about the LWS Rally

94. Other than Mrs Deeming's evidence, and the footage which has been tendered, there is also evidence from five people who attended the LWS Rally (as well as Rukshan Fernando who observed it).³ None of those witnesses were cross-examined.
95. Raewyn Clark attended (with her husband and daughter) because she thought 'it would be an opportunity to gather with like-minded people and be heard' and that, although she did not intend to and did not herself speak, she felt that her presence 'would lend support to the women's voices who would speak': CB:3, 108[9]. Angela Dennis attended because she 'had concerns about the contemporary gender movement and its impact on sex-based rights for women', which she thought 'was an issue that many others also had concerns about, but...rarely spoke out about in public', and because she thought the LWS Rally 'would provide a safe space within which women could speak about this topic': CB:5, p134-135[3]. Helen Papadimitriou attended because she wanted to share a space with other people with whom she could openly discuss issues relating to gender ideology: CB:19, 241[3].
96. The attendees were a diverse group.
- (a) Ms Clark gave the following evidence (CB:3, 108[14]):

Overall, I found it to be a really uplifting and wonderful occasion. It was a sunny, perfect day. It was encouraging to see so many people sharing their view that sex matters, that women are women, men are men, and you can't change sex. Often in the public discourse one feels silenced for having these views and it was encouraging to see so many others, normal people, women and men, of all ages who shared the same views. My daughter was amazed by the different political persuasions and viewpoints on display. There was a woman in a Greens t-shirt. There was a woman with a sign on

³ Andrew Deeming, Raewyn Clark, Angela Dennis, Susannah Oddi and Helen Papadimitriou.

behalf of left wing women. There was a man in a Donald Trump hat. There was a rainbow flag. There were people with religious messages on their shirt. And all these people had come together despite their different views to express a shared concern for the importance of women's sex-based rights.

- (b) Ms Dennis recalls they were predominantly 'left-wing women': CB:5, 135[4]. She spoke to someone who was de-transitioning.
- (c) Ms Oddi recalls a woman in a Greens t-shirt: CB:18, 233[12].
- (d) Ms Papadimitriou gave evidence that the LWS Rally (CC:19, 242[6]):

'was predominantly composed of women, though there were some men. There were mothers and grandmothers. There were lesbians. There were people from various different backgrounds. For example, I recall having a discussion with a woman who wore a hijab.'

- 97. Other politicians were also present at the LWS Rally including David Limbrick, a member of the Liberal Democrats (CB:5, 135[4]; CB:22, 263[9]).
- 98. Women took it in turn to give speeches. Ms Dennis listened to the speeches, many of which she found to be very moving: CB:5, 135[6].
- 99. Ms Papadimitriou saw four groups (which she perceived and observed at the time were all separate) (CC:19, 242[6]-[7]):
 - a. first, those attending the LWS Rally;
 - b. second, activists who had gathered opposite the LWS Rally and were protesting against the LWS Rally;
 - c. third, a group which Ms Papadimitriou describes as 'Freedom Protesters' (Ms Papadimitriou understands this group regularly holds protests every Saturday near Parliament House, and recalls that they 'were mostly older looking men' and that they were carrying Australian flags and a banner (although she could not recall what the banner said)); and
 - d. fourth, 'a small group of younger men who were wearing black t-shirts and black shorts' (who Ms Papadimitriou refers to in her affidavit as 'the Men').

100. Ms Clark also recalls a group of socialists with red flags: CB:3, 109[15].
101. Ms Papadimitriou did not pay much attention to any of the groups outside those at the LWS Rally. She says she ‘was there for the LWS Rally and wanted to listen to the women who were speaking as part of that rally’. At some point (she cannot recall precisely when), she climbed the first few steps of Parliament House and looked towards the north end of Spring Street where she saw the Nazis for the first and only time. Significantly, she could only see them from her vantage point on the steps but had not been able to see them from where had been positioned on ground level with the rest of the LWS group: CC:19, 242[8]. She could see the Nazis had a banner but could not see what it said from where she was. It was clear to her at the time that they were a totally distinct group from the LWS group: CC:19, 242[8]. She had no idea who the Men were: CC:19, 242[9]. All she could see was that they were wearing generic black clothes and had a banner. She did not even contemplate at the time that they were Nazis: CC:19, 242[9]. She does not recall anyone at the LWS Rally saying anything about the Men and did not see anyone from the LWS Rally interacting with them: CC:19, 242[10].
102. Ms Clark also did not know who the Men were at the time. She had not seen them arrive and was ‘a bit confused by them’ CB:3, 109[16]:

I did not see them on the stairs - this would have stood out to me because earlier on I had been asked to leave the stairs by the police. I saw they had a banner that said something about "paedos" and I assumed they were protesting against paedophiles. I did not see them salute. I didn't pay much attention to them. My recollection is that, during the event once Ms Keen arrived, I was generally either facing the LWS group to hear and see the women who were speaking or my back was to the LWS group because I was monitoring the pro trans protesters. I was distracted by the pro trans protesters because they kept getting closer to us and the police didn't seem to be holding them back. Based on my recollection, the Men would not have been prominent and visible to the majority of those who were at the LWS Rally. I didn't see the Men interacting with the LWS group. I didn't see any participants of the LWS Rally taking photos of or with the Men. I also didn't see the Men leaving. It never occurred to me at the time, while I was at the LWS Rally, that the men might be Nazis or Neo-Nazis.

103. Ms Dennis recalls seeing:
- (a) two groups ‘of pro-trans protesters’ – the first gathered on the north side of Spring Street who were carrying red flags, and the second gathered opposite the LWS Rally

(CB:5, 135[8(a)]);

- (b) a group ‘of anti-lockdown or anti-vax protesters’ – Ms Dennis did not pay much attention to this group but recalls ‘they were mostly older men, dressed in black’, who were ‘generally somewhat dishevelled’, and who ‘had a banner’ (CB:5, 135[8(b)]); and
- (c) at some point, ‘seemingly out of the blue’, ‘a group of men in black’ who marched past the LWS Rally down Spring Street (‘the Men’) (CB:5, p135-136[8(c)]). She was concerned for her safety when she saw them. She didn’t know who they were but assumed they were Antifa and heard other women at the LWS Rally saying they were Antifa. It did not occur to her that the Men were affiliated with Nazism. She does not recall seeing them salute, and does not recall seeing them wearing any Nazi insignia. Significantly, she gives the following evidence (CB:5, 136[8(c)]):

Even if I had seen them salute, I would not have known whether they were real Nazis because they did not have an appearance that I associated with Nazism - for example, they were all in black, and wearing shorts, rather the sorts of clothes (such as brownshirts or Nazi-style coats, and boots) that I would associate with Nazis. They marched past us and disappeared down Spring Street. I had not seen the Men prior to this. At the time, I was unsure as to what precisely had occurred as I was focusing on the speakers who were part of the LWS Rally. I could see the speakers were struggling to speak against the ambient sound of the various other groups that were outside Parliament House. I recall people regularly tried to close in to try and hear the speakers better. Most of the LWS attendees were trying to focus in on the speakers.

- 104. Ms Dennis did not observe anyone from the LWS Rally speaking to or engaging with any of the other groups: CB:5, 136[9].
- 105. Ms Oddi does not recall noticing the Men in front of Parliament House and did not even know they were near until she returned home and saw them on the news: CB:18, 232[5]. She does not recall observing that anyone at the LWS Rally was aware of or engaging with the other groups; they were looking towards and listening to the speakers: CB:18, 233[13]. She gave unchallenged evidence that the Men were not at Parliament House to support the LWS Rally and she did not see them participate in any way in the LWS Rally: CB:18, 237[27].

After the LWS Rally

106. The evidence suggests that those who attended the LWS Rally regarded it as a success. Ms Dennis, for example, gave the following evidence:

After the rally concluded, there was still a great feeling of excitement. I (and others who I spoke to at the LWS Rally) found it to be a good bonding experience as we were there to support each other and discuss sex-based rights. There was a sense of pride and accomplishment that the LWS Rally had proceeded and had been a success despite the large threatening counter protest presence. There was a feeling of pride in speaking, and not letting us be drowned out. The mood was very upbeat and excited. Overall, my impression was that people (including myself) left feeling it was a success. (CB:5, 136[10]).

107. Following the LWS Rally, there was a social event at the Sheraton Hotel. Mrs Deeming got the impression that people were positive and upbeat, and that the consensus was that the event had largely gone well: CB:2, 78[64]. Ms Dennis gave evidence that those who attended, including Ms Keen, discussed the LWS Rally, and the speeches, ‘with a great sense of excitement’, that ‘no one discussed the Men in any depth’, and that ‘no one suggested that they were Nazis or in any way affiliated with Nazism’ and that rather there ‘was a general sense of confusion about them’: CB:5, 136[11].

Call with David Southwick

108. At 2.20pm, David Southwick received a text message (CC:263) from Cam Mitchell who Mr Southwick described as ‘one of the guys that was doing some media contracting for us at the time’: T1007.13-16. Mr Mitchell had not been at the LWS Rally (T1007.18) and therefore had no first-hand knowledge of what had occurred. The photograph which he sent Mr Southwick showed the Nazis on the steps of Parliament; the LWS group is not visible.
109. Mr Southwick was concerned about the police’s failure to stop the neo-Nazis: T1012.3-13. He telephoned Mrs Deeming to find out what occurred. Mrs Deeming and Mr Southwick had slightly different recollections of the conversation. Mrs Deeming’s evidence is at CB:1, 11[47]-[51] and CB:2, 78-29[70]. Mr Southwick’s evidence is at CB:39, 455[10] CB:40 472-473[4]-[7].

110. Mr Southwick agreed to much of Mrs Deeming’s version in cross-examination: T1008-T1009. He also conceded that he had asked Mrs Deeming to get the organisers to distance themselves from the Nazis and he understood that the video that they later released (discussed below) was Mrs Deeming’s attempt to adhere to this request: T1092.22-34
111. The Court should find that:
- (a) Mrs Deeming told Mr Southwick that the men (i.e. the neo-Nazis, although she did not know they were neo-Nazis at the time) ‘had nothing to do with’ and were ‘nowhere near’ the LWS Rally and that ‘nobody would think they were with[the women at the LWS Rally] because they were just a group of racist men who had nothing to do with women or women’s rights’: CB:1, 11[47];
 - (b) Mr Southwick said Mrs Deeming needed Ms Keen ‘to publicly denounce the men and say they had nothing to do with the LWS Rally’ and Mrs Deeming said she ‘could ask her but could not force her to do so’ and warned him that Ms Keen ‘may find it patronising and offensive that a man was demanding she publicly state the obvious – that she was not responsible for, and did not approve of, the behaviour of horrible racist men in the vicinity of the rally’: CB:1, 11[48];
 - (c) Mrs Deeming told Mr Southwick that she and the other women at the LWS Rally ‘had been horrified and scared of these men’: CB:1, 11[49];
 - (d) Mr Southwick asked Mrs Deeming why she did not leave when they arrived and she said she did not know who they were and only saw the Nazi salute when they were already leaving: CB:1, 11[50];
 - (e) Mr Southwick suggested Mrs Deeming issue a press release to condemn the neo-Nazis, Mrs Deeming asked whether the Leadership Team could not put out a press release on behalf of every Liberal MP, and Mr Southwick said ‘that was not his job’: CB:1, 11[51]; and
 - (f) Mr Southwick said again that Mrs Deeming would have to get Ms Keen to publicly state that the neo-Nazis were not with the LWS Rally and she again said she would ask Ms Keen but could not force her: CB:1, 11[51].

David Southwick's tweet and press release

112. After speaking to Mrs Deeming, at 2:55pm Mr Southwick sent a text message to Brad Battin, then Shadow Police Minister: CC.264 Ex R182). This communication reflected that Mr Southwick's primary concern at the time was the inaction of the police in relation to the Nazis. He then spoke to Mr Battin and they agreed to issue a joint statement condemning the Nazis. Mr Southwick gave evidence that he drafted the statement with the help of the media office: T1010.14-15. He accepted that he could have asked the media office to assist Mrs Deeming to put out a statement of her own: T1010.17-35.
113. Mr Southwick then telephoned Mr Woff and had a brief conversation asking him to draft the press release. At 3:04pm Mr Woff sent a WhatsApp message to Mr Southwick with the draft press release: CC.265 Ex A138). Mr Woff's evidence that he drafted the press release should be preferred over Mr Southwick's evidence that he did, given the fact of this text message: T1010.14-15 (Southwick); T1173.4-28 (Woff).
114. At that time, the procedure for releasing press releases was a formal one, that was facilitated by the communications / media team. Mr Woff's evidence is that the media release went through a process – it went to the media team, and representatives from the policy team, for the proposed statement to be checked, then it would be elevated to the Director of Communications who has 'the final say', and then it would go to the MP for 'final approval', and after that the media team would send it out: T1170.24-41. The process was that the media team would work together with the MP in order for the media release to be published: T1170.43-44. This corroborates Mrs Deeming's evidence that she was unable – or at any rate thought she was unable - to issue a press release herself. The fact that Mr Southwick took no steps to assist Mrs Deeming with the press release is evidence supporting her version of their conversation.
115. Communications with Mr Woff and Mr Southwick were exchanged in which Mr Pesutto was copied: CC:266 Ex A139); CC:267 (Ex.140). Mr Johnston was involved given he had to approve the press release: T1173.40-42.

116. At 4:41pm Angie Jones posted the following tweet (CC.269 Ex R184):



(Jones Tweet).

117. At 4.42pm Mr Southwick posted the tweet condemning the Nazis: CC:270 Ex R185.

118. At 5.37pm on 18 March 2023, Josh Burns MP posted a tweet about what occurred (CC:271 Ex R186) which did not mention Mrs Deeming.

119. At 5:59pm the joint press release of Mr Southwick and Mr Battin was released to the media by Mr Woff: CC.274 Ex A141. Mr Southwick agreed none of the other 29 members of the Parliamentary Party issued a press release about the Nazis and he considered his joint press release with Mr Battin to be on behalf of the Party Room: T1026.34-43. Ms Crozier agreed that Mr Battin's and Mr Southwick's joint statement was put out not only in their personal capacities but on behalf of the Parliamentary Liberal team: T1142.9-13.

Mrs Deeming's 18 March Tweet

120. Meanwhile, after the Sheraton Hotel, Mrs Deeming joined Ms Keen in her hotel room (also with Ms Deves and Ms Jones): CB:2, 78[66]. They watched some of the livestream footage of the LWS Rally and Mrs Deeming saw, for the first time, that the Men had mounted the steps of Parliament House, on the other end of the steps from where the LWS Rally was, and had performed a Nazi salute: CB:2, 78[66]. They started speculating about who the Men were and why they were there. Mrs Deeming was confused by them. She gave the following evidence (CB:2, 78[66]):

They had no Nazi insignia but had done a Nazi salute. They didn't look like what I thought Nazis would look like. I didn't think their sign made sense for Nazis - it seemed to me to be inciting violence towards paedophiles and I didn't understand it. The presence of the Men didn't make sense to me. They seemed so out of place.

121. Mrs Deeming was shocked about the possibility there might be real Nazis in Melbourne in 2023: CB:2, 78[67]. Ms Keen said that Nazis were real - she said she had seen them when travelling through Europe, that they were utterly real and terrifying, and that 'people shouldn't underestimate their ability to dupe stupid young men into blaming other people's skin colour for their problems'. But she was also incredulous at the idea that the Men were real Nazis, because they seemed so clownish and frivolous. She wondered if they had been sent to discredit the women. Mrs Deeming had heard similar suggestions at the after event at the Sheraton Hotel. The possibility shocked her.
122. Mrs Deeming gave evidence that Ms Keen said that, whoever the Men were, they were vile and she didn't want them to steal the attention away from the brave women who had spoken at and supported the LWS Rally: CB:2, 78[68]. Following Mrs Deeming's conversation with Mr Southwick Mrs Deeming told Ms Keen of Mr Southwick's request: CB:1, 11[52]. Mrs Deeming gave the following evidence of her discussion with Ms Keen (CB:1, p11-12[52]-[53])

After my conversation with Mr Southwick, I told Ms Keen of Mr Southwick's request. I observed that she was angry and insulted that a rally raising the concerns of hundreds of women was at risk of being ignored and overshadowed by a small group of badly behaved men unaffiliated with the rally. She said she was disgusted that Mr Southwick would even demand such a thing - that he would in any way imply that the women at the LWS Rally were in any way responsible for or associated with those men. She was adamant that she did not want the behaviour of those men (which she thought was disgusting) overshadowing the LWS Rally or even mentioned in the same sentence as it. She was furious that what was otherwise a successful rally might be overshadowed, and kept saying how proud she was of all the women who had participated in and spoken at the rally and how unfair it was that people would focus on a tiny group of nasty men instead of listening to women speak.

I said I agreed with her, but asked her if we could find a way to make it clear those men had nothing to do with us in a way that was not degrading and did not deflect the focus from the purpose of the rally. She suggested we could do a livestream where we focused on the women and how brave they had been and what a success the day had been and that we could mention the idiot Nazis in passing as having been unwelcome intruders, but that she would not be issuing a grovelling media statement. I thanked her.

123. Nonetheless, although Ms Keen had suggested doing a livestream (which subsequently became the LWS post event video – see below), Mrs Deeming was also alarmed that Mr Southwick had suggested people might think the neo-Nazis had been with the LWS Rally (which had not even occurred to her as a possibility prior to that) and had been unwilling to put out a press release on behalf of all Liberals: CB:1, 12[54].

124. Mrs Deeming understood Ms Keen’s position, but also was happy to issue a statement disassociating herself from the neo-Nazis. However, as a new MP, she did not know how to issue a press release. Mrs Deeming gave the following evidence (CB:1, 12[54])

I rang one of my female staffers (I cannot recall which one) and asked her if she knew how to do a press release. She said she thought only the Party Leaders, Shadow Cabinet Ministers and the media office were authorised to do press releases under Liberal branding. She said that, in any event, she could not do it without a list of all the media email addresses to whom it would be sent, and that it would take hours to find them all. I asked her to put some words together for me in a draft.

125. It seems the ‘female staffer’ Mrs Deeming referred to was Renee Gorman. She sent Mrs Deeming a draft media release at 7.51pm on 18 March 2023 Ex A9). There is no evidence that Mrs Deeming drafted or provided any input into the draft media release.

126. At any rate, Mrs Deeming gave evidence that, while she was waiting for the draft, she reflected on the fact that Mr Southwick ‘had refused to do a team press release’, and had asked her to do one on her own, which previously she had understood she was not allowed to do: CB:1, 12[55]. She gave evidence this was ‘confusing and disturbing’ for her and she ‘began to feel very uneasy’. She gave evidence (CB:1, 12[55]):

I decided that the best I could do at such short notice, and without all the facts at hand, was a social media post. I decided to do it rather than wait for a draft from my staffer. As I still wasn't 100% sure whether the men were actual Nazis, I condemned them without labelling them as Nazis (as I was raised to do, because Nazism and the Holocaust are never to be spoken of lightly).

127. Accordingly, at 6.03pm on 18 March 2023, Mrs Deeming published the following tweet (CC:275 Ex A142)):



(Mrs Deeming’s 18 March Tweet)

128. Mr Southwick agreed in evidence that Mrs Deeming’s 18 March Tweet had each of the elements he wanted her to address: T1024.16 – T1026.32. His complaint was that it was not a formal press release and could have had more detail. The Court should reject this distinction as one of no substance.

Multicultural Dinner

129. Mr Pesutto, Ms Crozier and Mr Southwick attended the Multicultural Dinner that evening.
130. At 7:16pm Louise Staley sent a text to Mr Pesutto about the Nazis noting that Mrs Deeming had been present and suggesting her expulsion. Mr Pesutto agreed: CC:276 Ex R189. She linked an article in the Australian with pictured Mrs Deeming but did not name her or identify her as an MP: CC:773 Ex R27.
131. At 7:21pm Ms Staley also sent a text message to Mr Southwick to the same effect: Ex A259. From 7:30pm Mr Pesutto exchanged text messages with Mr Southwick about it: CC:278 Ex R191.
132. At 9:14pm Matthew Guy MP (former leader known for the “lobster with a mobster” scandal T1004.39-T1005.11 (Southwick)) sent a text message to Mr Pesutto and Mr Southwick (CC:279 Ex R192)) volunteering to move an expulsion motion against Mrs Deeming. Neither Mr Pesutto nor Mr Southwick could recall any conversation with Mr Guy about this: T675.25-34 and T676.10-11 (Pesutto); T1035.38-44 (Southwick). It is possible that Ms Staley had also sent him a text message: T1198.10-19 (Staley).
133. Mr Pesutto condemned the Nazis’ conduct during his speech at the dinner.

LWS post event video

134. Also that evening, Ms Keen – together with Mrs Deeming, Ms Deves and Ms Jones – filmed the livestream which Ms Keen had suggested, the livestream started at 7:46pm. This video was subsequently uploaded to YouTube at 8:13pm (**LWS post event video**), Ex A258. The LWS post event video is Ex R37, and a transcript of it is Ex R38.
135. Mr Southwick gave evidence that he felt that Mrs Deeming and the other participants in the LWS post event video ‘were trivialising the presence of Nazis at the Rally’ and ‘were not treating the Nazis as genuine Nazis’ and suggested that Mrs Deeming was ‘trivialising the presence of Nazis at Parliament House rather than condemning them or distancing herself from them’. In response to those allegations, Mrs Deeming’s evidence was (CB:2, 80[74]):

I do not accept that I 40rivialize40 the presence of the Nazis, and I certainly did not intend to 40rivialize their presence. But I was mindful of the views Ms Keen had expressed to me...to the effect that she did not want the LWS Rally to be overshadowed by a small group of disgraceful men who were unaffiliated with the rally. I agreed with this. She wanted to demonstrate that the men were unaffiliated with the LWS Rally and were unwelcome, in a way which did not undermine or overshadow the LWS Rally and its advocacy goals. I agreed with that sentiment. I did not want, by talking about the Nazis, to give them even more airtime and attention. I didn't want the focus to be on them. I thought that was Ex Actly what they would have wanted. I was supportive of Ms Keen trying to keep the focus on the purpose of the LWS Rally.

I also still did not know for sure, at this time, that the Men were actual ideological Nazis as opposed to ignorant and insulting fools. After the LWS Rally, at the catch up at the Sheraton Hotel, I had met with many of the women attendees, and I recall there was a lot of discussion about the protesters and the Men and there was lots of speculation as to who they were, including whether or not they were really Nazis. My recollection is that the women were not sure at that stage because, apart from the salute, nobody had seen any Nazi insignia and also the sign they were carrying was confusing and didn't make sense to us. Some people were suggesting they were Antifa, which is what I had originally thought. There was a general sense of confusion, and as I had been raised never to use the word 'Nazi' lightly, I instinctively held back from condemning the Men as actual ideological Nazis without being sure they really were Nazis...I instead opted to condemn their behaviour (including their sign) and their 'Nazi salute' until I could be sure.

At any rate, I don't agree that we didn't condemn them. Prior to the LWS post event video,

we had all been utterly contemptuous towards those men. We had mocked them and thought they were pathetic and offensive. I thought this was another brutal way of condemning and dismissing them at the same time, by showing contempt for them and treating them as unworthy of any attention. I had also already condemned their presence and their revolting Nazi salute – in my 18 March Tweet ([56] of my First Affidavit).

136. Other attendees who have given evidence also did not know whether the Men were Nazis. Ms Oddi gave evidence that she was aware of protests opposing previous LWS events organised by Antifa groups, antifascists and anarchists: CB:18, 238[28]. She thought the Men may have been Antifa: CB:18, 236[23]; 238[29].
137. Ms Keen’s attitude towards the neo-Nazis is consistent with Ms Oddi’s evidence that, in respect of protesters at previous LWS rallies, Ms Keen tended to choose ‘to mock and make fun of these protesters, rather than be intimidated’: CB:18, 238[30].

19 March 2023

Morning communications

138. At 7.13am on 19 March 2023, Ms Jones published the following tweet (CC:291 Ex A147)):



139. At 7:35am the communications team emailed its daily media summary to each member of the Parliamentary Liberal Party. There is one article in that summary referring to the conduct of the Nazis the day before: Ex A77. That article does not refer to or picture Mrs Deeming (Mrs Deeves was named): CC.349 Ex R33).

140. At 8:25am Mr Pesutto sent a text message to Mr Pintos-Lopez about meeting Mrs Deeming at 5pm: CC:292 Ex R30).
141. At 9.20am on 19 March 2023, Adam Bandt posted a tweet which did not refer to Mrs Deeming: CC:293 Ex R30).
142. At 9.45am on 19 March 2023, Mr Fernando published a tweet which embedded a montage of his HD Footage and stated (CB:7, 154[91(a)]; RF-1, p1):

Victoria Police stand between two groups that have come to hijack the #letwomenspeak women's rights rally in front of Parliament House in Melbourne. The agitators from extreme opposing ideological sides were locked in a stand-off for about 1 hour while guarded by police. At one point the police facilitated the group of men clad in black throwing sieg hall salutes to drift towards the women's right rally to hold a banner and make gestures to everyone from the steps of Parliament. They were then given a protective police guard when moving out of the Parliament precinct in front of another pro trans rights counter-protest that was trying to drown out the women's rights protest.

143. At 9:51am Mr Pintos-Lopez sent a text message to Mr Southwick (CC:296 Ex R199) and they subsequently had a telephone call to which Mr Pesutto was then joined: CB:36 [16]-[19]. Mr Pintos-Lopez gave the following advice (CB:37, p441 at [17]):

I said words to the effect to Mr Pesutto and Mr Southwick that we needed to manage any political and reputational implications for the Party of Mrs Deeming's attendance at the Rally and the potential connection between the Rally organisers and the neo-Nazis carefully and methodically. I said that we needed to slow down and not take any action precipitously and that we first needed to gather and understand all the relevant facts. I said words to the effect that any action that the Leadership Team might take needed to be measured and justified. I said that I did not believe that we should do anything other than gather information on the Sunday and that if any action was required, the reason to act needed to be explained to the party room and to the electorate, if necessary, during the week and prior to taking that action if any. I understood from what Mr Pesutto and Mr Southwick said following my giving them that advice that they wished to act that day rather than slowing down as I had advised.

144. At some point that morning Mr Southwick did some research but could not recall what he saw. He likely found and saw the LWS post event video at this point and the Jones Tweet.

145. At 10.03am on 19 March 2023, Mr Fernando published a further tweet which stated (CB:7, 154[91(b)]; CB:297):

In the chaos of multiple protests and counter protests many media and political pundits have taken the opportunity to infer a direct link between the women's rights group and the men clad in black due to the proximity of the groups as well as a shared opposition to other counter protesters. However having been able to observe what happened first hand it was obvious that both groups agitating had no respect for the women's rights rally, and were mostly there for their own ideological battle and promotion.

146. At 10:48am, Mr Pintos-Lopez sent a message to Mr Johnston asking him to draft a press release coming from Mrs Deeming and requesting that they have a short call about it: CB:37, p441 Pintos-Lopez [20]; CC.299 Ex R201. Neither witness recalled any telephone conversation and nor could either of them explain why no such draft statement was ever prepared: T1221.18-32 (Pintos-Lopez); T1275.16-T1276.6 (Johnston). It is clear that it became apparent during the day that no such statement would be necessary because Mr Pesutto had decided to press for Mrs Deeming's resignation or would otherwise move to expel her.

147. At 10.59am, Ms Jones published the following tweet (CC:300 Ex A150):



Angie Jones

@angijones

I have been denouncing Nazis more than ever in the last 24hrs despite them having nothing to do with us. It's changed absolutely nothing. It's just about making women bend & grovel for forgiveness for sins that aren't ours.

10:59 am · 19 Mar 23 · **71K** Views

174 Retweets **39** Quotes **1,103** Likes

148. At about 11am, Mrs Deeming received a call from Georgie Crozier MP to attend a meeting with the Leadership Team of the Parliamentary Liberal Party: CB:1, 13[58]. Mrs Deeming asked Ms Crozier what the meeting was about and she said it was about what happened at

the rally. Mrs Deeming said she did not think I could come in that day, because she had four children and it was not easy to organise a babysitter at such short notice. Ms Crozier said it was non-negotiable and that Mrs Deeming would be there whether she liked it or not. Mrs Deeming agreed to come. She felt she had no alternative as a new MP of just over 3 months. She asked who would be there and was told it would be the Leadership Team. Ms Crozier did not give Mrs Deeming any agenda of what would be discussed at the meeting and she did not offer for Mrs Deeming to bring any other support person such as another MP or other representative.

149. At 11.11am on 19 March 2023, Daniel Andrews published a tweet (CC:301) which did not refer to Mrs Deeming: CC:301 Ex R32.
150. At 11:40am the Age published an article about the conduct of the Nazis which included Mrs Deeming's 18 March Tweet and quotes from the joint statement by Mr Southwick and Mr Battin: Ex A64. This article evidences that her tweet was as effective a communication as the formal press release. It also demonstrates that her condemnation of the conduct of the Nazis and her distancing them from the LWS rally was public.
151. At 11.54am on 19 March 2023, Mr Fernando published a further tweet which stated (CB:7, p154-155[91(c)]; CC:302):

A women's rights rally #LetWomenSpeak in Melbourne was disrupted by multiple groups on Saturday afternoon.

The women's rights rally had a mix of individuals speaking, and the crowd listening was made up of a cross section of the community, including members of the LGBTQIA+ community.

Trans activists claiming the rally was hateful broke police lines multiple times to try and stop the women from speaking in their designated space, leading to multiple altercations with security and police.

On the outer edges of the rally, another group of agitators were in a stand-off, adding to the chaos on the streets of Melbourne."

152. Mr Fernando gave the following evidence as to why he published the tweets referred to at paragraphs 0, 143 and 146 above (CB:7, 155[92]):

I published the tweets...after seeing online commentary, particularly on social media, which suggested that the LWS Rally and the NSN were somehow connected. Based on my observations, this was not true. I recall seeing a tweet to this effect published by the then Premier of Victoria Daniel Andrews. As I had attended the LWS Rally, recorded footage of

it, and observed the events on that day, I felt it necessary, as an independent journalist who regularly reports on protests across Victoria, to accurately comment and report on my observations and audio-visual recordings of the LWS Rally. To me it was clear...that the various groups that gathered outside Parliament House on 18 March 2023 were not connected. This became particularly clear to me after seeing Sewell speak through his megaphone whilst the LWS Rally was ongoing and its attendees were speaking themselves...

Mr Pintos-Lopez's research

153. At some point after midday, Mr Pintos-Lopez attended the office and did research on the LWS Rally and its organisers. His evidence about this was wholly unsatisfactory. The only document annexed to his affidavit that he found was a copy of the article published in the National (**National Article**): CC:143 Ex R136). This is despite the fact that he clearly found Ms Keen's Wikipedia entry first and also the article about Ms Keen published in Pink News, which was the first footnote in his subsequent research record: CC.328 Ex A38. When questioned about what he found, what he saw and where he searched, he could not recall any specifics: see, e.g, T1223.32 – T1225.15.
154. In relation to the National Article, Mr Pintos-Lopez said in his affidavit that he research The National and 'formed the opinion that [it] was a credible mainstream publication': CB:37, 442 at [25]. He does not explain what research he undertook, and there is no record of any such research, and it is unclear how he formed this opinion or whether it was reasonable. In relation to whether it was 'mainstream', the Wikipedia entry (as at 14 March 2023) for The National, at CC:241 Ex A71) states that The National is a Scottish daily newspaper with a circulation of 3,555 as of 2023.
155. Mr Pintos-Lopez claims he found the Jones Tweet but could not recall what else he saw – giving evidence that he would have seen a number of tweets and might have seen tweets: T1234.18-38. Despite his evidence in his affidavit that he screenshotted the Jones Tweet on the Sunday (CB:37, 442 at [30]), it was plainly not screenshotted until Monday morning: T1234.40-1236.2.
156. There is no record in his first research document of the Jones Tweet or the LWS post event video: CC.328 Ex A38). It is likely that Mr Southwick drew his attention to those documents at their meeting later that afternoon. That is why those two documents were subsequently the only additions made to the second version of the research document: CC.331 Ex R78.

157. It is clear that Mr Southwick watched the LWS post event video before meeting with Mrs Deeming. It is not clear that anyone else watched the entire video before that meeting. It is more likely that they saw only a small extract from it, a matter which both Dr Bach and Ms Crozier conceded: T939.15-22 (Bach); T1147.15-23 (Crozier).
158. The Court should conclude that the research and information found by Mr Pintos-Lopez was limited to the material referred to in his research document, which was primarily a cut and paste from Ms Keen's Wikipedia page. The only other information they relied on was the Jones Tweet and the LWS post event video, both likely found by Mr Southwick. Also that Mrs Deeming had walked Ms Keen through the Parliamentary car park.

Mr Southwick's press conference

159. Just after midday, Mr Southwick attended a pre-arranged press conference at Caulfield at a Jewish community event where he intended to speak about the Victorian Auditor General: T1038.28-T1039.5. The audio recording of this press conference is Ex R70 and the transcript of the recording is Ex R69.
160. Mr Southwick raised the presence of the Nazis on the steps of Parliament on 18 March 2023 (line 21 of Ex R69). He condemned their conduct (lines 21-39). He expressed disappointment with the Police (lines 40-46). He was asked about Mrs Deeming's attendance (lines 54-56). His response was confusing but seemed to elide the presence of the 'protestors' and the presence of the Nazis:

55 U: A member of your own party, Moira Deeming, was there, she was supporting the anti-trans movement. The neo-Nazis say they were there aligned with that movement. What do you make of that, do you support her action?

60 DS: Yeah, look, I've had some initial discussions with Moira, and I'll have more. I'm told that many of those that were at the protest yesterday also felt very unsafe from these neo-Nazis. At the end of the day, I think those neo-Nazis, is one step - one thing about protesting, it's one thing about inciting hate and that's what those protestors were doing yesterday and quite frankly it's unacceptable and no one should be allowed to do what those neo-Nazis did yesterday on the steps of Parliament House.

161. He was then asked whether it was appropriate that a Liberal Party member 'was there supporting the anti-trans movement' (lines 63-64). His response started with the following: "Well, her views are not my views, and I don't think the views of the Liberal Party and most of mainstream Victoria (lines 65-66).
162. At 12:11pm on 19 March 2023, the *Daily Mail* published the words of Mrs Deeming's 18 March Tweet: CC:913, 3941.

Lunch at Mr Riordan's house

- 163. At 12:26pm Mr Pesutto recorded as an electronic note a draft press release announcing Mrs Deeming's resignation: CC.303 Ex A40).
- 164. Mr Riordan MP and his wife hosted about 200 people at a lunch at their house on 19 March 2023, many of them from the Liberal Party: CB:20, p247 Riordan [8]; T1145.1-4 (Crozier). Mr Pesutto and Ms Crozier attended as well as several other members of the Victorian Parliamentary Liberal Party including Brad Rowswell and Bev McArthur and federal politicians such as Dan Tehan and Sarah Henderson: CB:20, p247 Riordan [8].
- 165. During the lunch, Mr Riordan does not recall anyone saying anything about the LWS Rally or any concerns about Mrs Deeming: CB:20, p247-248[8]-[9]. Mr Pesutto agreed that no one at the event mentioned Mrs Deeming: T684.33-34. Ms Crozier could not recall anyone mentioning Mrs Deeming throughout the lunch: T1145.6-18.

Ms Jones' further tweets

- 166. At 12.32pm, Ms Jones posted a tweet (CC:287 Ex A144) providing context for the Jones Tweet:



- 167. At 12.40pm, Ms Jones posted the following further tweet (CC:289 Ex A145):



AJA statements

168. At approximately 1.50pm on 19 March 2023, the Australian Jewish Association (**AJA**) published a Facebook statement (CC:307 Ex A39) which: referred to Ms Keen as a ‘women’s advocate’, stated that the LWS movement ‘is concerned that biological men are undermining the integrity of women’s sport and spaces such as bathrooms’, stated that the Nazis had ‘invaded’ the LWS Rally and had likely seen ‘an opportunity to hijack the event for their own publicity’, and stated:

The Nazis were condemned by the women’s rally organisers – one contacted the AJA in distress explaining what had happened. The ‘Let Women Speak’ organisers had nothing to do with the Nazis.

It is shameful that some politicians and media are now trying to smear this women’s movement with the false accusation of involvement with Nazis.

169. At 2.04pm on 19 March 2023, Ms Deves posted a tweet which referred to the AJA’s statement and said: “Australian Jewish Association condemns the Nazis and defends #LetWomenSpeak organisers who had nothing to do with them’: CC:309 Ex R204).
170. At approximately 3.17pm on 19 March 2023, the AJA published a tweet which has been viewed over 307,000 times: CC:308, stating ‘AJA unreservedly condemns the Nazis who invaded the rally’.

Meeting of the Leadership Team

171. The meeting with Mrs Deeming was scheduled at 5pm, but as explained by Ms Crozier there was some confusion about the address and Mrs Deeming was over 20 minutes late: T1146.8-19. While waiting for Mrs Deeming, Ms Crozier, Mr Pesutto, Mr Southwick, and Dr Bach met Mr Pintos-Lopez and Mr Johnston.
172. On all accounts the meeting was half an hour or less. It is not clear on the evidence precisely what occurred or what was discussed, however it is apparent that Mr Pintos-Lopez gave an account to the others of information he found. Some of the witnesses have suggested that there was a printed document that had information on it (Bach 935.20-23; Crozier T1146.32-37), they were shown articles (Bach T936.2-8; Crozier T1146.44) or perhaps Mr Pintos-Lopez read information from his computer screen (Pintos-Lopez T1244.35-1145.28). Not such document has been produced.

173. The earliest document meeting the description was created by Mr Pintos-Lopez at 7:30pm that night: CC:328. Given the overlap between the content of that document and what Mr Pintos-Lopez later read out to Mrs Deeming, see below, the Court should find that the information in CC:328 is the extent of the information read out by Mr Pintos-Lopez in that pre-meeting in addition to providing the Pink News Article.
174. It is likely that Mr Southwick informed the others of Mrs Deeming’s 18 March Tweet, the Jones Tweet, the LWS post-event video, and Mrs Deeming taking Ms Keen through the Parliamentary carpark. It is also likely that at this time Mr Johnston found the Pauline Pantsdown Tweet or was directed to it by Mr Southwick and sent it to Mr Woff at 4:55pm: CC:314. The Court should conclude that it was only that short extract of the LWS post-event video that was shown to the attendees of the pre-meeting: Crozier T1148.7-9; Bach T939.17-20.
175. At the end of that pre-meeting, Mr Pesutto at 5:21pm sent a message to Mr Johnston (CC:316) with the text of a draft press release that he had prepared earlier that day, as set-out above. The Court should conclude that that communication occurred in the context of the Mr Pesutto informing the others that he would seek Mrs Deeming’s resignation or otherwise seek to expel her. After he left the pre-meeting Mr Johnston telephoned Mr Woff and told him *“Moira was gone, and he said it’s just a matter of how this plays out, referencing whether she would resign from the Parliamentary Liberal Party or whether John and – and the leadership team would move a motion to expel her.”*: T1177.20-23.
176. The evidence from the attendees of that meeting to the effect that it was discussed and contemplated that Mrs Deeming would be afforded the opportunity to issue a statement as a third option should not be accepted having regard to Mr Woff’s evidence and the documentary evidence including the recording of the subsequent meeting set-out below.

19 March Meeting

177. At 5:24pm on 19 March 2023, Mrs Deeming entered the meeting room with Ms Crozier. Mr Pesutto, Mr Southwick, Dr Bach and Mr Pintos-Lopez were waiting in the meeting room and Mr Southwick commenced secretly recording (his first recording of the 19 March Meeting is Ex A227). After thanking Mrs Deeming for coming in and informing her that the meeting was *“roughly pertaining to, obviously the events of yesterday”*, Mr Pesutto spoke for about three minutes with some general comments about what he was trying to do

as leader. At Exhibit A2 lines 16-18, Mr Pesutto said *“I should say people have views about gender identity across the board so nothing I’m saying is about whether you should or shouldn’t have those views, it’s not my place to judge, people will have those views.”* Mr Pesutto’s tone was measured but patronising for a person he would later in the same meeting describe as a person who has “been around politics for a while” (lines 79-80).

178. At about 3:00 (lines 26-28), Mr Pesutto referred to the arrival of the “Nazi protestors”. It is Mr Pesutto who equivocates whether the protestors were Nazis: *“I will call them Nazi protestors, but the whoever they are – I am going to call them that because that that frankly is how everybody see them, right, the media sees them.”* Mrs Deeming immediately said to Mr Pesutto (line 30) that she also thought the men who arrived were Nazis. Just a few minutes later in the meeting at about 10:30 (lines 110-115), Mrs Deeming again told the Leadership Team the men were Nazis:

So, I said that there was a horrible Nazi salute [a direct reference to what Mrs Deeming had posted the night before on X, CC:275], because I know you don’t just call people Nazis because that’s insulting to Jewish people, because I didn’t know who they were. And then later on the newspapers came out, apparently some of them didn’t have a mask on and they identified them, and they are Nazis. Terrible.

Again at lines 124 and 144 and 208 (‘actual Nazis’), Mrs Deeming unequivocally identified the men as Nazis. Unlike Mr Pesutto, Mrs Deeming never equivocated that the men were Nazis in the meeting.

179. Mr Pesutto admitted at line 39, *“if you look at the way the media is reporting [the rally] they are only referring to Katherine [Deves] and they haven’t talked about you yet”* but continued *“But having been around the oval a few times, that’s coming and that’s my feeling.”* From the perspective of both Mr Pesutto and Mrs Deeming (see lines 147-148) at this time, Mrs Deeming is not the focal point of mainstream media attention. Mr Pesutto, however, talked uninterrupted for almost four minutes about his concern that *“we are associated with Nazis”* (line 51).
180. At lines 64ff, Mr Pesutto concludes his opening remarks, telling Mrs Deeming: *“I’m keen to know factually the presence of the Nazis and whether there was any connections there before or after, and what happens when you saw them arrive, because that’s going to come out when they start digging on this stuff.”* Mr Pesutto did not ask Mrs Deeming how she wanted to “fix” the situation or stress the need for her to do anything.

181. Mr Pesutto suggests to Mrs Deeming that he would like her to tell him details about the rally he does not know. But in paragraph [73] of his first affidavit (CB:30) he gave evidence that before he met Mrs Deeming he already knew about her involvement in the organisation and promotion of the rally, he knew about the neo-Nazis turning up and performing the Nazi salute and holding the banner, was told that Mrs Deeming had failed to leave the rally when the neo-Nazis arrived, and watched a video of Mrs Deeming, Ms Keen and Ms Jones. Mr Pesutto's evidence in [73] is either incorrect or he is deliberately trying to bait her to say something contrary to the information he already had about the rally and its organisers (see also [70]).
182. At lines 67-78, Mrs Deeming responded to Mr Pesutto's questions about the rally. She commences "*Very obviously I'm not a Nazi and I don't support Nazis*" and says that everybody thought they were the other people that had gotten through the Police lines. At line 79, Mr Pesutto said: "*I guess, one of the issues, Moira, is that – I mean you've been around politics a while – you know that when you run protests like this.*" Mrs Deeming said she "*didn't run the protest*": line 81. Mr Pesutto questions her about that denial and Mrs Deeming clarifies that she was involved in the organisation at the end and was not the main organiser, who was "*Angie Jones who is a Jewish woman*": lines 91-93. At lines 95-105, Mrs Deeming explained to Mr Pesutto why to her mind she and the organisers could not be blamed for "*some random horrible people turning up that had no insignia, I had no ability to know who they were until they put their hand up, which was when they were being escorted off the premises as far as we could see*".
183. At lines 106-108, Mr Pesutto said Mrs Deeming should have known that in participating in protests like this people like Thomas Sewell would attend. There is an unfair suggestion from what Mr Pesutto has said that Mrs Deeming should know that advocacy for sex-based rights will attract Nazis like Mr Sewell. Mrs Deeming at lines 109-137 questioned why they would expect a Nazi group to turn up to the Standing for Women rally. Mrs Deeming said that one of their leaders who runs XYZ has "*this whole post*" about how he did not come to support the women but was there to protest both sides because Standing for Women is "pro lesbian atheist". Mrs Deeming could not recall under cross-examination what she had read or heard in relation to XYZ, although she did say she thought her reference in the 19 March Meeting was to 'something I saw on Facebook or Twitter' (T242.10-11) and that she thought she had seen 'a post' (T242.22).

184. Exhibit A257 is a post from an XYZ twitter account shortly after the events on 18 March 2023 that said:

Its good that NSN joined the protest. The rightful pushback against groomer propaganda cannot be allowed to be dominated by radical feminist atheists who will merely reinforce the gains of cultural Marxism.

185. Exhibit A61 is an article published by XYZ on 18 March 2023 that said:

Speaking plainly, grassroots movements which initially oppose Globohomo tend to be infiltrated and directed by, if not jews, then at least atheist radical feminists with funny sounding hyphenated surnames [presumably Kellie-Jay Keen-Minshull named earlier and later in the article], who are at heart liberals who merely want to turn back the clock of Liberalism to 1993 or the 70's or something.

Whether it is Reclaim Australia, the anti-lockdown and anti-vax movements, or probiological reality protests, the goal is always the same:

- Prevent White people from organising and coalescing into a movement which genuinely advocates for our own interests.*
- Misdirecting them to reinforce the progress of Liberalism and maintain support for Israel.*

Thomas Sewell's organisation by its very nature is immune to this standard playbook, hence its effectiveness.

Both the groomer ideology of "trans" activists and the lesbianism promoted by Kellie-Jay Keen-Minshull are forms of Liberalism directed by the Globohomo regime at White people in order to undermine White families, birthrates and social cohesion.

186. The public claims from XYZ are consistent with the violent rhetoric from Sewell on 18 March 2023 (see [Annexure A](#)) with a megaphone on the steps of Parliament while Ms Keen and the women were attempting to speak at the LWS Rally.

187. The respondent has tendered an interview Sewell conducted on 20 March 2023 (Exhibit R525), after most of the matters complained of, for some unknown purpose. In that interview Sewell first identified a group of ‘conservatives, freedom rally people’ [lines 287-288] as distinct from a group he described as “TERFs” (“*there were even TERFs there, there was like a - I don’t know what it’s called – trans-exclusionary radical feminist, something*”) - an obvious reference to the LWS Rally. Later in the interview Sewell again distinguished between “*the sort of hodge podge of different ideologies and beliefs, but under a common banner that they don’t like the tranny agenda, they don’t like the grooming kids agenda, they don’t like the pronouns at schools, that’s kinda what they were talking about*”

[a reference to the conservatives and freedom rally people] and the TERFs “*going on about the transgender bathrooms and all this sort of stuff as well and sooking about men beating up women in sports.*” That post-event interview and the publications by XYZ are not probative in any way of the events on 18 March 2023 or the reasons why Sewell and his cronies attended Parliament on that day.

188. There is nothing in those documents, however, that suggests the Nazis were there to support rather than hijack the agendas of the other rallies, c.f. the reference to “ideological barrier”. The documents and recording otherwise could only be probative evidence the dramatic ideological divide between Mr Sewell, the NSN, neo-Nazi or Nazi sympathisers and Standing for Women, Let Women Speak rallies, Ms Keen, Ms Jones, and Mrs Deeming. The events on that day as outlined in Annexure A are established by the video evidence of the different groups within the Police barrier, the distinct advertising and advertised agendas for those rallies in the prior weeks, and how the Nazis vilely perpetuated their own nefarious agenda on that day to the detriment of almost all the other groups and persons there.
189. At lines 141-160, Mrs Deeming said that this would only look bad if Mr Pesutto did not shut this down and say it is ridiculous. She said that everyone had said the Nazis were not invited and condemned them. Mrs Deeming acknowledged that it was unfortunate the events on 18 March 2023 came after her Maiden Speech and International Women’s Day – a reference to her sex-based rights advocacy. The only reasonable inference from the transcript is that Mrs Deeming does not understand how she or Standing for Women could be responsible for the Nazis (Standing for Women supporters comprising Jews, Muslims, Christians, Atheists, Labor people, Liberal people, David Limbrick MP, Senator Jacinta Price, Senator Claire Chandler).
190. At lines 163-165, Mr Pesutto, apparently recognising Mrs Deeming’s concerns about the linkage to sex-based rights, again claims that he is not concerned about the substantive issue Mrs Deeming “*feels strongly about*”. At lines 164-165, Mr Pesutto said: “*This is about Nazi links and perceived...*”. Mrs Deeming understandably reacts quickly and strongly to the suggestion of Nazi links at line 166: “*Are you accusing me of actual Nazi links?*”.
191. Mr Pesutto said at lines 167-169: “*To the protest ... and the people you were working with*”. Mrs Deeming is obviously confused at line 170 that Mr Pesutto is still referring to the Nazis attendance at the rally. Mr Pesutto said at lines 171-172: “*So okay, so – perhaps I can phrase it this way. Can you assure us that nobody you’ve worked with has any sympathies*

or you know liaisons with Nazi groups?” At lines 175-188, Mrs Deeming emphatically rejects any connection with Nazis or the Nazis who attended the rally commencing: *“Yes like obviously I’m not a mind reader maybe there’s some secret Nazis somewhere but absolutely no indication at all anywhere”*.

192. At lines 189-192, Mr Pesutto raises Mrs Deeming being presented as anti-LGBTI and at lines 201-203 he complains to Mrs Deeming that participation in an event “like that” involves the whole Liberal team and party and that he was getting messages from people who were concerned. At lines 204, Mrs Deeming asked Mr Pesutto if he is talking just about the Nazis or something else. Mr Pesutto again at lines 205-207 claims that his concern is not about anything else.

193. At lines 210-211, Mr Pesutto asks Mrs Deeming if she knew whether the people she was working with or associating with did not have *“Nazi sympathies”*. This is the second time Mr Pesutto suggested that someone Mrs Deeming worked with had Nazi sympathies and might therefore be connected to the Nazis who attended the LWS Rally. It is plain at this point that Mr Pesutto in asking this question was referring to Ms Keen and Ms Jones and that his ultimate accusation against them is that they are Nazis or Nazi sympathisers. This is notwithstanding the fact that he conceded under cross-examination that he could not describe his concerns about Ms Jones as Nazi *“sympathies”* (T701.8) and the evidence he had against Ms Keen was scant and circumstantial.

194. Mrs Deeming clearly understood Mr Pesutto’s question to be about the women she worked with in the sex-based rights movement and responded at lines 212-214:

I mean they’re from the left. And they’re Jews, and they’re lesbians and they’re atheists and they’re radical feminists. That’s - and they’ve never said anything, anything that could possibly give me that impression.

195. At lines 215-219, Mr Pesutto, despite what he said at lines 205, 207 that he was not talking about anything else said:

I mean, this does affect the whole team and I’m not going to sugarcoat there is a mounting concern about whether your passion for this issue, which I do not doubt and I do not ask you to relinquish. I’m not saying you should not be passionate about this issue. I need to make that clear, but there is mounting concern, which I principally share as the leader that this is not going to stop and this is the second ...

196. Mr Pesutto is clearly referring to the sex-based rights issue upon which Mrs Deeming campaigned and was elected. Mr Pesutto was, on an objective assessment, eliding the two issues and speaking with a forked tongue in the meeting to his real concerns moving forward. He had no answer to her defence when it comes to what happened at the rally, save her involvement in events like the LWS, even though he keeps saying it is not relevant, her views and passion about safe spaces for women and sex based rights. Significantly, these concerns are not just expressed towards specific people such as Ms Keen or Ms Jones but sex-based rights advocacy in general. Mrs Deeming at lines 222-223 appears understandably confused at why there is a concern about her if this meeting is not also about her sex-based rights advocacy because there is no evidence linking her to the Nazis.
197. At lines 230-234, Mr Pesutto said: “*Well, we’re aware that others are searching through social media, media ... we known Labor is, we’ve done a bit. We’ve found a little but not everything. I might ask, Rod, do you want to go through some stuff you have found?*” At lines 237-250, Mr Pintos-Lopez reads out the information from CC:328, or an earlier version. There is no suggestion in the recording that Mr Pintos-Lopez is pausing or reading at a pace to show images:

So, I think this probably took me 15 to 20 minutes to find. In October 2019, Keen 238 appeared in a video interview with Jean-François Gariépy, a far-right YouTuber who advocates for a white ethno-state and has made videos with neo-Nazis Richard Spencer and Mark Collett, as well as former Ku Klux Klan leader David Duke. She's also given an interview to Soldiers of Christ Online, a far-right network. Then in terms of white supremacy allegations, one incident came after she took a selfie with Hans Jorgen Johansen, a Norwegian neo-Nazi who was probed by police after his comments against Jews and denial of the Holocaust. Parker was also accused of using a Barbie doll wearing a Nazi uniform as her profile picture on the social media site Spinster. Standing for Women's protest in Newcastle on January 16, she sparked a controversy after one of the speakers, Lisa Morgan, quoted Adolf Hitler to attack trans rights. This is the quote: “Do you know the big lie? The big lie was first described by Adolf Hitler in Mein Kampf. The Big Lie is that trans women are women”, Morgan told the people at the Parker organised demonstration.

198. The most probable inference from lines 252-256 (and what Mr Pesutto said at lines 210-211) is that Mr Pintos-Lopez was presenting the information to Mrs Deeming to establish that Ms Keen supported Nazis, was a Nazi sympathiser or a Nazi. At line 252, Mr Pintos Lopez in reference to Ms Morgan said: “*I think she’s supporting – what she is saying is that*

it is a big lie just as Hitler described it". Mr Southwick adds "*The Holocaust*" at line 254. It is unclear if Mr Southwick is claiming that Ms Morgan said the Holocaust was the "big lie" or Ms Morgan was in effect supporting the Holocaust. Whichever of those only two available interpretations (Holocaust denial or support), it was an attempt at a damning indictment of Ms Morgan and Ms Keen beyond mere association or inappropriate analogies. Mrs Deeming, on the other hand, understood the reference to Hitler to be a condemnation: lines 251, 255.

199. Between lines 257-285, Mr Pintos-Lopez read the Jones tweet and Mrs Deeming attempted to understand what it meant. When she said she did not understand what Ms Jones was saying at line 259, first Mr Southwick at lines 262ff said "*That's - what she's saying is really offensive*" and then Mr Pesutto at line 276ff said "*So the paedo filth line is so odious across the LGBTP*", challenging her confusion and understanding of the tweet. At line 284, Mrs Deeming said "*I have a serious question – who's she – who are you saying she's talking about?*". At lines 286, Mr Pesutto asks Mr Pintos-Lopez to read out the tweet again, illustrating again that they are not showing her anything. At line 291, Mrs Deeming asked "*Who's she tweeting it to*". Mr Pesutto, Mr Pintos-Lopez and Ms Crozier either misunderstood the question or refused to answer by stating it was a tweet to everyone. Mrs Deeming clearly understood the tweet was a response to someone and may have context, which it does: see CC:291, 304, 305. At line 297, after she did not get a proper response to her question, Mrs Deeming said: "*Yeah, I genuinely – it sounds like she's condemning paedophilia*". At line 299 she said: "*I'm seriously confused.*"

200. At lines 303ff, Mr Pesutto said: "*So the entire LGBTI community will see that, and they – they will interpret that to mean, that if you're same sex attracted, if you're bi, if you are, whatever else you might be, you are paedo filth and that ... is untenable*". At line 309, Dr Bach said: "*Clearly, Moira, it does mean*". At line 310, Mr Pesutto said: "*That's what she's saying*". At line 313, Dr Bach said: "*That's what it says*". At line 314, Mr Pesutto said: "*That's what it's saying*". Despite her obvious genuine confusion, Mrs Deeming does not fight back but is conciliatory and understanding at lines 315-316:

Yeah I see what you're saying. I know her, I don't think that's what she was saying at all.

201. Mrs Deeming continued at lines 319-321: "*No no no, I see that from your point of view because you don't know her, I just genuinely didn't understand who you thought she was taking about. I think she's [in her head] talking to trans rights activists over there.*"

202. At line 325, Ms Crozier piled on and said: *“It’s very obvious what she was saying, you can’t get away from it, you just can’t.”* Both Ms Crozier, Dr Bach and Mr Pesutto are unfairly attacking Mrs Deeming because she interpreted the tweet in its natural and ordinary meaning. Mr Southwick who attacked her first apparently was not concerned, as opposed to those three, that the tweet was offensive to the LGBTI community, but that it was offensive to the Jewish community to suggest you should agree with something because Nazis agree with it. The outrage from all four is contradictory, irrational, and suggests a common unspoken agenda that would result in Mrs Deeming’s resignation.
203. At line 332-333, about 26 minutes, in Mrs Deeming was being completely conciliatory: *“I’m not disputing that, I just wouldn’t have interpreted that the way that you have, but I see that you would.”*
204. It is extraordinary that each attendee appears to have expected that Mrs Deeming would conclude from a single tweet, which they refused to give context, that Ms Jones, a person known to Mrs Deeming to be a gay rights advocate, was seeking to make a slur against all LGBTI people that they were paedophiles.
205. From line 334ff, Mr Southwick redirected the discussion back to Ms Keen. At line 334, he said *“What about Posie Parker’s connections with all these people she’s had selfies with and photos with all of these Nazis, white supremacists.”* At line 345ff, Mrs Deeming said: *“Are you calling me a Nazi? I mean, I just can’t help but be like, I don’t know, I would have to go through each of those things and work out what did she say, what did she really mean. I don’t know, I would have to go through those, because as far as I can see, it’s a Standing for Women event that advocates for a certain set of – well it’s just a listening post really”.* (Mrs Deeming had also described the LWS Rally as a ‘listening post’ in her tweet on 11 March 2023.)
206. At lines 350-361, both Crozier and Southwick were questioning Mrs Deeming about her connections to Ms Keen, Ms Jones and Standing for Women. At lines 359-363, Mr Southwick said: *“But the issue on top of all that is it’s even more than just turning up, you’ve actually had someone ... who has now a known history of being connected to white supremacists, supremacists and you’ve escorted her through the back of Parliament.”*

207. Mrs Deeming was obviously confused and said at lines 364-368:

I just don't know what that even means, like ... call me Nazi adjacent, what does connected to – I genuinely would have to go back through because she doesn't seem like that to me, she's never said – I mean I don't know her very well, but there's nothing like that on Standing for Women -.

208. At lines 369-404, after having talked about Ms Keen's "known history", Mr Southwick said at lines 375ff: "It's a lot more than just turning up on the on the steps and having a say. It's effectively walking the organiser through the back of Parliament. And then who has a history of association with these white supremacist neo-Nazis, and then we have neo-Nazis also turn up. Thomas Sewell, who is a well-known neo-Nazi, has put out a statement that effectively said, you know, "yes, we stood with them, because we need to get rid of these paedophiles". Mr Southwick elided Mr Sewell and the Nazis with Ms Keen and Ms Jones at lines 391-393: "I understand you didn't attract those people and didn't set out to attract those people [the Nazis], but you are now connected right in the middle of these people and for you to then go out and have a little champagne with those people."

209. At line 397, Mrs Deeming was confused because Mr Southwick effectively said she had champagne with Nazis. At lines 399, 401, Ms Crozier said "They're both ... because they're connected." Both Ms Crozier and Mr Southwick are telling Mrs Deeming that Ms Keen and Ms Jones are interchangeably connected with the Nazis.

210. At line 402-404, Mr Southwick criticised Mrs Deeming for not getting out a statement. Ms Crozier from line 414 attacked Mrs Deeming for listening to Mr Anthony Mitchell. The advice Mrs Deeming followed, however, was Parliamentary Liberal Party practice for formal statements to be approved and distributed by the Leader's office [T1169.42-46 and T1170.20-41 (Woff)]. At line 424-429, Mrs Deeming said:

Yeah, but I spoke to you and I thought – that's what I was doing condemning it. ... [Mr Southwick: Where?] In that clip I was saying you know, "we don't know they were, they came along to – " look, I, at that stage I don't think I'd seen that they had identified someone. ... I went straight out, you know.

211. At lines 110-111, Mrs Deeming had already referred in the meeting to the content of her tweet issued at 6:03pm on 18 March 2023 condemning the "horrible Nazis salute" of the Nazi protestors, eventually viewed over 267,000 times.

212. At line 429 - following the criticism from Mr Southwick and Ms Crozier about the Nazis, Ms Jones and Ms Keen, and Mrs Deeming's apparent failure to put out a statement - Mrs Deeming said:

“Anyway, look, I’m happy to condemn everything. I’m not arguing. Like, I’m not defending them. Happy to condemn them, happy to do that, eager to do that. That’s fine.”

213. Mr Pesutto did not immediately embrace her offer but said: *“We’ll have to think that through, I don’t know.”* Objectively assessed, the entire purpose of this meeting to this point was to force Mrs Deeming to resign. That was the easiest option for the Leadership Team. Each of the people who spoke against Mrs Deeming presented Ms Jones and Ms Keen as loathsome Nazis or at least Nazi sympathisers who were directly connected with and responsible for the attendance of Sewell and the Nazis. There was no justification for those accusations on the limited information the attendees had, but that approach fitted their agenda to force Mrs Deeming to resign.

214. At line 433-434, Mrs Deeming said: *“Have you got an action you are going to take against me.”* Mr Pesutto said at line 435-436: *“Possibly. In the interests of process, I want to think about what you’ve said and work it through. I guess there’s no easy way to say this”* but then he was cut off by Mr Southwick at 32 minutes. At about this time, Mr Johnston may have received information from the meeting to send a revised draft media release that inserted expulsion: Johnston [23]; email CC:319. No one in the meeting recalls sending any such communication and none has been produced. It is therefore more likely he already knew that this was the other option and was preparing for it.

215. At lines 437-441, Mr Southwick equated the Nazi salute with *“the people you associate with in that video afterwards”* as highly offensive. It is reasonable to conclude from that that he considered Ms Keen, Ms Jones and Ms Deves to be Nazis or at least as offensive as Nazis. At lines 441, he moved on from the Nazis and said in the context of asking if she wanted to be part of “this team”: *“I – you know, like I’ve never said – your views are your views, I’ve never tackled anything about them, and I respect that you’re able to have your views 100%, they’re not my views, but they”*. Mrs Deeming said at line 444: *“What views to you think I have honestly”*. Mr Southwick equivocated. Mrs Deeming said at line 447: *“Which views did you condemn today?”* At line 451 she said: *“Which views do we disagree on? In short, I want to be a team”*. Mrs Crozier at line 453 interrupted her and said: *“But you’re not because how can – again, I go back to the point that after last time.”*

216. At lines 454-458, Mrs Deeming said:

Look, you've just described it as a disaster, right, I honestly did not view those women as part of that, rightly or wrongly, and I accept that, I'm not arguing that. I don't want to spend 100 years arguing that. But honestly what views do you think that I have legitimately that are so terrible? Like do you actually think that, that I am some kind of a secret Nazi? Is that actually what you think about me?

217. At this point of the meeting, Mrs Deeming has clearly accepted that Ms Keen and Ms Jones are connected to the Nazis but she is trying to understand whether they think she is also a Nazi or if they are talking about her sex-based rights advocacy or both. At line 454, Mr Pesutto said: “No, no its no the Nazi”. At line 460-461, Mrs Deeming said: “*But it's my views that keep getting condemned, my unspecific, unspecific views.*” And then Mr Pesutto cut her off at line 462-465, even though the meeting is apparently for them to hear from her; mis-described what has just occurred; and then directed Mr Southwick to speak. They clearly did not want to hear her making concessions - in this case trying to understand how she can fit her views to be a team player. She was constantly making concessions, in an attempt to appease the Leadership Team and seek to fix the situation.

218. At lines 466ff, Mr Southwick said: “*the issue that I have are more about, again, the group that you associate with, and that group, which is – Rod's now made very clear mention that have associations and have been associated with known Nazis. I mean, one photograph is is is bad enough. This is more than that. It's a series of actions from people in which, after everything happened, you chose to have champagne on a couch with those individuals*”. Mrs Deeming did not challenge Mr Southwick's exposition from lines 476-489 about the risks associated with attending rallies and associating with individuals.

219. At lines 503-505, both Ms Crozier and Mr Pesutto suggested that Ms Jones had not condemned Nazis. At line 508-511, Mr Southwick criticised Ms Jones' actions on the couch in using inverted commas when describing the Nazis. At lines 518-532, Mr Southwick and Mr Pesutto explained to Mrs Deeming why they were concerned the team was being associated with the people she had champagne with: Jones, Keen and Deves.

220. At line 533, Mr Pesutto said: “*Okay, so Moira I think there's a threshold question about whether you feel you can be part of the team, and whether we're convinced you can be part of the team. I have no doubt you feel so strongly about these issues that you would want to continue to do what you've been doing.*”

221. After repeatedly telling Mrs Deeming that their concerns had nothing to do with sex-based advocacy, Mr Pesutto told Mrs Deeming at line 533ff that her advocacy for these issues (issues they have still not named or described) are his concern.
222. At line 553, Mrs Deeming, after hearing Mr Pesutto say “*It’s bad*” at line 552, said: “*And it needs to be fixed*”. Mrs Deeming recognised, and did not ignore, the concerns expressed to her and she was open to a solution. She said at lines 556-561: “*You said that I was annoyed sitting here ... No, no, no, no, that’s true, but you have, you know, convinced me that that does look way worse than I thought. To be fair I genuinely don’t think that, you’ve made me worry about Kellie-Jay Keen, but I do not think Katherine Deves and I do not think that Ange Jones is actually – I don’t really think any of them are*”.
223. It is clear from the context Mrs Deeming was merely stating that she did not believe the women to be Nazis or Nazi sympathisers. At line 574, Mrs Deeming explained that: “*I’m processing it*”. In response to push pack about Ms Jones’ use of air quotes Mrs Deeming said at 576-590:

And I’m like, I found out after that and I was going to say, we hadn’t found out but she wasn’t with me then. I don’t know what to say about that, I don’t sort of remember that she did that in air quotes, I haven’t watched it again. I was thinking of that, which I said, which was distancing us all from them. Anyway, like I said, I’m not trying to argue with you. ...

I’m not trying to defend it, I’m not trying to argue with you. I was all offended you could think that I was a Nazi until you made that case. ...

No, no, no, but like even that I could be, you know – because, I was saying, adjacent of it, what are you talking about. Right, so that’s fine. If you want to fix it, I’m open to suggestions, if you want like, you know, whatever you want to do that’s fine. I just, I’m not, I don’t want to argue as if I’m defending like Nazism. I just, I don’t know what to do now.

224. At lines 591-599, Mr Pesutto said:

I think, so in the interest of candour, I came into this meeting thinking there were two outcomes, either you resign from the Parliamentary Party or I look at a process under the Parliamentary Party rules. I can’t rule those out. I’m thinking, on the basis of our discussion, whether there is a third way which doesn’t involve the same kind of outcome 594 as those two options. I don’t know that that’s possible, to be honest, but in the interest of working through the process fairly I’m prepared to sort of confer with the leadership team, to take on

board what you've said, and see if there's a way. But I just don't get the sense you appreciate how toxic this is for us with again, the issues – it is so toxic.

225. Mr Pesutto admitted that when the meeting started there were only two options. It is only based on what Mrs Deeming said in the meeting that he would consider a third option. Mr Pesutto, again, seemed very reluctant to consider an alternative.
226. Mrs Deeming at lines 600-601 sought to reassure Mr Pesutto by saying: “*Before I came in here, I didn't think that there was even a – anywhere near reasonable case to make that argument.*” Despite Mrs Deeming's concession, Ms Crozier at lines 604-624 refused to entertain any compromise – this reflected the pre-determined outcome of the meeting. Her concerns appeared to not be related to Nazis or associations with Nazis. At lines 625-643, Mr Southwick took a more conciliatory response, but at lines 641-642 said “*I don't understand kind of what's the next step?*” He expressed his real agenda when he referred to her maiden speech and International Women's Day speech - that it is all about her views on sex-based rights, and not her indirect association with Nazis.
227. At lines 644-649, Mr Pesutto suggested she “disown” the women but doubted she would do that. At lines 647-648, Mr Pesutto said: “*What's coming is a series of pieces that links the worst comments and actions of those people, to you, to me, and then it's on.*” At lines 650, Mrs Deeming asked if she “*could just disown anything, any views or that they've said ... like in general*”.
228. Under cross-examination, Mr Pesutto refused to concede that he did not have credible information to justify a request to condemn either Ms Jones or Mr Keen as people: T717.8. In the meeting, however, he appeared to countenance that it could be acceptable for Mrs Deeming to “*just disown anything, any views or [things] that they've said*”. In paragraph [89] of his first affidavit, Mr Pesutto considered it was reasonable to call out what they had done. The difficulty for Mr Pesutto is that at least as far as Ms Keen, Mrs Deeming never refused to call out the Nazi Barbie doll image or the Pridestapo. The Pridestapo image was never discussed let alone shown and there is no evidence anyone located that image until 20 March 2023. The Nazi Barbie doll image was never discussed after being described by Mr Pintos-Lopez. There is no documentary evidence that this image, as opposed to a description of the image, was located until 20 March 2023. Mr Pesutto has given dishonest evidence to seek to justify his indefensible position in relation to the significant concessions Mrs Deeming was prepared to make during the meeting.

229. At 653-656, Ms Crozier again rejected the option of compromise and concluded: “*We can’t change any of that, right*”. The clear implication of her response is there was nothing Mrs Deeming could do or say to disassociate herself from the women. Ms Crozier did not have any information to justify her claim that these people “*who’ve got a long history of saying stuff in the public domain, which are pretty bloody offensive*”.

230. At 657-666, Mrs Deeming said:

Can I just. One – just one point of clarification here. I’m treating the transgender laws as separate to the Nazi thing, right? You may not be able to say. So, the transgender laws thing, you know, I honestly think that we just got so much support, that I have so much support on that. Rightly or wrongly, I’m just saying, that was my view. The Nazi thing, that was from my perspective, believe it or not, just so out of left field. So out of left field. I honestly thought it was the other side. Anyway, so that’s easy to condemn, like just flat out. And I, because, like, I don’t know what she has said in the past. So, to just condemn in general, I don’t know, Nazism, you know the beliefs, that would make more sense because what if I leave something out, and I don’t want to condemn a whole person, I just want to say that if they’ve said that then I disagree with that or –

231. At this point in the meeting, Mrs Deeming asked questions looking to compromise. A reasonable conclusion from Ms Crozier’s unsubstantiated claim that these people have a long history of saying stuff that is bloody offensive is that she is not just referring to Nazis but sex-based rights advocacy. Mrs Deeming did not refuse to condemn particular conduct but sought confirmation whether she was condemning any and all Nazi related conduct or speech and not the sex-based right advocacy on which she was elected.

232. At line 667, Mr Pesutto asked Mrs Deeming if she wanted to be associated with Ms Jones. At line 669-677, Mrs Deeming said:

I just don’t want to set a standard where just because I’m talking to someone or agree with someone on one thing, that means I agree with them on everything. Or that I have to - ...

And I’m happy to make a statement that [the LGBTI community is paedo filth] is not what I believe. I just don’t think. I honestly don’t think that’s what she believes.

233. At line 679, Mr Pesutto, not knowing Ms Jones responded: “*I think you’ve got that wrong*”. The truth was Mr Pesutto was wrong, and Ms Jones had explained the context and her condemnation of Nazis on Twitter that morning. Mr Pesutto’s assessment of Ms Jones, that formed the basis of his later publications, was fundamentally unreasonable.

234. At lines 685-712, Mr Pesutto said:

So, I mean in terms of. You know, so if we were to posit that there are three general scenarios, with the one in the middle being that we work on a statement, it would need be pretty hard, it would need to go a long way to disassociating yourself from them and disassociating us. But I guess, if I can go back to the threshold issue, if you want to be able to prosecute these issues, and this is – this was part of my reasoning, if you want to be able prosecute these issues, with the same passion you’ve got, I know – I know your passionate about these things so, I get it, but if you want to be able to continue to do that, the best way to do that might be to be an independent, to give you complete freedom. If you want to be in the party, it’s possible to do that without having to relinquish your views, or walk away from the things you believe in, but there would have to be some clear, if you like, road rules. You can’t hang out with these people. You just can’t. You can’t go to rallies. You’re a senior figure of the Liberal Party, you represent all of us. When you go out you represent me, David, Georgie, every member, supporter, donor, everyone. You can’t conduct – and I don’t think –for the most part – I haven’t read all of this stuff– but you’d have to be careful about the language you use because there are people who engage in this debate publicly. It’s not like there’s no debate about it, people debate about it. But as a public figure, with responsibilities, as a senior liberal you’d have to be prepared to make sure that all of your language – and I’m not saying it has or hasn’t been – I’m saying that the language would have to protect us at all times the team would have to be protected, from anything you say which doesn’t mean you can’t go out and argue case for things but that it protects the team at all times and protects our ability to win. If that, comparing that with the first scenario or the third, if that’s possible, if you’re willing to do that, then it may be – I don’t know we would have to work through it and see if it’s possible, then it may be possible to do something, but there is a fundamental question – and ultimately, Moira, I think – I think you have to be happy with what you’ve landed on because if you – I can tell you now, if you agree to something that deep down you’re not really happy with, genuinely you’re not happy with, and feels like it in any way hampers your ability to argue the cases you want to argue then you’re not going to be happy and it will manifest itself somewhere, somehow, it just does.

235. Mrs Deeming responded at line 713: “I agree”. She had not rejected any suggestion or third option to move forward. She had merely made significant concessions and raised how best to address that new third option. The whole speech from Mr Pesutto was not about Nazism. What he was really talking about was Mrs Deeming’s advocacy for sex-based rights and safety for women. She then said at lines 715-718:

I agree. But obviously I’m not interested in promoting Nazism, it’s not a problem, you’ve told

me I don't have to give up my – you know my arguments about the laws about balancing sex-based rights. Like I said, it's unfortunate that the three events came in one go but it isn't something that I – I don't want to be a single-issue –

236. Again, Mrs Deeming was being conciliatory, she was open to the strictures Mr Pesutto had proposed. At lines 724-735, Ms Crozier attacked Mrs Deeming over her sex-based advocacy. At lines 741-766, Mr Southwick attacked Mrs Deeming over her failure to put out a formal press statement the day before and blamed her for Mr Andrews snubbing Mr Pesutto the day before. At lines 767-769, Mr Pesutto and Ms Crozier agreed with Mr Southwick.

237. At lines 770-789, Mr Southwick criticised her for being a single issue candidate (that is, sex-based rights). At lines 785-789, Mr Southwick informed Mrs Deeming that yesterday was part of her control and that her narrative had to change. At lines 792- 802, Mr Southwick said:

Yeah, in terms of what you're actually, what you're saying and when you're saying them, what your focus is, what are you actually, what are you putting out there. You know, it's just like none of that – up until this point you haven't shown that. If you- if that's not who you want to be – which, again I'll take that on face value, I'll accept that. But what are you going to do? Like okay let's put out a statement, fantastic, lets disown the lot, fantastic. So where are you going to go going forward, do you want to be part of that focus on let's get good government in Victoria, and let's focus on the mainstream issues, let's do it. And I suppose that's what John is saying if it isn't, and if it is about you want to focus on a key issue on the, on the women's issue specifically that you've been focusing on, then then as John said, well you know, you can do that from – there are others means for you to be able to do that. But if that's the only thing and that's what you are going to focus yourself on, you're taking us all on that journey.

238. The effect of what Mr Southwick was is that if Mrs Deeming wanted to continue to focus on sex-based rights (an issue she was repeatedly told at the beginning of the meeting she was entitled to hold and advocate for), she would not be a team player. Mr Pesutto then said at 803-822 (in what can fairly be described as a rant):

And so for example, and so just to finish on that, I know we've been talking for a bit, if you are going to be bringing down Katherine Deves, then whatever we are talking about, I'll be honest with you, whatever we are talking about, we could find Daniel Andrews robbing a 7-Eleven, but if you bring Katherine Deves down, everyone is going to go "don't are about that,

Katherine Deves is in town,” that’s all it’s going to be about. And this is why I say to you, I genuinely say, it’s a really tough call for you, because I think the best thing you can do for yourself, if you don’t mind me saying, is honestly arriving at a decision to say what do I really passionately want to do. Because if you want to keep doing that, I think that first option of going your own way would be the best. But I don’t- the reason I say that is I don’t want you to be under any misapprehension about what’s required in the statement and not just the statement but what follows it. So, you can’t be bringing down Katherine Deves because when you bring down Katherine Deves, we’re all in it. It means disowning those people, I will not, I will not be associated by one or two times removed with Angie Jones. I will not. Anyone like that is out of my tent, but if you are prepared to do that, that’s how I think it can work, but it’s a big ask, and if you want to be able to keep doing those things, that’s why I think, you know, just, you know, have a sense of what it really does require, because it’s big, it’s doable, but it requires a big change. I don’t know if you need any time to think we’re going to, we’re talking about a lot of issues, unless there is anything else you wanted to contribute, Moira, but I’d like some time to think and maybe just confer if that’s all right. I mean, I genuinely want to explore the options, Moira.

239. They did not put any evidence to Mrs Deeming in this meeting to the effect that Ms Deves was a Nazi supporter, but Mr Pesutto nonetheless gave a lengthy statement that went on for a couple of minutes about Ms Deves. Again, this was objectively confusing in terms of what the real problem was for Mr Pesutto – a reasonable conclusion for Mrs Deeming to have drawn is that he was not talking about the Nazi issue at all but rather was talking about the sex-based rights movement. As was put on behalf of Mrs Deeming in opening address: “What they’re doing throughout this meeting is changing the goalposts... and basically saying to her ‘Unless you publicly condemn these women, you know, we’re not interested’.”
240. At this stage of the meeting, Mrs Deeming had not rejected any options. Mr Pesutto was telling Mrs Deeming that all options were still on the table in relation to the third option. Mr Southwick is telling Mrs Deeming that all options were still on the table. Mrs Deeming did not reject any of those options proposed. Both Mr Southwick and Mr Pesutto in moving the goalposts to control her sex-based rights advocacy do not appear to be genuine about pursuing the third option.

241. At 848-862, Dr Bach then said:

It's been good to listen, it's been good to hear your views, Moira. Even in that, in coming back, in seeking, pointedly, I think, from you, so to seek to lessen some of the shocking things that these – your friends - have said, demonstrates to me that – I don't think there is a way forward. So, for me, the issue is your friends, the people you worked with, the people you showed through Parliament, very openly and publicly, have a long history of sympathizing with neo-Nazis and white supremacists. And you said a little while back, John, you know, you wanted to explore and see if there is a way forward. I – this – I don't think there is. These are your people, and I don't mind saying also, I don't think a reasonable person would believe you, that you had no idea that these are the long standing, stated views of your people. I don't believe you. And it's absolutely clear to me, from what you've said, that you don't get the seriousness of that, at all. Your mob have stated white supremacist views and still we're arguing about Ex Actly what they might have mean ... when they call trans people paedophiles, which, of course in and of itself, is quite disgusting and disgraceful, so, for mine, I don't see a way forward.

Dr Bach said to Mrs Deeming: “*I don't see a way forward.*” Mrs Deeming in her affidavit had recalled that as being a comment to the effect that she cannot be *rehabilitated*, and that was the effect of what Dr Bach was saying. Dr Bach criticised her because of supposed evidence that Ms Jones, Ms Keen or Ms Deves had openly and publicly a long history of sympathising with the Nazis and “long standing, stated views”.

242. Dr Bach's conduct in making such forceful accusations about third parties, on very limited or non-existent evidence, to an inexperienced female MP who had attended the meeting by herself, was disgraceful and unbecoming for a politician, let alone a school-teacher of children. He had alleged that Ms Keen and Ms Jones were long standing Nazi sympathisers, if not Nazis. This was a group of MPs and a staffer, four males, including two lawyers, who had the Pink News article (Ex A37) where Ms Keen denounced the Nazis and expressed her abhorrence for them. Despite that they said to a junior female colleague that they had proof, that it's a matter of fact that these people –referring to all three women – her mob, her friends, the people she works with - have a long history of sympathising with neo Nazis and white supremacists. Their conduct was unethical and dishonest. It was bullying and harassment of the most serious kind. It was intended to achieve their end – pressuring Mrs Deeming to resign. When they failed in that endeavour they persisted in their disgraceful goal to expel her.

243. At lines 874-896, Mr Southwick admitted his true views, which was that he thought there was never any coming back from it and that, going into the meeting, that was his view because based on the information he had there was no coming back from it. Then at line 897, Mr Pesutto, who used the word “association” numerous times in subsequent days in defaming Mrs Deeming, said by way of admission: “‘*Association*’ is a flexible word.”
244. And apparently, in the conduct they were levelling at Mrs Deeming, the Nazis turning up, was “*icing on a cake*”: lines 898-899. It was a sweet bonus for them that neo-Nazis attended the steps of Parliament and performed the salute repeatedly. This was what Mrs Deeming on her own, a new Member of Parliament, had to face at a meeting that had been going for over an hour during which accusations were made against her by five people. She was not then given the chance to go away, to respond, to look at the material and consider it and respond to it. Mrs Deeming was thoroughly brow-beaten by the end of the meeting at 6:35pm - she said at lines 912-949:

I don't have a problem at all, and I look forward to denouncing Nazism and, I don't know, anything similar and any accusations of paedophilia for the trans community. No problem at all. I don't believe those things....

I know it sounds stupid to you, but honestly, I did not read those the way that you have read them, and I'm not arguing with you, I see it now that you've said it but I'm not kidding I don't I don't it was just they were having an argument with the activist –and I'm not arguing it, I'm just saying – ...

Well, I don't know what to say to you, this seems so insane to me, of course I don't think that a whole group of people are paedophiles because of their sexuality or gender identity. Of course, I'm not a Nazi and I don't support Nazism. I'm more than happy to condemn all of that. It's just a real shock to me, it's just a real shock to me that those were the ones that you thought were Nazis....

I'm not arguing, I'm not arguing. I'm just telling you the truth. I thought you were going to come in here and talk to me about those people in black....

No but no, I'm just saying, I wasn't prepared for – ...

I'm not arguing, I'm just saying. Do you want me to wait outside while you talk?

245. Mrs Deeming admitted that initially she was annoyed to be there (lines 556-561) and offended that they could think she was a Nazi (lines 582-583) until they made their case against Ms Keen. The first part of the meeting was taken by Mr Pesutto's speech, Mrs Deeming's version of events and an examination of her knowledge about Nazi sympathisers. The evidence was only read to her by about the 21 minute mark. After

hearing and discussing the evidence, from about the 25 minute mark (line 315ff) Mrs Deeming acknowledged their interpretation of the Angie Jones tweet and by line 429 (30 minutes in) she offered to “condemn everything”.

246. She was not defiant. She bent to their will, agreed to do what they wanted, she did not deny what they were saying, she repeatedly said, “*I’m not arguing, I’m not arguing.*” She agreed to condemn Nazi and Nazism. She agreed to condemn a view they claimed Ms Jones had expressed about paedophilia. She had agreed to do what they wanted. She discussed the potential contents of a statement, but she had not ruled out any compromise as to her actions or the content of any statement. Nothing in her final words at line 912-949 indicated other than a preparedness to put out a statement the leadership might propose. No words in a draft statement were proposed to Mrs Deeming.

247. When Mr Pesutto returned at 6:56pm, he said:

We’ve had quite a long discussion where we fleshed through everything. The long and short of it, Moira, is as a group we don’t think a statement will work. The damage is deep and a statement won’t get us there. And what I’m going to do is ask the Party Room to support a motion to remove you from the Parliamentary Party. I’m sorry it’s come to this, and it’s not done personally. I have to put the team first and nothing I think about gets past, gets me past the concern I have that the damage to the team and our prospects is too severe. The Party Room will decide, but I’ll put it to them that in the circumstances for the reasons we’ve gone through today, that’s what I’m going to do. If you wanted to, you could resign in the meantime but that’s a matter for you, I can’t force anything on that front. It would save everyone a whole lot of, you know, the energy that goes into these things but, Moira, I’m going to proceed on that basis. If you do want to resign, let me know, but I propose to advise the Party Room immediately. I won’t have a formal motion done, but I will get that out as soon as I possibly can. Again, I’m very sorry it’s come to this. But I just don’t feel I have a choice. And again, at the risk of repeating myself, it’s not personal, I’m putting the team first and I just feel I need to do that. I’m sorry we kept you waiting so long but we did have - we did exhaust every possible angle of the issues, we don’t do this with any joy at all, but it’s necessary in my view to bring it before the Party Room. In terms of process, when a motion is circulated, it would come from me. I need to move it, I need to give 5 days’ notice, so that would – if I can get a notice out tomorrow it would be the business day that, the 5 days excluding any business days. So, I imagine that would be on the Monday or Tuesday but there would be 5 days there and then my understanding of the process is that you’ll be given a chance to address the Party Room I think is what happens. I wasn’t there when Bernie went through the same thing, but

I stress that the reasons for it relate to the matters concerning links of people to self-confessed and self-professed Nazis which we just cannot take that on as a party. We are committed to winning in 2026 and this stuff will ensure that we don't win and I'm already being attacked again on social media but this time by ministers of the government who are already gunning for me this week. It's not going anywhere. So, Moira, I'm sorry it's come to this but that's where I've landed.

248. Mr Pesutto said no statement would be acceptable. However, he said in [89] of his first affidavit:

Mrs Deeming said words to the effect she was prepared to call out the Nazi presence at the rally, but she stood by Ms Jones and Ms Keen and was not going to say anything condemning them or expressing any disapproval of what they had done. I thought what we were asking Mrs Deeming to do was very reasonable; to call out and distance herself from Ms Keen and Ms Jones and their use of Nazi analogies and the Nazi Barbie doll image, the pridestapo image and the Jones tweet.

249. What he in fact said to Mrs Deeming was that no statement would be good enough. Mr Pesutto in his first affidavit at [93] gave incorrect evidence in claiming that he told Mrs Deeming: “*we just don't think you accept or understand that what has been done is wrong or that you are prepared to do what's needed to protect the party*”: T724.24-25.

250. Mrs Deeming never said she stood by Ms Jones and Ms Keen. Her only defence was she did not think they, particularly Ms Deves and Ms Jones, were Nazis or Nazi sympathisers and did not believe Ms Jones intended the Jones Tweet to mean what Mr Pesutto thought it meant. Mrs Deeming repeatedly made it very clear that she was happy to condemn any conduct they had engaged in that was unacceptable relating to Nazism and in relation to the LGBTI community and the reference to paedophiles. Mr Pesutto does not refer to Ms Deves in his affidavit account of this meeting, despite the fact that he clearly wanted Mrs Deeming to disassociate from, if not condemn Ms Deves.

251. Without the recording in paragraphs [89], [91] and [95] of his affidavit, Mr Pesutto relied upon Mrs Deeming's alleged failure to call out the images as his basis for moving for expulsion. Beyond it first being described, there was absolutely no discussion about the Nazi Barbie doll image in the recording and Mrs Deeming never expressed any reluctance to condemn that allegation.

252. The documentary evidence, including the recording and CC:331, contradicts any claims that any attendees had seen or knew about the Pridestapo image at or before this meeting. This is a significant error, because a common theme in the respondent's evidence was Mrs Deeming's apparent unwillingness to condemn that and other "offensive" images she was shown. Mr Pesutto conceded at T707.14-17 that he did not know whether or not the Pridestapo image had been found by the time of the meeting. Ms Crozier admitted it was possible she did not see the Pridestapo image on the Saturday: T1147.33. Mr Johnston did not give evidence that he was shown the Pridestapo image at the pre-meeting or on that day: [14]. To the extent that Mr Pintos-Lopez (T1233.23), Dr Bach (T935.28), or Mr Southwick (T1035.7) maintained they saw the Pridestapo image on Saturday, their evidence should be rejected.
253. The recording and contemporaneous documentation (CC:328) contradicts the respondent's contested and challenged evidence that Mrs Deeming was shown any images at the meeting. Mr Pesutto's suggestion under cross-examination that the images were shown through a laptop (T707.14) being read-out from across the table from Mrs Deeming is inherently implausible, particularly in light of the recording, the need to read-out, rather than show, the Jones Tweet a second time, and the lack of images in the version of the dossier in existence that night: CC:328. It was also physically impractical based on the location of Mrs Deeming in Exhibit A60 that Mr Pintos-Lopez showed Mrs Deeming images on his laptop. It is also not believable to suggest, as Mr Pintos-Lopez claimed, that he switched between tabs on his Internet browser and turned his laptop while he was reading from his script: c.f. T1253.41-46. The speed with which he read out the allegations against Ms Keen further squarely contradict this claim.
254. Mr Pesutto gave untrue evidence in [86], [89], [91], and [95] of his first affidavit about the images he alleged were shown during the meeting and his reasons for moving for expulsion. If Mr Pesutto had honestly believed that the recording supported his affidavit evidence, he would have obtained a copy of the recording the moment he realised that Mrs Deeming had given a contradictory account to his before he swore his second affidavit in reply. His failure to do so is evidence of his consciousness of guilt. These falsehoods, and for reasons developed further below, mean that the Court should not accept Mr Pesutto's evidence about what occurred on 18 and 19 March 2023 unless supported by objective evidence or when adverse to his interest.

255. The obvious inference from Mr Pesutto's conduct given his notes at 12:26pm (CC:303) and message to Mr Johnston at 5:21pm (CC:316) before the meeting that proposed Mrs Deeming's resignation, is that his primary, if not singular, intention in entering the meeting was to secure Mrs Deeming's resignation. Mr Woff gave honest evidence that at the time the meeting commenced Mr Johnston told him:

"So when Mr Johnston called me, he told me that Moira was gone, and he said it's just a matter of how this plays out, referencing whether she would resign from the Parliamentary Liberal Party or whether John and – and the leadership team would move a motion to expel her."

The only draft media releases prepared that day referred to resignation or expulsion. The media team never drafted a proposed media release from Mrs Deeming despite a request from Mr Pintos-Lopez for that to occur earlier on Sunday at 10:48am: CC:299.

256. Mr Pesutto's intention to force Mrs Deeming to resign explains his need to give a long speech at the beginning of the meeting and then seemingly lure her into a trap before confronting Mrs Deeming with the evidence after 20 minutes. If Mr Pesutto's intention of the meeting was to see if they could reach a solution where Mrs Deeming would issue a formal statement acceptable to him that would denounce the Nazis and distance her and the Liberal Party then that could easily have been made clear at the beginning of the meeting. Instead Mr Pesutto waited almost 20 minutes to present the "evidence" that each of the attendees claim they considered to be what Mrs Deeming needed to address.
257. The recording of the meeting also fundamentally undermined each of four other attendees' (Crozier, Pintos-Lopez, Southwick, Bach) evidence about events on 19 March 2023.
258. Ms Crozier in her first affidavit at [35] falsely contended that Mrs Deeming refused to put out a statement condemning the Nazis. Her characterisation and memory of the recorded meeting was so fundamentally wrong that her evidence about the meetings on 19 March 2023 is fundamentally unreliable.
259. Mr Pintos-Lopez in his first affidavit at [39] falsely claimed that Mrs Deeming said she would not distance herself from the organisers of the rally - when she had offered to disown views they had expressed.

260. Mr Southwick in his first affidavit had also falsely claimed at [37(h)-(i)] that she refused to put out a press release of the kind he claimed he had suggested “distancing” herself from the Nazis and organisers.
261. Dr Bach in his first affidavit at [31] falsely suggested that Mrs Deeming was only offering to say “I’m not a Nazi”. These material falsehoods, and for reasons developed further below, the Court should not accept Dr Bach, Mr Southwick or Mr Pintos-Lopez about what occurred on 18 and 19 March 2023 unless supported by objective evidence or is adverse to their respective interests.
262. It is not necessary for the Court to form views about Mr Southwick, Dr Bach, Ms Crozier or Mr Pintos-Lopez’s knowledge or motives before and during this meeting, but it remains open for the Court to be satisfied that they also intended to compel Mrs Deeming to resign or otherwise be expelled after talking with Mr Pesutto in the pre-meeting. Their conduct in the meeting and unsatisfactory evidence about that meeting and, in relation to the male attendees, their unwillingness to give responsive evidence or make obvious necessary concessions when faced with the recording, may only be explained if they had the same objective as Mr Pesutto and had discussed it beforehand with him. Mr Southwick and Ms Crozier attacked whenever Mrs Deeming proposed compromise or a way forward for her to remain as part of the team, and Dr Bach took an entirely irrational approach to the limited evidence he was given about Ms Jones and Ms Keen.
263. At Exhibit A3 line 29, Mrs Deeming said: “Okay, thank you” to end her participation in the meeting.

Calls from the Leadership Team to MPs

264. Mr Pesutto and others from the Leadership Team made calls to other MPs to inform them of the decision to seek to expel Mrs Deeming from the Victorian Parliamentary Liberal Party.
265. Mr Pesutto called Mr Hodgett and said, in effect, that there had been a rally, that it was gate-crashed by neo-Nazis, that Mrs Deeming had been involved, and that he was moving a motion to expel Mrs Deeming from the Victorian Parliamentary Liberal Party: CB:12, 195[5]. It was short, one-way conversation. Mr Pesutto was not seeking Mr Hodgett’s views or opinions, but rather was telling him what he was proposing to do.

266. Mr Pesutto also called Mr Wells. He said that Mrs Deeming had attended a Let Women Speak rally at Parliament House that she had organised, that she had spoken at the rally and had organised a group of Nazis to attend the rally, and that he had no other option but to expel her: CB:27, 297[11]. Mr Wells said ‘that if those accusations were true, she had to go’. Mr Wells gave evidence that he considered ‘this was a very serious accusation’ and that he ‘was horrified that a Member of Parliament could possibly organize Nazis to attend a rally for support’: CB:27, 297[12].

267. Mr Southwick called Mr Riordan. Mr Riordan’s evidence about this is as follows CB:20, 248[10]):

I first heard there was an issue when David Southwick called me that evening. He said words to the following effect: "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." I said words to the effect "If she's done all that, we'll need to really consider if'. He said words to the effect: "We have all the evidence. There's footage of her drinking with Nazis. It's shocking". I was left with the impression that it was indisputable. I thought that David would not have made these allegations lightly, since they were so serious. Because of that, and because the claims were so specific and he had said they had evidence, I thought the claims might be true. But I still wanted to see the evidence to support them.

268. Under cross-examination, Mr Riordan gave evidence that he was left with the impression that Mr Southwick was implying Mrs Deeming had been part of an event that hosted and supported Nazis: T441.1-9. He found this alarming. He was left with the impression that the substance of what Mr Southwick was saying was that Mrs Deeming had been involved as an organiser of an event which Nazis had attended: T441.20-26.

269. Ms Crozier called Ms Heath and said words to the effect of ‘Moira has stepped out of line. You’ll receive an email from John soon and will learn more about it in due course’: CB:9, 167[6]. Ms Heath asked what Mrs Deeming had done but Ms Crozier didn’t elaborate, saying only that she would learn more about it soon.

Publication of the Media Release

270. At 8:30pm Mr Pintos-Lopez sent his research document (recorded as being created an hour earlier) to Mr Johnston and copied Mr Pesutto: CC.328 Ex A38.

271. At 8.36pm, Mr Pesutto sent an email to members of the Victorian Parliamentary Liberal Party, entitled 'Moira Deeming', announcing his intention to move a motion to seek to expel Mrs Deeming as a member of the Victorian Parliamentary Liberal Party: CC:329 Ex R210.
272. At 8.42pm, the Media Release was sent by email (CC:330 Ex A159) to, according to Mr Pesutto's Defence, approximately 767 journalists and other recipients: CA:3, 94[3.5(iii)].
273. It was also uploaded to Mr Pesutto's website and the website of the Victorian Liberal Party (CA:6 and CA:7).
274. At 8:43pm Mr Pintos-Lopez sent a slightly updated version of his research note, adding the Jones Tweet and the LWS post event video to Mr Johnston, copying Mr Pesutto and noting that it was for printing for John: CC.331 Ex R78.
275. At 8.48pm and 9.03pm, Dean Hurlston sent the following messages to Mr Pesutto: CC332 Ex A160):

SMS/iMessage Message received on 19/03/2023 9:03:03 PM from Dean Hurlston [REDACTED]

no need to call again
Catherine Deeves is also someone i passionately support. She's a jewish woman who has been exonerated by the Jewish association. she's not in any way a nazi or white supremacist

SMS/iMessage Message received on 19/03/2023 8:48:51 PM from Dean Hurlston [REDACTED]

Mate
Please DONT expel moira.
I'm gay. she's totally an incredible support to me. she is simply trying to defend women's spaces.
I agree with her.
None of us support or ever seek the Nazi idiots.
Dean ❤️

276. At 9.15pm, Constantine Frantzeskos sent Mr Pesutto a text which Mr Pesutto 'liked' with a thumbs up: CC:335 Ex A61):

SMS/iMessage Message received on 19/03/2023 9:15:35 PM from Constantine Frantzeskos [REDACTED]

Well done on the open stance on Deeming. Front foot against fuckwits.

Reporting on the Media Release (see also Annexure B)

277. Very shortly after the publication of the Media Release, it started to be widely republished online.
278. The first tweet about the Media Release seems to have been a tweet by Mitch Clark of The Australian at 8.44pm (only 2 minutes after it was emailed out by Mr Pesutto's team at 8.42pm). Mr Clark's tweet is Ex A260. It stated: "*Opposition leader John Pesutto says he will move a motion at the next party room to expel Moira Deeming as a member of the parliamentary Liberal Party. He says her position is 'untenable'.*". The tweet included a screen-shot of the first four paragraphs of the Media Release (lines 1-9). The tweet has had approximately 15,300 views.
279. Within the next 5 minutes after that there was:
- (a) a tweet by Lana Murphy of Nine News Melbourne at 8.47pm Ex A261), which quoted lines 5-11 of the Media Release and has had approximately 26,900 views;
 - (b) a tweet by Annika Smethurst of The Australian at 8.48pm Ex A262), which contained two screen-shots showing the whole of the Media Release and which has had approximately 248,000 views; and
 - (c) a tweet by 8.49pm by Sumeyya Ilanbey of The Age and the SMH at 8.49pm Ex A263), which quoted the first four paragraphs of the Media Release and which has had approximately 173,000 views.
280. In other words, there is in evidence – all within 7 minutes of the release of the Media Release – four tweets by journalists republishing the Media Release which have had a total of approximately 463,200 views.
281. Subsequently, but all within an hour of the Media Release being emailed out by Mr Pesutto's team at 8.42pm, the whole of the Media Release was republished in tweets published by: Simon Love of Sky News at 8.55pm (Ex A264) which has had approximately 6,393 views; Sharnelle Vella of 7 News Melbourne at 9.13pm (Ex A286) which has had approximately 37,700 views; and Richard Willingham of ABC News at 9.40pm (Ex A267) which has had approximately 11,200 views.

282. The first article reporting on the Media Release seems to have been an article published at 8.55pm on 19 March 2023 (only 13 minutes after it was emailed out by Mr Pesutto's team at 8.42pm) by Sumeyya Ilanbey of The Age, entitled '*Liberals move to expel Moira Deeming over neo-Nazi rally links*': CC:614, 1; CC:407, 2135-2138 Ex R63).⁴ The article repeated extracts from the Media Release (see Annexure B).
283. Senator Henderson read this article and understood from it that Mr Pesutto was seeking to expel Mrs Deeming for having attended the LWS Rally because of its alleged links to a neo-Nazi protest which involved the performing of the Nazi salute: CB:11, 189 at [11]. At 9.34pm, she sent Mr Pesutto a private and confidential message via WhatsApp saying: '*John, I am deeply concerned about moves to expel Moira. There's no suggestion she is linked to the right wing extremists. She is raising concerns about which many women are very concerned. Where is the procedural fairness in this reported decision?*' which Mr Pesutto read at 9.37pm: CB:11, 190 at [12]-[13]; CC:337, 1843.
284. Mr Fernando saw the Media Release and understood from it that Mr Pesutto was suggesting that the LWS Rally was associated with the NSN: CB:7, p155 at [93]. He was shocked by this allegation and published a tweet at 9.11pm saying CB:7, pp155-156 at [93]; CC:334:

It's being reported that the Liberal Party is considering expelling one of its woman MP's Moira Deeming because they attended a rally to advocate on behalf of women's rights.

The rally was then hijacked by a group of men that decided to use the rally to espouse their own extreme view against another group, which was then further misrepresented by the media and politicians that were not even there as being associated with the women.

The women's rights rally was further targeted by trans rights activists, that attempted to disrupt the event multiple times.

If this is true, its [sic] no wonder the Liberal Party keep loosing [sic] elections.

285. At 9.56pm and 9.58pm, articles were published by The Canberra Times and The Herald Sun reporting on the Media Release (see Annexure B). The Herald Sun article has had approximately 15,204 views.

⁴ The Court Book index mistakenly refers to the article as having been published by the ABC.

286. At 10.04pm, Senator Henderson sent Mr Pesutto the following private and confidential message via WhatsApp CB:11, p190 at [17]; CC:340, 1846:

I have just read your statement John. I have not spoken to Moira but I did see her tweet when she made clear that this protest was hijacked by these extremists. You may have more information than is available publicly, but prima facie this does not look good in my humble opinion. John I don't share all of Moira's views as you would probably know but we are a broad church ... surely it would have been better to announce an internal investigation which would have given Moira the opportunity to get proper advice, and more time for you and the broader party to consider the ramifications in the cold light of day.

287. The message was read by Mr Pesutto at 10.01am on 20 March 2023: CB:11, p190 at [18]. The ABC subsequently published an article on 22 March 2023 entitled 'Federal Liberal senator Sarah Henderson pressures Victorian Liberal leader not to dump MP Moira Deeming' (CC:440), which reported that Senator Henderson 'has personally sent Mr Pesutto messages urging him not to take action against Ms Deeming' and stated that the ABC 'has been briefed by sources who have been told by Mr Pesutto about Ms Henderson's intervention' (CC:440, p2300). Senator Henderson sent Mr Pesutto a message on WhatsApp at 9.53pm on 22 March 2023 saying: '*John, it's very disappointing that my very private messages to you have been leaked. I raised my concerns with you in complete confidence and this constitutes a real breach of trust.*': CC:445 Ex A192).

288. Further articles reporting on the Media Release were also published on 20 and 21 March 2023, as set out in Annexure B.

20 March 2023

Morning communications

289. At 1.33am, Nina Vallins – who was at the LWS Rally - sent an email to Mr Pesutto: CC:384 Ex A170). Ms Vallins interpreted the Media Release as saying that Mrs Deeming 'was involved in a rally associated with far right-wing extremist groups including neo-Nazi activists'. Ms Vallins stated that she was at the LSW Rally and that she did not know who the men in black were, and that they were 20 metres away from the LWS group. She stated:

The attempt to paint our rally as a neo-Nazi event is wrong. As a Jew and a feminist, I find it deeply offensive.

You give the Nazis strength and power by saying that this was a Nazi event. There were 20 evil men there, who have all been masturbating over the media reports Ex Aggerating their presence and impact; and you give them the extra present of they're now you blame Ms Deeming

290. At 6:43am the communications team emailed the media summary to MPs: Ex A78. It records as the lead on both radio 3AW and ABC at 6am that Moira Deeming is facing expulsion from the Liberal Party after attending a rally attended by neo-Nazis. It also refers to an article in the Herald Sun about her expulsion.
291. At about 7am Mr Pesutto met with Mr Johnston to plan what he would say: CC.314 Ex A151), 1813.
292. At 7:57 am Mr Woff sent the Pauline Pantsdown tweet to two journalists: CC.361 Ex A67; CC.362 Ex A68.

3AW Interview

293. At approximately 8:55am, Mr Pesutto participated in the 3AW Interview with Mr Mitchell: Statement of Agreed Facts (SOAF) at CD:2, pp5-6 at [17]. The 3AW Interview was uploaded to the 3AW website (SOAF at CD:2, p6 at [20]) and its substance was reported by at least The Age that day (CB(2):4, p2). [See Annexure B for further details about the extent of publication of the 3AW Interview.]
294. Mr Riordan gave evidence he would have heard extracts of the 3AW Interview although he is not likely to have heard it live: T442.31-3.
295. At 9.28am, Julie Shannon, a Liberal member, sent an email to Mr Pesutto (CC:366 Ex A165)) saying: 'I refer to your Media Release yesterday unjustly accusing Mrs Moira Deeming of organising a rally involving Nazi sympathisers' (in a reflection of how people were understanding the Media Release).

ABC Interview

296. At about 9:39am, Mr Pesutto participated in the ABC Interview with Mr Rowland: SOAF at CD:2, 6 at [29]. The ABC Interview was published on television (SOAF at CD:2, 6 at [29]) and radio (SOAF at CD:2, 7 at [31]); it was made available to be streamed (SOAF at CD:2, 6 at [29]); it was uploaded to the ABC website (SOAF at CD:2, 7 at [33]); and its

substance was reported by at least (in addition to the ABC) The Daily Mail (SOAF at CD:2, p8 at [35(c)]), The Epoch Times (CB(2):6.15, p1), and Politicom (CB(2):6.15, p12)). [See Annexure B for further details about the extent of publication of the ABC Interview.]

297. Mr Riordan gave evidence he is likely to have heard or seen the ABC Interview though he could not recall: T442.35-39.
298. At 10.45am on 20 March 2023, Claudia Theron sent an email to Mr Pesutto (CC:372 Ex A167)). Ms Theron provided Mr Pesutto with a link to Mr Rukshan’s Stream footage (i.e. CC:254) and stated:

Even mainstream media have mentioned that the neo nazis crashed the event. And a live stream of the event shows that the side Moira was on was not anti-trans as much as pro-women and definitely not neo-nazis. I have attached a link to the website of organisation that was represented at the event, a link to a live stream of the event, and a link to the channel 7s news report. I have attached this for your viewing as I think that when you look at all this it looks more like an opportunity for the liberal party to show what critical thinking looks like and what freedom of speech and association looks like.

299. At 10.47am on 20 March 2023, Raewyn Clark sent an email to Mr Pesutto: CB:3, 110-111[22]-[25]; CC:374. Relevantly, Ms Clarke:
- (a) told Mr Pesutto that she had attended the LWS Rally and that it had been ‘hijacked by intruders’; and
 - (b) gave an account of events at the LWS rally:

Ms Clark in her email also provided Mr Pesutto with links to the videos which had been published by Ms Keen and Mr Fernando (i.e. the videos at CC:253 Ex A137) (Ms Keen) and CC:254 (Mr Fernando)). She offered to meet with Mr Pesutto ‘to share [her] experience’. Mr Pesutto ignored her.

300. At 11am Mr Pesutto attended a Shadow Cabinet meeting.
301. At 11:17 am Mr Pintos-Lopez emailed to Mr Johnston an updated version of the research document, which relevantly contained Mrs Deeming’s 18 March Tweet, the context of the Jones Tweet and the entire Pink News article: CC.379 Ex A168). This document was shortly thereafter sent to Mr Woff. He gave evidence that he understood that he received

these documents in order to background the media with the content: T1183.24-27.

Press Conference

302. After the Shadow Cabinet meeting, Mr Pesutto conducted the Press Conference (for 34 minutes) accompanied by Mr Southwick, Ms Crozier and Dr Bach. The Press Conference was live streamed and televised. It was published on television by SBS, for example: CB(2):11.5. It was published on Facebook and YouTube. That same day, its substance was reported by at least: the AFR (CB(2):6.16, pp1-5); The Age (CB(2):6.16, pp6-10; CB(2):9.14), The Canberra Times (CB(2):6.16, pp17-20); The Guardian (CB(2):6.16, pp25-28); SBS News (CB(2):6.16, pp11-17); and Sky News (CB(2):6.16, p39). [See Annexure B for further details about the extent of publication of the Press Conference.]

Finalisation of Expulsion Motion and Dossier (**EMD**)

303. At 12:05pm a further version of the research document was distributed: CC.381. Mr Pintos Lopez then met with Mr Pesutto and they went through it together: T785.42-788.20 (Pesutto); T1261.1-22 (Pintos). Mr Woff was sent this document too. It refers to the karaoke night.

304. At 12:10pm and 12:12pm Mr Woff sent a link of the LWS post event video to journalists: CC.361 Ex A67 and CC.362 Ex.68. Each of those journalists responded and requested links to videos of Ms Keen with nazis.

305. At 1.34pm, Lynne Robertson sent an email to Mr Pesutto: CC:385 Ex A171). Her email questioned how it could be Mrs Deeming's 'fault the Neo Nazi's turned up to the event' and stated:

306. At 1:42 pm Mr Pesutto drafted a cover email to party members: CC.386 Ex A172).

307. At 2.38pm, Moira Chalk sent an email to Mr Pesutto: CC387 Ex A173). She stated that she was at the LWS Rally and that she was 'appalled at the ill informed and reactive response of your party leadership and the unevidenced accusation of Moira Deeming having links to an unrelated group of neo-nazi men'.

308. At 3:56pm a further draft of the research document was again circulated, more in the form of the dossier that was ultimately published: CC.391 Ex A175).

309. At some stage on 20 March 2023, Mr Wells called Mrs Deeming: CB:1, 26[133]. Mrs Deeming gave unchallenged evidence that Mr Wells asked her whether it was true that she associated with Nazis and had organized the neo-Nazis to attend the LWS Rally. The fact that Mr Wells had to ask this ‘really disturbed and upset her’. She thought it proved what she had feared – ‘that other MPs now thought or suspected th[he] was involved with the Nazis’.

310. At 4.27pm on 20 March 2023, Mrs Deeming issued a statement on Facebook: CB:1, 27[134]; CC:394 Ex R39). At 4.42pm, she published the same statement on Twitter: CB:1, 27[135]; Ex A273.

311. Amongst other things, in this statement (**Mrs Deeming’s 20 March Statement**), she said:

I and the other attendees were horrified to see masked men all clad in black inside the buffer zone. We thought that we were going to be attacked. However, the police did not seem worried and were talking with them over at the edge of the line .

Later I saw the police seemingly usher these men right through the centre of the buffer zone in between our event and the counter protestors, which is when I saw those men raise their hands in a Hitler salute.

I along with the few others who were facing them from the front were horrified, but relieved that the police were moving them on.

After the event I was informed that these masked men had in fact mounted Parliament House steps outside of our view on the other end and performed a Nazi salute, and that members of the SFW group asked the police to make them leave, but were informed that the Police had no powers to move them on due to Labor's removal of those powers....

I also condemn of[sic] the actions of the masked men in black who were later identified as Neo-Nazis, who gate-crashed the Let Women Speak event. Most of the LWS supporters did not realise who they were until they were being escorted out by Victoria Police, when they did the despicable Nazi salute. I completely reject the beliefs of Nation al Socialists (Nazis) and I have seen firsthand the impact that the Holocaust had on a family member.

None of those organising the event had any involvement with these men, as has been confirmed by Victoria Police, the Australian Jewish Association and all the organisers themselves.

312. Mrs Deeming’s reference to the Australian Jewish Association was a reference to the AJA and its Facebook post and tweet published on 19 March 2023: CB:1, 27[137].

313. At 4:30pm a draft of the EMD was emailed to Mr Pesutto, Mr Southwick, Ms Crozier and Dr Bach: Ex A272. This version still included the exculpatory line about Mr Keen's knowledge of her interviewers and also Ms Jones' twitter profile identifying that she is left wing.

EMD distributed

314. At 5:42pm the EMD was emailed to Mrs Deeming: CC.396 Ex A176).

315. At 6:01pm the EMD was emailed to the other MPs in the party room: CC.397 Ex R224). Mr Wells gave evidence that about six MPs he spoke with told him 'they believed the accusations in the EMD were true': CB:27, 298[21].

316. At 6:19pm Dr Bach sent an email to Mr Johnston and Mr Woff about a quote for the Age: CC.398 Ex A61).

317. Between 6-7pm Mr Pesutto attended the studios of Sky News and participated in an interview with Peta Credlin. The audio-visual recording of the interview is Ex A29. During this interview:

(a) Ms Credlin queried the accuracy of Mr Pesutto's claims about Ms Keen. She played an extract from the 3AW Interview in which Mr Pesutto had alleged Ms Keen had associations with Nazis by having done videos with Richard Spencer, Mark Collett and David Duke. She then played to him an extract from Ms Keen's interview with Avi Yemini in which she had said the following: 'I've never met or spoken to either of those men ever. I've got no connection with those men. It's – it's my Wikipedia. Someone's done a Wikipedia page to try and silence me, to shut me up, which I just refuse to do, and I can't even edit it. It's got some weird lock on it. So, I can't do anything about that.' Ms Credlin says she had looked at it independently and could not see that Ms Keen had anything to do with those men.

(b) Mr Pesutto was asked whether the Expulsion Motion and EMD would be released to the public, and he responded that he 'would consider it' but that he wanted to give Mrs Deeming 'due process'. Mr Pesutto never asked Mrs Deeming whether she thought the Expulsion Motion and EMD should be released: CB:2, 92[99]. Mrs Deeming gave evidence that if she had been asked she would have said no.

318. At 7.05pm, Henk Kelly-Kobes sent Mr Pesutto a message which Mr Pesutto ‘liked’ by giving it a thumbs up: Ex A33:

SMS/iMessage Message received on 20/03/2023 7:05:12 PM from Henk Kelly-Kobes (+61 4 111 111 111)

Stand your ground on dumping Moira. It will help to wipe out the black gang stuff from 5 years ago. It will also bring back some middle ground women.

319. At 7:16pm Michael Kroger sent a message to Mr Pesutto and it would appear that he had a copy of the EMD: Ex A41.
320. At 7:17pm Mr Boffa sent a message to Mr Pesutto pointing out that he was wrong about interviews given by Ms Keen: CC.401 Ex R226.
321. At 7.41pm on 20 March 2023, Ms Dennis sent an email to Mr Pesutto and others in the Victorian Parliamentary Liberal Party: CB:5, 136[12]; CC:404. She sent the email because she felt ‘that Mr Pesutto was telling lies or was extremely misinformed and mistaken about Mrs Deeming and about the LWS Rally’: CB:5, 136[13]. She wanted Mr Pesutto and the Victorian Parliamentary Liberal Party, who were going to be voting on whether to expel Mrs Deeming from the Victorian Parliamentary Liberal Party, ‘to understand the facts and what had really occurred’. She stated in her email (CB:5, 137[13]):

None of us had anything to do with the neo-Nazi group, the community group, or any of the other groups which showed up on the day. We were as shocked as anyone when they marched through. Yet claims are being made that the organisers, or Moira Deeming MP, were somehow connected with these Nazi elements. This is not true. Moira is a courageous MP and human being. She stands up for the rights of women and girls, and for freedom of speech. If she is expelled[sic] from the party, because of lies and smears, I will not be voting for the Victorian Liberals in future.

Mr Pesutto never responded to the email: CB:5, 137[14].

322. At 8:44pm the Age published an article entitled 'Deeming vows to fight move to expel her from party room' (**Age Article**): CC.405 Ex A177). Mr Pesutto’s Defence alleged that the Age Article ‘contained material from the Expulsion Motion and EMD’: CA:3, p101 at [22.3(ii)]. Mr Pesutto suggested in his affidavit (at [138]) that the Age Article indicated that the Expulsion Motion and EMD had been leaked.

323. Mr Johnston in his affidavit also suggested (at [38]) that the Age Article indicated ‘that the Expulsion Motion and EMD or parts of it had been leaked to The Age’. This evidence is plainly false. The Age Article did not state that the authors had a copy of the EMD, and there is nothing in it to suggest they did. There is a reference to Mrs Deeming having attended ‘a post-rally karaoke night with the organiser’(at 2130). There is no reference to a ‘karaoke night’ in the final version of the Expulsion Motion and EMD. But there was reference to it in documents which had been prepared by Mr Pesutto’s office that day - e.g. CC:379 Ex A168), 1990 and CC:381 Ex A169), 2019. The readily available inference is that Mr Pesutto’s office had been providing the contents of these documents to journalists. Mr Pesutto eventually accepted in cross-examination that there was no explicit reference to the Expulsion Motion and EMD in the Age Article. The Court would find that Mr Pesutto and his office used the Age Article as a pretext for leaking the Expulsion Motion and EMD on 20 March 2023.
324. At 9.50pm, Mel Hawk sent an email to Mr Pesutto (CC:406 Ex A178)) stating that she ‘was there’ at the LWS Rally and ‘I know what happened and will be more than willing to speak under oath about it’.

21 March 2023

Distribution of EMD to media

325. At 8:30 am Mr Woff sent the EMD to many journalists: CC:414 Ex A181); CC.415 Ex A182). As an inevitable result of that, the EMD was republished by mainstream media outlets that day – the whole of the EMD was republished by The Age at 9.29am (CB(2):6.17, p1 and CB(2):9.8), by The Herald Sun at 10.06pm (CB(2):6.17, p7), and in addition large parts of the EMD were reported on and quoted by The Guardian at 4.00pm (CB(2):6.18, p1) and by 9News at 7.04pm (CD(2):6:18, p9). In the course of the next week, the whole of the EMD was also republished by The Australian on 22 March 2023 (CB(2):6.17, p8) and by The Age on 26 March 2023 (CB(2):6.18, p21. [See Annexure B for further details about the extent of publication of the Expulsion Motion and EMD.]
326. There is evidence that Mr Pesutto’s office continued to leak the EMD over the coming days. For example, Mr Johnston sent it to the ABC on 21 March 2023: CC:428 Ex A189).

21 March Meeting

327. At around the same time there was a meeting of the Victorian Parliamentary Liberal Party (**21 March Meeting**).
328. Ms Heath took minutes of the 21 March Meeting which are at CC:432 Ex R228. Mr Hodgett gave evidence that those minutes were an accurate summary of what was said at the 21 March Meeting: CB:12, 196[17]. Mr Riordan moved a motion seeking to delay the Expulsion Motion: CB:1, 30[153] (Deeming); CB:20, 249[17] (Riordan).
329. Mrs Deeming gave evidence (at CB:1, p30-31[153]-[154]) that some of the members speaking in favour of the delay motion were saying that the Expulsion Motion was extremely serious and should be delayed for that reason, whereas the members speaking against the delay Motion were saying the Expulsion Motion was extremely serious and should be dealt with as soon as possible for that reason. Mrs Deeming gave evidence that there was a sentiment being expressed that delaying the Expulsion Motion would save face for Mr Pesutto and save his leadership, give everybody time to think more clearly about what to do and how to handle the issue and find a resolution, rather than smearing her with Nazism and expelling her. But Mr Pesutto refused to delay or withdraw the Expulsion Motion.
330. Mr Hodgett gave evidence (at CB:12, 197[18]) that the general sentiment from those in favour of delaying the Expulsion Motion was that the whole process had been rushed and that more time was required to reach a sensible resolution. His impression at the time was that the majority of MPs thought an expulsion was too severe and a resolution was required which would allow Mr Pesutto to remain in his position without Mrs Deeming being expelled. It was obvious to him, and he thought it was obvious to others at the time too, that Mrs Deeming was not associated with any Nazi groups or sympathisers. The majority of MPs he had spoke to thought it was quite reasonable for Mrs Deeming to have attended the LWS Rally.
331. Mr Riordan gave evidence (at CB:20, 250[18]) that he spoke in support of the delay motion and say words to the effect that ‘we all needed to take a deep breath, that the process was being rushed, that the Expulsion Motion and EMD didn’t justify Moira’s expulsion, and that we needed to fully understand what had happened at the Rally and the implications rather than smearing Moira with claims of Nazism and expelling her’. The sentiment he

was trying ‘was that delaying the Expulsion Motion would avoid embarrassment for John and allow the party to save face’.

332. Mr Wells gave evidence (at CB:27, 299[23]) that he said in the 21 March Meeting that the EMD did not justify the Expulsion Motion and that the Party Room ‘needed to understand the facts of the situation before making a decision to give everybody time to think clearly and find a better way which would save face for Pesutto and save his leadership’. He gave evidence he ‘wanted the temperature to lower before any decision was taken’. He gave evidence that Nick McGowan MP said ‘we should not smear a new MP with allegations of Nazism’, which is an indication of how Mr McGowan understood what was being alleged against Mrs Deeming (or at least the gist of what was being alleged).

333. Mr Pesutto gave evidence that Mrs Deeming had called the Nazie Barbie doll image ‘hilarious’: CB:30, p354 Pesutto [144]. This evidence was plainly a mischaracterisation of what Mrs Deeming had said:

(a) Mrs Deeming gave the following evidence (CB:2, 92[101]):

I do not recall using the word ‘hilarious’ specifically. What I recall is that I was trying to express that it was simply absurd, ludicrous and laughable to think that this EMD was evidence to prove anything that had been alleged. What I was trying to express was that, at worst, the images showed poor taste humour, not support for Nazism. I was criticising the Expulsion Motion and EMD as not coming close to justifying my expulsion. I thought the whole thing was insane and I couldn’t believe that when I finally got to see the ‘evidence’ against me - it was that ridiculous document. I could not believe he was proceeding with the Expulsion Motion on the basis of what was in the EMD.

(b) Ms Heath recalls Mrs Deeming using the word ‘hilarious’ (or a word like it) in relation to the EMD and thought at the time she should not have used that word because she thought it was apt to be misunderstood, but her clear impression at the time was that Mrs Deeming meant that the EMD was hilarious – ‘not that it was actually funny but that it was ludicrous and could not support her being expelled’: CB:10, 185[12].

(c) Mr Hodgett does not recall Mrs Deeming describing an image as ‘hilarious’ but recalls she flicked through the Expulsion Motion and EMD and was, in effect, ‘ridiculing that the contents of the Expulsion Motion and Dossier justified her being

expelled’: CB:13, 203[11].

- (d) Mr Riordan recalls Mrs Deeming attempting to explain why the contents of the Expulsion Motion and EMD did not justify her expulsion: CB:21, 258[19]. In relation to what Mr Pesutto calls ‘the Nazi Barbie doll image’, Mr Riordan recalls ‘Mrs Deeming saying words to the effect that her understanding was that Ms Keen had been accused of being a Nazi and had posted the image as a retort to the allegation against her’. He gave evidence that ‘Mrs Deeming’s comment to the effect that the image was ‘hilarious’ was her saying it was ‘hilarious’ that this was the best the Leadership Team had got and that this was the ‘evidence’ being used against her’.
- (e) In response to Ms Crozier’s assertions at paragraph [49] of her affidavit, Mr Riordan gave evidence that his perception was that Mrs Deeming – who ‘looked like a nervous wreck’ and was ‘sitting there in a room of 30 of her peers, shaking, and trying to defend herself’ – was not ‘scoffing at and rubbishing’ the actual content of the Expulsion Motion and EMD in itself but rather the suggestion that the Expulsion Motion and EMD justified her expulsion: CB:21, 260[28].
- (f) Mr Smith gave evidence that he recalls ‘Mrs Deeming saying words to the effect that to use the ‘Nazi Barbie doll image’ (to use Mr Peustto’s words) as evidence that Ms Keen was a Nazi or had Nazi views was hilarious or ridiculous’ and that his impression at the time was ‘that she was saying that the image did not prove that Ms Keen was associated with Nazis, or that she (Mrs Deeming) should be expelled because of any such associations’ and that ‘[s]he was not saying the image itself was ‘hilarious’’: CB:24, 281[23].
- (g) Mr Wells gave evidence that it was obvious to him at the time ‘that Mrs Deeming was not saying that the image itself was ‘hilarious’ but rather that it was ‘hilarious’, in the sense of being ridiculous, that the image had been included in the Expulsion Motion and EMD as somehow justifying her expulsion’: CB:28, 310[15(b)].

334. The delay motion did not pass.

Further communications to Mr Pesutto

335. At 9.25am, Cam Liston sent an email to Mr Pesutto: CC:416 Ex A183). He said he had attended the LWS Rally and that it was clear that the Nazis had ‘gate crashed the women’s

rally’, that Mr Pesutto was ‘factually wrong’, and that [g]uilt by association sends a terrible precedent’.

336. At 10.51am Ms Papadimitriou sent an email to Maree Edwards, the Speaker of the Victorian Legislative Assembly: CB:19, 243[13]; CB:421. Mr Pesutto was copied in to the email. She sent the email because she could not believe that Mr Andrews and Mr Pesutto, despite, she says, ‘disagreeing on seemingly everything’, could all agree it was appropriate to label Mrs Deeming and the other women who attended the LWS Rally as Nazis and because she thought Mr Pesutto was misrepresenting what had occurred at the LWS Rally: CB:19, 242[14]. Relevantly, Ms Papadimitriou’s email stated:

It is absurd to suggest that the Victorian women at the event, including Moira Deeming, are somehow linked to the Nazi group. The women who peacefully attended come from a diverse range of backgrounds. Many were lesbians and parents of gender dysphoric young people....

I am a lifelong Labour[sic] Greens supporter who supports Moira Deeming. On Saturday Moira spoke eloquently and with dignity about a muslim, migrant woman's experience of living in Australia. Moira has done nothing wrong. Using her as a scapegoat for the angry violent behaviour of random men is unjust and unfair. Do not blame this woman and sacrifice her career and livelihood.

I am happy to speak with you about the issue - I am a witness to the event and the women who spoke there. I am a woman who cares about the erosion of women's rights and our voice in public life. I hope you do too.

337. Mr Pesutto never responded to the email: CB:19, 243[15]. Other than Mrs Deeming, Mr Pesutto had never spoken to anyone who had been at the LWS Rally. Ms Papadimitriou offered to speak with him but was ignored.
338. At 10.58am Ms Oddi sent an email to Mr Pesutto and Ms Crozier: CB:18, 239[36]; CC:422. Ms Oddi’s email stated that she had attended the LWS Rally: CC:422, 2183. She described Ms Keen as ‘a women’s rights activist’: CC:422, 2183. She stated: ‘I had no idea the nazis were there until I came home and saw it on the news’ and ‘I should not have to justify this, but I do want to say the women did not notice them’: CC:422, 2186. When she had not received a response from Mr Pesutto or Ms Crozier by 8.06pm that evening, she forwarded her email to Mr Dutton: CB:18, 239[37]; CC:429.

339. At 3.24pm, Pru Gell sent an email to Mr Pesutto: CC:427 Ex A188). It stated ‘The neo-Nazi and far right associations that Posie Parker and Mrs Deeming have are terrifying’.

Publications by The Herald Sun

340. On 21 March 2023, The Herald Sun published a two page spread of articles entitled "State to outlaw Nazi Salute", "*Deeming is looking like Bernie Finn 2.0, and it could also be John Pesutto's make-or-break moment*" and "*Risky Bid to expel sitting MP – Opposition leadership on the line*". Those articles are at CC:435 Ex A191.

341. Mrs Deeming gave evidence that she was furious about the photographs, which included a huge photograph of her and Ms Keen in the foreground which was superimposed on a photograph of the neo-Nazis saluting on the steps of Parliament House in the background: CB:1, 29[147]. She was extremely worried and upset that this linked her visually to the neo-Nazis. She thought it looked as though the neo-Nazis were saluting her and Ms Keen. She was scared it would make people think she attended with the Nazis or that there was mutual support between them or that she had stood near or with them.

342. At around this same period, in the lead up to and in the days following the vote on the Expulsion Motion on 27 March 2023, the media began to follow and harass Mrs Deeming. She gave evidence: ‘This distressed me to no end. I felt I had lost my privacy, and that my children had lost their privacy. I felt dehumanised and hounded’: CB:1, 30[148]. At one stage there was an intrusion into their home: CB:1, 30[149]. Mrs Deeming felt her home was no longer private and that she and her family were in danger. Following this incident, she made sure all the blinds were down on all their windows and the police did patrols around their house. She felt terrified for the safety of her children.

Attempts to persuade Mr Pesutto not to proceed with the Expulsion Motion

343. Over the course of the following days, prior to the 27 March Meeting at which members of the Victorian Parliamentary Liberal Party would vote on the Expulsion Motion, numerous people sought to persuade Mr Pesutto that his decision to seek to expel Mrs Deeming was ill-advised and ill-informed and that he should not proceed with it:

- (a) Mr Hodgett told Mr Pesutto that an expulsion was too harsh. Mr Pesutto told him, in effect, ‘that it was too late – that he had taken a position and he had to see it through’. Mr Hodgett urged Mr Pesutto to reach a compromise. He thought this would be the

most satisfactory outcome not only for Mrs Deeming but also for him and the Liberal Party. He told Mr Pesutto that his view was that ‘at worst, Moira might have shown dubious judgment politically by associating with individuals who might have questionable or even offensive views but that this was not a hanging offence’. (CB:12, 196[14])

- (b) Mr McCracken and Ms Heath met with Mr Pesutto because they were ‘worried the situation was getting out of hand’. Mr McCracken told Mr Pesutto ‘he didn’t have to expel Moira’. ‘[He] thought it would tear the party apart’: CB:15, p213-214[19]. Ms Heath suggested Mr Pesutto could say that further information had emerged which showed that Mrs Deeming did not deserve to be expelled: CB:9, 169[16]. She suggested this ‘further information’ would be that it had become clear that the Nazis had not ‘attended’ the LWS Rally but had crashed it; she had thought it was clear from the outset that the Nazis were not associated with the women at the LWS Rally, but since that was the line Mr Pesutto had taken she thought he could now say that further information had emerged which showed that the Nazis were not associated with Mrs Deeming or the women at the LWS Rally, which would give him a way out. She suggested Mr Pesutto could shift the focus onto the Labor Government’s position on the ‘Move-on Laws’. He refused.
- (c) Mr Riordan and Brad Battin spoke privately with Mr Pesutto. Mr Riordan’s evidence about this is as follows (CB:20, 249[16]):

I cannot now recall who said what, but we made it absolutely clear to him that this was not an attack on him; we were not trying to belittle him; it was not a shot at his leadership; we were not trying to undermine him. We said it was already a mess and we were trying to resolve it. We said we would work with him and stand with him and say whatever he wanted us to say to give him cover so he could abandon the Expulsion Motion. I said he had made a mistake and that he couldn't proceed with the Expulsion Motion because the evidence was so flimsy and Moira was not a Nazi. I told him that at my house on Sunday there were 200 people there and not one person had mentioned Moira or the Rally. I told him it was a non-event. I said that sacking a female Member from the party on a false pretence is wrong. I pointed out that he was proposing to sack her because she was collaborating with Nazis but that's not what had happened. I said that we shouldn't sack someone except in the most extreme of circumstances. John refused to back down. He was adamant that the claims of Nazi collaboration could be

substantiated. He said he could not lead a party with someone like Moira in it. Brad Battin and I shook our heads in disbelief.

- (d) Mr Wells met with Mr Pesutto on 21 March 2023 and possibly three times in total over the next week and also spoke to him by phone on a number of occasions prior to the 27 March Meeting: CB:27, 299[24]-[25]. He gave the following evidence about his interactions with Mr Pesutto:

I met Pesutto personally that day and possibly three times altogether over the next week and also spoke by phone to him on a number of occasions in the run up to the motion to expel Deeming. I said that what he had done was wrong and if he lost the motion he would have to resign. I said there was no substance to the accusations against Deeming. Pesutto kept saying he had to follow through with his motion or it would be a sign of political weakness. I pointed out that either way it was going to end in tears.

I said the result should not be expulsion even if he thought she had done something wrong. I suggested a lesser course of counselling or mentoring her as a new MP might be better. He said the evidence was all there in the EMD that she had associated with someone who associated with Nazis. I said relying on Wikipedia for the evidence was embarrassing and this was a change of story from the original conversation I had with him (when he had said she had organised a group of Nazis to attend the rally). He said the Leadership Team would not be wavering.

344. Mr Riordan gave evidence that Mr Pesutto's decision to proceed to seek to expel Mrs Deeming was 'incompatible with the long history of the party and how it should operate': CB:20, 250[20]).

Mr Pesutto's office plotting to persuade MPs to support the Expulsion Motion

345. At 10.31am on 21 March 2023, Chantalle Asmar from Mr Pesutto's office circulated to the Leadership Team (and also Mr Johnston, Mr Pintos-Lopez and Mr Anderton) an Excel spreadsheet with her assessment of the likely positions of the MPs within the Party Room on the Expulsion Motion: CC:419 (Ex.42). In relation to MPs who had been assessed as 'Unsure'. Ms Asmar had provided suggestions as to how they might be persuaded to support the Expulsion Motion – for example, Trung Luu ('Pitch - #1 candidate in the West'), Michael O'Brien ('Pitch – Coalition threat might get him over the line'), Brad Rowswell ('Could be persuaded by Kroger'), etc.

346. Further versions of the spreadsheet were circulated at 11.22am on 21 March 2023 (CC:423 Ex A186)), at 8.40am on 23 March 2023 (CC:448 Ex A193)), 11.35am on 24 March 2023 (CC:459 Ex A195)), 6.19pm on 26 March 2023 (CC:470 Ex A44)).

23 March 2023

347. At 1.24pm on 23 March 2023, Chris Duke and Peter Phillips (Moderator of the Presbyterian General Assembly) sent an email to Mr Pesutto attaching a letter on behalf of the Presbyterian Church of Victoria: CB:6, 141[11]-[12]. The email and letter are at CC:450. The purpose of the letter was to show Mr Pesutto and the Leadership Team that Mrs Deeming 'had never associated with Nazis, and that during our interactions with Moira we never thought for a second that she had Nazi sympathies': CB:6, 141[12]. Mr Duke never received a reply from Mr Pesutto: CB:6, 142[13].

24 March 2023

348. On 24 March 2023, Mr Pintos-Lopez sent a WhatsApp message to the Leadership Team (CC:460 Ex A196)) about the number of people in support of expelling Mrs Deeming:

WhatsApp Message received on 24/03/2023 12:55:28 PM from Rodrigo Pintos-Lopez [REDACTED]

Kristy McSweeny texted me and sent some screenshots of the comments to her post overnight about her disagreement with Credlin on Sky. She says there have been 22,000 views and lots of retweets. All in support of expelling Deeming.

25 March 2023

349. On 25 March 2023, Mr Pesutto published an article about Mrs Deeming entitled "*Decency and diversity must unite us*": CC:463 Ex A43). Amongst other things in that article, Mr Pesutto wrote: "*Nazis have no place in our community and those who share platforms with or associate with extremist groups, including neo-Nazi activists, have no place in the Liberal Party.*" When Mrs Deeming read this article, she thought Mr Pesutto was directly saying that she shared platforms with and associated with extremist groups, including neo-Nazi activists, and that is why she was being expelled from the Victorian Parliamentary Liberal Party as having no place in it.

350. Also on 25 March 2023, Neil Angus (a former Member of Victorian Parliament between 2010 and 2022) sent the following message to Mr Pesutto and the Leadership Team:

SMS/iMessage Message received on 25/03/2023 8:53:45 PM from Neil Angus [REDACTED]

Dear John, David, Georgie and Matt.
Having spoken to John and Matt and left messages for David and Georgie, I am writing to seek a meeting with you all and Moira. I am doing this in an effort to stave off what will be a terrible outcome from the Party meeting scheduled for Monday, regardless of the result of the vote. The damage this situation is causing the Party and its members cannot, in my view, be overstated. I have spoken with Moira and she is contrite and keen to do all she can to see this situation resolved, with no further damage being done. I implore you to meet so a resolution can be reached and there will be no need for Monday's meeting to be held. Thank you. Neil Angus.

(CC:462 Ex A198))

26 March 2023

351. At 2.51pm on 26 March 2023, Mrs Deeming sent an email to members of the Victorian Parliamentary Liberal Party asking them to vote against the Expulsion Motion: CC.468 Ex R41).

27 March 2023

Response to EMD

352. At 6.29am on 27 March 2023, Mrs Deeming sent an email to members of the Victorian Parliamentary Liberal Party (CC:473 Ex R42)) with her response to the EMD (**EMD Response**).
353. Mrs Deeming gave evidence (CB:2, 93[107])

Amongst other things, in my Dossier Response , I said: ' I admit that with the benefit of hindsight of what has occurred that my participation may have been an error of judgment that resulted in unneeded scrutiny' . I made this statement as a recognition , based on my experience since the LWS Rally, that I needed to be more mindful of how persons such as Mr Pesutto and his supporters could misrepresent my public activities and create adverse publicity for me and the Liberal Party if I was not more careful in the future.

27 March Meeting

354. On 27 March 2023, there was a meeting of the Victorian Parliamentary Liberal Party to vote on the Expulsion Motion (**27 March Meeting**).
355. Before the meeting started, Ms Heath said to Mr Pesutto words to the effect of ‘John – this is an important meeting. How do you want me to take the minutes? I assume they need to be detailed?’: CB:9, 171[25]. He said words to the effect of ‘It’s very important and I want you to be detailed’. She said she would.
356. Ms Heath typed notes of what was said using her laptop. She typed as fast as she could: CB:9, 171[25]. She was ‘trying to capture what each person said, and to be as accurate and detailed as possible’. Mr Hodgett gave evidence that Ms Heath ‘was a very fast typist and would type notes straight onto her laptop’: CB:12, 197[20].
357. There were subsequently three versions of Ms Heath’s minutes, which are at CC:482 Ex R240) (**first version of the 27 March Minutes**), CC:490 Ex R242) (**second version of the 27 March Minutes**), and CC:491 Ex R243) (**third version of the 27 March Minutes**). Mrs Deeming gave evidence that each of those three versions is consistent with her memory of the 27 March Meeting: CB:1, p35-36[179]. Mr Hodgett gave evidence that each of those three versions accurately reflected what was said and what occurred at the 27 March Meeting: CB:12, 197[20]. Mr McCracken’s and Mr Riordan’s and Mr Smith’s memories of the meeting were consistent with the three versions: CB:15, 214[20] (McCracken); CB:20, 250[22] (Riordan); CB:23, 271[31] (Smith).
358. Mr Pesutto gave some bizarre opening remarks in which he did not refer at all to Mrs Deeming, or the allegations against her, but talked mainly about himself and his leadership (see CC:491. P2450 Ex R243)).
359. Then various MPs spoke for and against the Expulsion Motion.
360. Mr Wells gave unchallenged evidence that approximately 10 MPs who spoke in favour of the Expulsion Motion ‘expressed views that the contents of the EMD were true and justified Deeming’s expulsion’: CB:27, 299[27].

361. Mrs Deeming gave the following evidence (CB:1, 36[180]):

It greatly upset me each time someone spoke in support of it. I was upset that Mr Pesutto seemed to make the issue about him, not me. It was grating that he said it had been a difficult week, as though his difficulties were comparable to mine. It upset me that he said the decision was not personal; it seemed deeply personal to me . I was distressed that the Leadership Team continued to lie to support their position. Dr Bach suggested I was an extremist which shocked and upset me. It disturbed me that they seemed to lie so easily , without any embarrassment or empathy. There was something inhuman about it. I had a sense my life was being ruined . Conversely , a number of people spoke in opposition to the Expulsion Motion. I was struck by Nick McGowan MP (Member for North-Eastern Metropolitan) saying words to the effect that if I was expelled the party would be labelling me as a Nazi, which he said is like calling someone a murderer, a rapist, or a paedophile , and that there is not a penalty that is worse than that. I knew he was right and I was terrified that even though that was obvious to every one of them in that room, that they might actually do it me even though I was innocent.

362. When the debate had finished but before Mrs Deeming spoke, Mr Smith asked Mr Pesutto directly whether there was any room for compromise but he said no: CB:23, 271[34].

363. Mrs Deeming made an impassioned speech. The text of her speech is at CC:489 and CC:502. The witnesses describe that she cried and was very emotional and was visibly upset when she revealed intensely personal and traumatic experiences from her past: CB:12, 197[22] (Hodgett); CB:15, 214[23] (McCracken); CB:20, 251[27] (Riordan); CB:27, 299[27] (Wells).

364. Ms Heath gave evidence (CB:9, 171[26]):

Moirra seemed broken and vulnerable as she shared her own personal experience with sexual abuse. She outlined why women's rights are so important to her and that it was because she wanted to protect other girls from experiencing the trauma that she had gone through. It was obvious to me from observing her that she did not feel comfortable sharing her trauma with people who were trying to expel her from the Party Room, but she was doing so out of desperation, as her only option if she wanted to stay in the Party Room.

365. The preparation and reading of the speech was traumatic for Mrs Deeming. She gave evidence that having to read it 'was degrading and humiliating and traumatic' and 'I felt like this was a Kangaroo court, and that I was utterly at the mercy of the party room to

decide my fate on allegations I felt they all knew were untrue and couldn't hold up in any real court': CB:1, 36[183]. Mr Deeming gave evidence that she had told him 'she felt she had been backed into a corner and forced by Mr Pesutto's statements about her into a position where she had to reveal, in her speech, deeply personal aspects of her past in an attempt to explain her view that biological females should be entitled to their own private spaces': CB:4, 124[65]. He gave evidence:

She told me she felt degraded and humiliated by this. Moira is a very private person when it comes to showing emotion. She shows them at home but not in public. She told me that giving this speech was going to make her cry and she did not want to expose her deepest traumas to the people who were putting her through this new trauma. She described to me that she felt as though she was being 'forced to stand in front of them naked', or words to that effect, but that she felt she had no choice in order to clear her name for our children.

366. Mr Riordan gave evidence that his reading of the mood of the Party Room was that Mrs Deeming's speech 'had swung the room against voting for the Expulsion Motion and that the Expulsion Motion was not going to pass': CB:21, 258[20]. He thought this would have been clear to those in the room. Mr Wells gave evidence that it became evident to him, during the meeting, 'that the numbers were shifting in favour of not expelling Deeming', that he estimated they were in the end 16 to 14 in Mrs Deeming's favour, and that he thought it was clear the vote was not going to pass: CB:27, 299[27]; CB:28, 311[16].
367. If the Expulsion Motion had not passed, Mr Pesutto's leadership position would have been in jeopardy: CB:21, 258[20].

Negotiations

368. There was an adjournment. There were negotiations in which Mr Hodgett, Mr Smith and Mr Wells acted as intermediaries between Mrs Deeming and Mr Pesutto and Mr Southwick.
369. Mrs Deeming's evidence about this was that she was initially asked if she would accept a proposal whereby the Expulsion Motion would be withdrawn if she accepted a 12-month suspension but that she refused and said she had done nothing wrong: CB:1, 37[184]. She gave evidence that she 'kept saying that Mr Pesutto had to unsay everything he and the Leadership team had said' and that she 'would never accept any compromise without a complete exoneration and a retraction of everything Mr Pesutto and the Leadership Team had said'.

370. Then it was suggested she might accept a 9-month suspension: CB:1, 37[185]. Mr Wells suggested to her this was the only way to save both her and Mr Pesutto and that, to get her exoneration, she had to save Mr Pesutto's leadership and this required her to 'take a hit'. She gave the following evidence (CB:1, 37[186]-[187]):

I felt I had no choice and no time to think. This seemed to me to be the only way I could remove the Nazi slur for the sake of my children and retain my position. Mr Wells and Mr Smith and others were imploring me to accept a compromise. I was physically backed into a corner of the room and felt trapped. I was emotional and humiliated, and exhausted. I couldn't think and felt I was being forced to make a significant decision right then and there. I had been expecting the Expulsion Motion to either succeed or fail; I was not prepared for this situation at all.

Eventually I said I would agree to accept a 9-month suspension but only if Mr Pesutto would publish an official signed and stamped statement (just like the Expulsion Motion) which exonerated me from every single one of the accusations and imputations that he had published about me. I made it very clear - and I checked with Mr Wells multiple times that he understood and the Leadership Team understood - that I would not accept any compromise unless Mr Pesutto retracted every single claim he had made about me, including that I was associated with Nazis and had brought the Liberal Party into disrepute. I also checked and ensured that I would be automatically reinstated at the end of the 9-month suspension. Mr Wells and Mr Smith spoke to the Leadership Team and returned to tell me that Mr Pesutto had agreed to those terms.

371. Mr Hodgett's evidence about this was as follows (CB:12, 197[22]):

[Mr Pesutto] beckoned me over. He asked if I thought Moira would accept a suspension instead of expulsion. I said I didn't know but would ask her. I asked her and said she wouldn't accept a suspension. I went back to John and told him. There were then further discussions. Kim Wells and I spoke to Moira. I recall Kim saying she had to accept some form of compromise. She was upset because she didn't think she deserved any form of punishment. Kim and Moira and I discussed whether she might accept a suspension for 3 or 6 months. I was concerned because we were negotiating on the run. I thought we should have resolved this beforehand which is exactly what I had attempted to do in the lead up to the meeting. Eventually, Moira agreed to accept a 9 month suspension. John was prepared to accept this, even though it would mean some embarrassment for him.

372. Mr Smith's evidence is as follows (CB:23, 271[36]):

I went over to Moira with David Hodgett and Kim Wells. I was suggesting she might agree to a 6 month suspension, but my recollection is that Mr Pesutto was insisting on 9 months. I thought this would be a satisfactory outcome. I did not think it was fair; in my view Moira had done nothing that warranted any punishment, let alone an expulsion or suspension. But I thought it was a satisfactory practical resolution for the benefit of the party. The resolution was put to the party room and the party agreed to the compromise. The compromise was that there would be a 9 month suspension and that Mr Pesutto would put out a statement, jointly with Moira, recanting what he had said about her.

373. Mr Wells' evidence was as follows (CB:27, 300[28]-[31]):

David Hodgett and I were called over to Pesutto and David Southwick and we were asked if Deeming would accept a 12-month suspension.

Hodgett and I went to speak to Deeming to ask if this was acceptable. Ryan Smith joined us. Deeming was, quite rightly in my view, still visibly very upset about all of the accusations made about her. She said to me that being accused of associating with Nazis would stick with her for her whole life. She said no to the suspension as she had done nothing wrong. She 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.

Pesutto refused and said there had to be a suspension of 12 months. Smith and I went back to Deeming. She flatly refused to accept any deal unless there was a full exoneration of everything in the EMD 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. This had to be published in a joint public statement with Pesutto. She said she would rather be expelled if her family's name was not cleared. Smith and I went back to say Deeming was not happy but reluctantly accepted a 9-month suspension and a full exoneration in a joint public statement with Pesutto.

Pesutto, Southwick and Georgie Crozier orally agreed to the compromise that included a full exoneration in a joint public statement between Deeming and Pesutto.

374. In his second affidavit, Mr Wells made clear (CB:28, 311[17(b)]; and see also[20(b)]-[20(d)]):

Mrs Deeming was adamant, and made crystal clear to me, that she would not agree to any

compromise or deal unless there was full exoneration and a joint statement from her and Mr Pesutto together. I communicated that to Mr Pesutto. I made clear to Mr Pesutto, and it was part of the compromise, that there would be no deal unless there was a full exoneration of Mrs Deeming and unless she and Mr Pesutto would issue a joint public statement.

Reading out of the terms of the compromise

375. The meeting resumed. Mrs Deeming gave evidence that Mr Pesutto announced that he withdrew the Expulsion Motion and a compromise had been reached: CB:1, 38[189]-[190].
376. Ms Heath gave evidence that Mr Pesutto announced that there was a proposed compromise, which was that Mrs Deeming would be suspended from the Party Room for 9 months, there would a joint statement from the Leader's Office in conjunction with Mrs Deeming, and the Leader's Office would release a statement saying that Mrs Deeming was not a Nazi or Nazi sympathiser: CB:9, 171[27]. When it came to typing the compromise, she wrote it down twice because Mr Pesutto said it once and then returned to it a second time – so she wrote it twice. She read it back to the Party Room and it was voted on and agreed.
377. The first version of the 27 March Minutes recorded that the compromise as follows (at CC:482, 2427 Ex R240):

11:56am. Meeting called to order. We have reached a compromise. People have been moved

The promised compromised –

- moira to be suspended from the party room for 9 months
- a joint statement
- a media statement this statement will make clear that no one was accusing Moira of being a Nazi, or Nazi sympathiser.

Effective: 9 months from this meeting.

Motion:

- nine months suspension immediately
- joint statement from the leaders office in conjunction with Moira
- we will release a statement that she is not a Nazi

Agreed but not with a show of hands.

378. Ms Heath understood at the time that the resolution which had been voted on and agreed included that Mrs Deeming and Mr Pesutto were going to get together and prepare a single joint statement which would then be released as a mutual statement: CB:9, 171[28].

379. Mr Hodgett gave evidence that the terms of the compromise were read out ‘several times’, and then the party room voted on and approved the compromise: CB:12, 198[23]. He gave evidence that the compromise was ‘that Moira would accept a 9 month suspension and there would be a joint statement from her and John, making it clear that Moira was not being accused of being a Nazi, or Nazi sympathiser’.
380. Mr McCracken gave evidence that his understanding of the agreement was: a) Mrs Deeming would be suspended for 9 months; b) she would re-enter the party room in late 2023 or early 2024; and c) a joint statement from Mrs Deeming and Mr Pesutto would be prepared and agreed ‘which would make it clear that Moira was not a Neo-Nazi and did not have those sympathies’: CB:15, p214-215[24]. His understanding was that ‘both parties would have input and would have to agree to the content of the media statement before it would be published in both their names’.
381. Mr Riordan gave evidence that what was agreed was that Mrs Deeming would be suspended for 9 months and that ‘there would be a joint statement from John and Moira saying she was not a Nazi or Nazi sympathiser’ and ‘that both John and Moira would be putting their names to the statement’:CB:20, 251[28]. Based on his experience in politics, that is what is meant by joint statement: CB:21, 259[24].
382. Mr Smith gave evidence that the compromise was ‘that there would be a 9 month suspension and that Mr Pesutto would put out a statement, jointly with Moira, recanting what he had said about her’: CB:23, 271[36].
383. Mr Wells gave evidence that the compromise ‘was that Deeming would be suspended for 9 months and that a joint statement from him and Deeming would be issued after the meeting which would make it clear that no one was accusing Deeming of being a Nazi or a Nazi sympathiser’: CB:27, 300[32]. Mr Wells thought Mr Pesutto ‘was just summarising that he would fulfil the deal he had made...which was that there would be a full exoneration’.
384. Mr Trung Luu also seems to have understood what was required, because in a text to Mr Pesutto at 6.07pm that night he referred ‘the statement between leader team and moira’: CC:485 Ex A202).

27/03/2023

SMS/iMessage Message sent on 27/03/2023 8:23:45 PM - Read

Many thanks Trung. I'm saying whenever I do media that this is not about free speech or one's religious views. But I'll keep trying to get the message across as I know it has been swamped by Moira and her supporters to misrepresent what the issue is really about - that is, being a team player. Thanks for your wise counsel and support. 🙏🙏
Cheers, JP

SMS/iMessage Message received on 27/03/2023 6:07:35 PM from

John I didn't want to make the situation any worst earlier or speak out of term as it is your call. But the statement between leader team and moira need to ensure that she state or acknowledge that your motion / decision has nothing to do preventing free speech and denying her to speak for woman rights as this has been a narrative exploited and used to gathered support. It has painted a bad picture on our liberal brand and if not nip in the butt. It will harder to change the narrative later on.
Trung

(It is also notable that Mr Pesutto's response to Mr Luu also states that 'what the issue is really about...is being a team player').

Credit issues regarding joint statement

385. There cannot now be any question that the Party Room was informed that a joint statement had been agreed as recorded in Renee Heath's detailed notes. All the attendees who gave evidence to this Court save Mr Bach and Ms Crozier agreed that the words "joint statement" were used in the resolution to the 27 March 2024 meeting. Ms Heath's notes, that Mr Pesutto agreed accurately recorded the substance of what was resolved at the meeting, described the notes as a transcript: T854.17-20.
386. Ms Crozier agreed that she understood that both Mrs Deeming and Mr Pesutto were to put out statements as a resolution of the party room meeting. Mr Bach although he did not remember the words "joint statement" gave evidence that when he a version of Ms Heath's notes that included the words "joint statement" in the media he believed they were so accurate there must have been a recording of that meeting: Bach T933.4-7, 934.5-22, 985.23-28.
387. Mr Pesutto contended in his first affidavit CB:30, [160] that he meant "joint statement" to mean jointly prepared. Under cross-examination at T857.18 he said it was to "jointly prepared". At T857.23, he said to was a 'joint statement' in that I wanted my office to hold the pen." A T857.30, he said I don't think anyone reasonably would have expected me at

that stage to be on a joint statement with Mrs Deeming. At T857.41-46, he did not accept that he understood 'joint statement' meant a statement from him and Mrs Deeming on their joint letter head. At T858.4-12, he said that 'joint statement' can be either a statement on both letterheads or a statement where you worked together.

388. Mr Pesutto having accepted that he spoke the words "joint statement" knew that what he had agreed in the 27 March Meeting was that a joint statement would be published from both Mrs Deeming and Mr Pesutto on their letterheads and his evidence above were lies:
- (a) as outlined above Mr Southwick issued a 'joint statement' with Mr Battin on their joint letterhead on 18 March 2023;
 - (b) as outlined above Mr Pesutto and Mr Southwick issued a 'joint statement' together on their joint letterhead on 13 May 2023;
 - (c) Mr Pesutto admitted at T858.1-8 that Southwick and Battin joint statement was a 'joint statement';
 - (d) Mr Southwick admitted at T1016.8-10 that the way a 'joint statement' normally happens was a statement issued by two or more MPs on each of their letterhead;
 - (e) Mr Bach understood a 'joint statement' to mean a statement from two or more persons on each of their letterhead at T986.1-4;
 - (f) Mr Hodgett gave evidence that, based on his experience in politics, the words 'joint statement' are 'ordinarily understood to mean a statement with comments from both people with the letterheads of both people': CB:13, 203[12].
 - (g) Mr McCracken gave evidence that his understanding, based on his experience in politics, is that a joint statement 'is where a statement is prepared by two or more people who contribute to the contents of the statement, and who release it 'jointly' in both their names': CB:16, 220[16].
 - (h) Mr Riordan disagrees that Mr Southwick's suggestion (at paragraph[62] of his first affidavit) that it was 'a matter of common political sense' that the 'joint statement' meant 'there would be a statement agreed by both parties' rather than a statement signed by or released by both parties: CB:21, 259[24]. Mr Riordan gave evidence:

In my experience, when 'joint' press statements are released, they always have both names on it. I have never heard of a 'joint' press statement going out with only one name on it. If that was the intention at the time, the Party Room should have been told that the resolution being sought was that Mrs Deeming would issue a statement in her name which would be approved by the Leadership Team (that would not have been a 'joint statement').

- (i) Mr Smith also disagreed with Mr Southwick's suggestion that 'as a matter of common political sense' the words 'joint statement' meant 'there would be a statement agreed by both parties, which Moira would release through the Leader's office'. He gave evidence th[t]his is not what was discussed at the time' and that 'it was clear there was going to be a joint statement from two people': CB:24, 282[26].
 - (j) Mrs Deeming gave evidence that, in her experience, 'the words 'joint statement' mean a statement by both people together': CB:2, 95[114(b)].
389. Dr Bach contended in his first affidavit that he heard statement but did not recall if Mr Pesutto used the phrase "joint statement" at the 27 March 2023 meeting: CB:32, [56]. In cross-examination at T985.14-45 and T988.20-25 emphatically denied multiple times that the words 'joint statement' were not used.
390. Dr Bach as outlined above admitted the accuracy of Ms Heath's notes that recorded the phrase 'joint statement' was resolved by the meeting. For the same reasons in relation to Mr Pesutto above and for the additional reason because the increased certainty in his evidence from his first affidavit to answers in cross-examination. Dr Bach lied in this evidence lied in evidence about what 'joint statement' meant in the motion resolved on 27 March 2023.
391. Mr Southwick in his first affidavit gave evidence that although he did not recall the exact words - it was agreed that they would move a motion that include a 'joint statement' be published: CB:30, [160]. He contended that as a matter of common political sense, he understood that a "joint statement" meant there would be a statement agreed by both parties, which Mrs Deeming would release through the Leader's office.
392. At T1105.1-6, Mr Southwick gave evidence he thought that there was a 'joint statement' and that the 'joint statement' was put out on the evening on 27 March 2023 that was jointly

worked on between both parties, that was prepared jointly and word-by-word agreed to by both.

393. For the same reasons as Mr Pesutto above, Mr Southwick lied in evidence about what ‘joint statement’ meant in the motion resolved on 27 March 2023.

Preparation of the joint statement

394. Following the 27 March Meeting, Mrs Deeming returned to her office. Mr Deeming ‘could see she was drained and exhausted’: CB:4, 124[66]. She told him she had delivered her speech to the Party Room and, as she had feared, she had cried which she said was deeply humiliating for her. She was upset she had had to reveal these things about herself.

395. Mr Deeming gave unchallenged evidence that Mr Pesutto and a pack of people walked past Mrs Deeming’s office and she asked him a question along the lines of ‘What’s happening with the statement’ and he responded along the lines of ‘We’ll send someone to come and get you’: CB:4, 124[69]. But instead of working with her to prepare the joint statement, as had been agreed, he instead gave his own press conference (see paragraph 420 below).

396. Mrs Deeming went to Ms Heath’s office trying to find Mr Pesutto so they could prepare the joint statement: CB:1, 38[193] (Deeming); CB:9, 172[29] (Heath).

397. Ms Heath exchanged the following texts with Mr Pesutto (which are at CC:480 Ex A201)):

(a) At 2.06pm, she texted him:

SMS/iMessage Message received on 27/03/2023 2:06:05 PM from Renee Heath [REDACTED]

Moira has asked me as secretary to find out when you’re meeting her for the joint statement. She is waiting here for you and has to make plans

(b) At 2.16pm, he responded:

SMS/iMessage Message sent on 27/03/2023 2:16:27 PM - Delivered

Hi Renee, I’ll get the office to get in touch with Moira to start working on it if they haven’t already. I’ve just finished the presser a little while ago and have a meeting now.

(c) At 3.00pm, she responded:

SMS/iMessage Message received on 27/03/2023 3:00:19 PM from Renee Heath [REDACTED]

Ok. She doesn't have her lap top so you'll need to text her

398. Mrs Deeming returned to her office to wait for Mr Pesutto. While she was waiting, in response to a tweet stating that Mr Pesutto had 'stated unequivocally' that Mrs Deeming agreed that Ms Keen and Ms Jones 'have consorted with Nazis and expressed bigoted views', Mrs Deeming published a tweet at 5.25pm (CC:484 Ex R48) (**Mrs Deeming's 27 March Tweet**) stating:



399. Eventually, Mrs Deeming was summoned to a meeting where she thought the joint statement would be prepared: CB:1, 39[195]. She asked if she could bring her husband, Andrew, but was told no.

400. There were at least two meetings to prepare the statement.

401. In the first meeting, Mr Southwick handed Mrs Deeming the draft statement which is at CC:494 Ex R43). Mrs Deeming gave the following evidence (CB:1, 39[196]):

I was furious and immediately rejected this statement as being the Ex Act opposite of what had been agreed , which was a joint statement from me and Mr Pesutto which would exonerate me and retract the claims in the Expulsion Motion and EMD. I told Mr Southwick, again, that the Nazis had not "attended 11 the LWS Rally. I asked him where was the exoneration I had been promised. I asked where Mr Pesutto was. Mr Southwick said he was representing the Leadership Team and that I had to get my half done first. I said I would never sign this statement. Mr Southwick said that if I didn't sign it, they would have to recall all 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. I was disgusted and regarded these statements as an attempt to blackmail and coerce me. I was furious and outraged. I told Mr Southwick that it was not my problem if we had to return to the party room because this draft statement did not reflect the deal that was made and what I had been promised. I said I would rather return to the party room and be expelled than sign my name to this statement. I walked out of the meeting and returned to my office.

402. On her way to her office, she called Mr Wells and ‘raged at him’, saying the draft statement ‘was the opposite of what had been agreed’ and he assured her ‘that everything would be OK, that it was just a negotiation, and that the party room had agreed[she] would be exonerated in a joint statement, but th[she] had to get[her] part done first’: CB:1, 40[197].

403. Mr Deeming gave unchallenged evidence that, when Mrs Deeming returned to her office following this first meeting, she said that Mr Pesutto had not even showed up and that Mr Southwick had given her ‘what was supposed to be ‘her half’ of the joint statement to sign’: CB:4, 124[71]. She was absolutely furious at this draft statement. He gave the following unchallenged evidence:

She told me that he had threatened her that, if she did not sign the proposed statement, they would have to return to the party room to vote on the Expulsion Motion. She told me he had said that, if that occurred, because she had made so much trouble and forced a new meeting, the other MPs would be furious and would definitely expel her this time and her career would be over. She told me she had said to Mr Southwick 'That's fine, I'd rather be expelled than sign this statement'. She told me she had rung Mr Wells on her way back. I understood he had been acting as an intermediary between her and the Leadership Team. She told me she had blasted him because she felt she had been betrayed. She told me Mr Wells had said he

would sort it out but she needed to do her part of the statement first. Moira appeared furious. She told me she felt blackmailed by Mr Pesutto and Mr Southwick, humiliated, and powerless.

404. Mr Deeming also gave unchallenged evidence that Mrs Deeming asked him if he could join her at the next session ‘because she was in an emotional state, was so exhausted (she had not drunk or eaten enough), and believed that Mr Southwick and the others were bullying and ganging up on her’: CB:4, 125[72]. During the second meeting, Mrs Deeming gave evidence that:

- (a) Mr Southwick kept pressuring her to denounce LWS, Ms Keen and Ms Jones: CB:1, 40[199] and [202].
- (b) Mr Southwick said that she was in this situation because she had refused to condemn the social media posts in the 19 March Meeting, and she reminded him that she had never seen these posts until Mr Pesutto included them in the EMD because the Leadership Team had refused to show them to her during the 19 March Meeting, and Mr Southwick said ‘this was because they didn’t have the evidence organised at the time of the 19 March Meeting’: CB:1, 40[200].
- (c) Mr Southwick kept repeating that the problem was that she had contradicted Mr Pesutto as Leader with her 27 March Tweet; she was shocked by this and said words to the effect of ‘I wouldn’t have to contradict the Leader if he stopped telling lies’: CB:1, 40[201].

405. Mr Deeming gave the following unchallenged evidence about this meeting (CB:4, 125[74]):

We worked on editing Moira's half of the joint statement until it was in an agreed form. Moira asked if we could stop and finalise it the next day because Mr Pesutto was not even there and she was so tired. But Mr Southwick said no. He said they just needed to get her half done. Moira appeared annoyed at Mr Southwick because he kept rejecting her proposed wording. She told him that because he was in the original Sunday night meeting with the Leadership Team and because he had made the deal in the party room, he knew that the words she wanted to say were consistent with what she had told the Leadership Team on the Sunday and were consistent with what the party room had agreed in the 27 March Meeting.

Mr Southwick said that did not matter. He said what mattered was that Moira's statements would be seen to be 'contradicting the leader'. This made Moira look incensed. She told Mr Southwick that if Mr Pesutto stopped lying then she would stop contradicting him. She kept asking why Mr Pesutto was not there. I cannot recall Mr Southwick's response, other than that he appeared to me to be making excuses as to why Mr Pesutto was not there. Mr Southwick kept pressuring Moira to denounce Angie Jones, Kellie-Jay Keen and the LWS as

Nazi associates and bigots. Moira got especially angry at this and told him never to ask that again or she would walk out. Mr Southwick kept saying words to the effect of 'You have to back up the leader' and 'You can't contradict your leader'. At some stage Moira said that the Leadership Team hadn't shown her the evidence at the meeting on Sunday and Mr Southwick replied that they didn't have the evidence on the Sunday...

406. This unchallenged evidence is important because: it shows that it must have been contemplated that Mr Pesutto would be adding words of his own to form a joint statement with Mrs Deeming's words since they were talking about 'her half' of the statement; and Mr Southwick admitted that the Leadership Team 'hadn't shown her the evidence' at the 19 March Meeting because 'they didn't have the evidence' at that time.

407. Mr Hodgett gave the following evidence about the preparation of the joint statement:

(a) At CB:12, 198[26]: *'At one point Moira asked where John's words were. She thought her statement was going to be merged with a statement from John, to be a joint statement which would exonerate her. That was my understanding too. I thought John was preparing his own part of the statement. I thought the two statements would then be merged and put together, on a joint masthead.'*

(b) At CB:13, 202[12]: *'During the meetings to prepare the statement, Mrs Deeming had asked where Mr Pesutto's words were, and it was clear to me at the time, and I thought it was clear to the others in the room, that she thought her statement was going to be merged with a statement from Mr Pesutto, to be a joint statement, which is what the Party Room had voted on. That was also my understanding at the time.'*

408. Mr Hodgett also gave evidence that at some stage he went to Mr Pesutto's office and they were questioning whether a joint statement or a jointly prepared statement was required to be prepared and one of Mr Pesutto's staffers 'was frantically running around trying to get a copy of the meeting minutes, to clarify whether it was to be a joint statement or a jointly prepared statement': CB:12, 198[27].

409. It was presumably at around this time that Mr Pesutto sent Ms Heath the following further text at 3.52pm (CC:480 Ex A201):

SMS/iMessage Message sent on 27/03/2023 3:52:20 PM - Delivered

Hi Renee, can you forward the minutes of this morning's meeting?
Cheers, JP

410. Mr Pesutto's request for a copy of the minutes is consistent with Mr Hodgett seeing Mr Pesutto's staffer 'frantically running around trying to get a copy of the meeting minutes'. They were obviously on notice that Mrs Deeming expected that the statement would be a joint statement, issued by both of them together, and were trying to confirm from the minutes whether this was required.
411. Ms Heath gave evidence that her instinct was not to send Mr Pesutto her initial notes of the 27 March Meeting because she had not edited or finalised them: CB:9, 172[31]. But she told herself that Mr Pesutto was the Leader and she should obey him. Accordingly, at 3.59pm, she sent him what she describes as her 'raw, unedited notes from the 27 March Meeting': CB:9, 172[31]; CC:482 Ex R240. She then sent Mr Pesutto a text (at CC:480 Ex A201) "Emailed unedited minutes text".
412. Ms Heath gave the following evidence in relation to that email (i.e. the first version of the 27 March Minutes) (CB:9, 172[32]):
- These initial notes were not, and were not intended to be, the formal 'minutes' of the 27 March Meeting; rather, they were my initial notes – I told John in my email that I had not 'proofed' them yet and I told him in my text that they were 'unedited'. Despite that, my initial notes are consistent with my recollection of the 27 March Meeting. I think they were accurate, even if they were not in final form.*
413. Having received the first version of the 27 March Minutes from Ms Heath, Mr Pesutto and his office would have seen that what had been agreed was that a 'joint statement' was required from his office in conjunction with Mrs Deeming and that he was required to 'release a statement that she is not a Nazi'. They ignored this.
414. At some stage during the negotiations, Mr Southwick called Mr Wells. Mr Wells' evidence is that he said to Mr Southwick 'words to the effect that Mrs Deeming should do her part of the joint statement first and then Mr Pesutto should do his part so they could then put the joint statement': CB:28, 312[21]. He gave evidence that he thought it was clear at all times that it was to be a joint release from both Mrs Deeming and Mr Pesutto and that, if Mr Pesutto or Mr Southwick had ever said they were going to release a statement from Mrs Deeming alone, not a joint statement as promised, he would have stopped the negotiations.
415. Eventually, the form of words was agreed. Mrs Deeming gave evidence (CB:1, 41[203]):

I was exhausted. I hadn't eaten that day. Eventually, I agreed to a form of words. Alex Woff, from Mr Pesutto's Office, sent me the statement on WhatsApp and I approved it being released. However, I thought this was my half of the joint statement, which was going to be merged with Mr Pesutto's half (which I thought would be drafted together, as mine had been, and that it would be published as one statement) . I had repeatedly asked where Mr Pesutto was and where his half of the joint statement was, and I had repeatedly been told I had to agree to my half first. Instead, "my half" was published by the Liberal Nationals Media , as a statement from me alone , without Mr Pesutto's promised exoneration. A copy of the statement which was published is at page 54 of Exhibit MD-1. I would never have agreed to this statement being published if I had known it would be published without Mr Pesutto's promised exoneration. I refused to ever publish it or endorse it myself because it was not the 'joint statement', with exoneration, I had been promised. I regarded it as a total betrayal and yet another malicious trick played on me.

She also gave evidence (CB:2, 96[121(d)]):

I had understood we were preparing my half of the joint statement. I thought at the time that everyone else understood that too. I had repeatedly asked where Mr Pesutto was, and where his half of the statement was, and I had been repeatedly told that Mr Southwick was representing him for now and that I had to prepare 'my half first. As I said in my First Affidavit, I thought my half of the statement was going to be merged with Mr Pesutto's half (which I thought we would prepare together), into one joint statement. Nobody ever suggested to me that the statement would be by me alone and without any words of exoneration at all from Mr Pesutto. If this had been suggested, or if I had suspected this would occur, I never would have participated at all in the writing of the statement.

416. Mr Deeming gave evidence that, by the time the statement was in an agreed form, Mrs Deeming ‘was barely functioning’ and looked to him ‘as if she had just been through a terrible trauma’ and was ‘emotionally and physically exhausted and wanted to go home’: CB:4, 126[75]. Mr Hodgett recalls that Mrs Deeming ‘was angry and frustrated’, ‘clearly wasn’t happy with the outcome’, and ‘felt she had been pushed into a position she shouldn’t be, and that she had done nothing wrong’: CB:12, 198[29].

The statement is released

417. A statement expressed to be ‘from Moira Deeming MP’ was sent out by the Liberals National Media at 7.08pm on 27 March 2023 (**27 March Statement**): CC:487 Ex R45.
418. Mr Hodgett was surprised when he saw the statement ‘had been published in Moira’s name only without John’s part’ because he ‘had thought Moira was going to see John’s words and agree on them, so it would be a joint statement’: CB:12, 199[30].

419. Mr Pesutto and Mr Southwick must have known that what had been agreed in the 27 March Meeting was that a joint statement would be published from both Mrs Deeming and Mr Pesutto.

- (a) Mr Pesutto agreed that Ms Heath's notes recording a 'joint statement' were effectively a transcript of the meeting and recorded the substance of what had been resolved: T854.17-20;
- (b) as outlined above Mr Southwick issued a 'joint statement' with Mr Battin on their joint letterhead on 18 March 2023;
- (c) on 13 May 2023 Mr Pesutto and Mr Southwick issued a 'joint statement' together on their joint letterhead: Ex A45;
- (d) Mrs Deeming gave evidence that, in her experience, 'the words 'joint statement' mean a statement by both people together': CB:2, 95[114(b)].
- (e) Mr Hodgett gave evidence that, based on his experience in politics, the words 'joint statement' are 'ordinarily understood to mean a statement with comments from both people with the letterheads of both people': CB:13, 203[12].
- (f) Mr McCracken gave evidence that his understanding, based on his experience in politics, is that a joint statement 'is where a statement is prepared by two or more people who contribute to the contents of the statement, and who release it 'jointly' in both their names': CB:16, 220[16].
- (g) Mr Riordan disagrees that Mr Southwick's suggestion (at paragraph[62] of his first affidavit) that it was 'a matter of common political sense' that the 'joint statement' meant 'there would be a statement agreed by both parties' rather than a statement signed by or released by both parties: CB:21, 259[24]. Mr Riordan gave evidence:

In my experience, when 'joint' press statements are released, they always have both names on it. I have never heard of a 'joint' press statement going out with only one name on it. If that was the intention at the time, the Party Room should have been told that the resolution being sought was that Mrs Deeming would issue a statement in her name which would be approved by the Leadership Team (that would not have been a 'joint statement').

- (h) Mr Smith also disagreed with Mr Southwick's suggestion that 'as a matter of common political sense' the words 'joint statement' meant 'there would be a statement agreed by both parties, which Moira would release through the Leader's office'. He gave evidence th[t]his is not what was discussed at the time' and that 'it was clear there was going to be a joint statement from two people': CB:24, 282[26].

Mr Pesutto's statements to the press

420. Meanwhile, Mr Pesutto had done a press conference (**27 March Press Conference**). The audio recording of the 27 March Press Conference is Ex A27 and the transcript of that recording is Ex A28. During the 27 March Press Conference, amongst other things, Mr Pesutto said:

Now today we have an extended very lengthy and very emotional party room meeting for a very long time and many members spoke and they were very emotional during that meeting. That meeting took place off the back of some new information that was provided by Moira Deeming early this morning at around about 6:30 in Melbourne time. That new information contained important concessions and those concessions were in the form of a condemnation of the types of conduct that were referred to in the dossier on which I have always sought from the very start and which had in fact been what prompted the notice of motion in the first place. So whilst it took a few days Moira actually provided the condemnation I'd been seeking all along and that provided an opportunity during today's meeting for me to propose a slightly different outcome given Moira had provided what I'd been seeking and recognised why we support to do that and having heard from Moira along with other speakers [?] where she amongst other things and I won't go into all of the detail but certainly called out Nazism and also called out any kind of bigotry against the LGBTI community. So in light of that I proposed an outcome. That outcome sees Moira being suspended from the parliamentary party for a period of nine months. She will lose the Whip's position an important position in the upper house. She will issue a statement later today and it will be for Moira to prove herself over the coming months during her suspension. What I can say is that the proposal I put to the party room was met with unanimous support. So out of this whole exercise which began last weekend we have a situation where the conduct I've wanted condemned has been condemned where there is a consequence that follows from not having condemned that when the first opportunity arose and certainly when my colleagues and I sought it from Moira and we've got a party where that's united behind the outcome.

(lines 10-31 of Ex A28)

So in the absence of the condemnation which is contained in the material that she supplied she supplied a memorandum to the parliamentary members and when I read that I was pleased to see that it contained a condemnation of the types of conduct that's referred to in the dossier and which I'd been seeking all along, that was the reason for the notice of motion in the first place. So having provided that information it then provided an opportunity that I was able to identify to reach an outcome that would see a consequence that attached to not having to provided that condemnation at the earliest opportunity but also providing a way back. So it's up to Moira to choose how she goes about that. But that information was contained and signed in a memorandum that Moira provided to the party.

(lines 40-48 of Ex A28)

Now understand what's happened here. I and my colleagues we had sought a, we had sought from Moira the concessions that she's provided us all. We sought that last weekend on a Sunday morning. Having received the material from Moira this morning which contains that condemnation I was satisfied that she understood why it was important to do that and also accept why it's important for there to be serious consequences and to understand a nine month suspension losing the Whip's position these are serious consequences. So I was satisfied with the condemnation which was the most important thing because I wanted the messages to come out of the party the Liberal Party I lead to be strong on this. We will condemn any kind of Nazi references. We will condemn any kind of bigotry and that's any member of the LGBTI and we will condemn any kind of attack on people who are vulnerable no matter what their circumstances.

(lines 60-70 of Ex A28)

421. Mr Pesutto falsely asserted that Mrs Deeming had condemned Ms Keen and Ms Jones 'specifically' (lines 106-115 of Ex A28).
422. He also falsely denied that he had moved the Expulsion Motion at the 27 March Meeting (lines 171-173 of Ex A28). Mrs Deeming gave evidence she was 'devastated' and 'furious' when she heard this (CB:1, p41-42[205]):

He had double-crossed me and I was furious, because he had misrepresented my position and what I had said and had misrepresented the resolution which had been reached which was meant to have exonerated me. I was absolutely despairing at this point. I felt so powerless and wounded and furious all over again. And worst of all, this meant that the one thing I wanted most, and thought I'd won for my children - being the clearing of our family name - was now even further out of my reach than ever before.

423. Mr Deeming gave unchallenged evidence that when Mrs Deeming found out that Mr Pesutto had done a press conference in which ‘he had not cleared her and instead had said that she had made ‘concessions’ that he wanted’, she was furious: CB:4, 126[76]. She said she had been tricked and lied to, and he agreed. He had never seen her so angry.

424. Mr Wells gave evidence (at CB:27, 300[18], 301[36]-[37]):

Later that evening, I heard Pesutto's comments in the media about the meeting saying that he had agreed to Deeming 's suspension as a result of concessions she had made that morning. That was a misrepresentation of Deeming's speech in the party room and Deeming's response to the EMD she had sent to Members that morning . This was the complete opposite of what she had agreed to . Deeming did not make any concessions whatsoever.

Pesutto did not join in making the statement with Deeming and did not exonerate her from the accusations he had made. I considered this was a complete breach of trust and a breach of the agreement I had helped broker between Pesutto and Deeming , that was announced to the party room, on 27 March 2023.

425. Mr Wells gave evidence that, if Mr Pesutto had issued a joint media statement with Mrs Deeming, as he promised, or joined her for a joint press conference, ‘that would likely have been the end of this matter’: CB:28, 314[32].

ABC 7.30 Report

426. Mr Pesutto was interviewed on the ABC 7.30 Report on 27 March 2023 during which he made the following statements (CB:1, p42[206] (Deeming)):

Presenter: *‘Moira Deeming has walked back her condemnation of the Rally and its organiser. Will you move again to expel her from the Liberal Party?’*

Mr Pesutto: *‘What I would say - if I just take our viewers back a step - I brought this motion last Sunday because I was very concerned that certain types of conduct by people associated with Moira Deeming and the conduct of that rally was totally unacceptable and I wanted a condemnation of that. Now, despite the passage of last week, we didn't get from Moira, until very early this morning, her specific condemnation of that, followed by what was in essence a very tough and emotional (interrupted).*

Presenter: *‘Moira Deeming published a tweet just a couple of hours ago, talking to the organiser of the rally and this is someone with very clear, for our*

audience, very clear far right associations, many of which you detail in the dossier that you presented to your own party room, she said speaking directly to that person 'don't worry I never condemned you'. So I just want to ask you, that is Moira Deeming walking back her condemnation which is also supported in the statement she made this evening. Will you move to expel her from your party?'

Pesutto: *'If [the Party Room] sees evidence that there's a difference between what we were assured in written and oral presentations to the party room and what is being posted on social media then yeah, there will be consequences with that. The party will be looking very closely, all of us, who believed what was put to us. If, as I've seen this evening, there are comments on social media that are inconsistent with that ... that is a matter Moira would have to take very seriously because there will be repercussions.'*

427. Mrs Deeming gave the following evidence of her reaction to Mr Pesutto's statements to the ABC (CB:1, 43[207]-[208]):

I found Mr Pesutto's comments nightmarish and surreal - not just because of how brazenly untrue I thought they were, but also because I found them to be intensely sinister and threatening. They had a very profound and ongoing impact on me. I took his comments - especially when he said he and the party would be "looking very closely" at me - to mean that he would follow me, and monitor and scrutinise me, along with unnamed others from the party, and would pick apart anything I did or said, until I was broken and destroyed. After this, I started to have frequent nightmares that men from the Liberal Party were following me around and watching me, trying to intimidate me, isolate me and unnerve me...I was so devastated from this point onwards that my psychological and physical health began to rapidly decline.

Following what I perceived as Mr Pesutto's threat towards me on the 7:30 Report..., combined with...the media pressure, and the degrading, humiliating and malicious double-cross that had occurred after the 27 March Meeting - I found myself at the lowest I had ever been since I was a child.

Request from Peter Dutton

428. At 9.30pm on 27 March 2023, Mr Dutton sent a message to Mr Pesutto saying 'John for the sake of Aston could we pls put this issue to bed today. No more media pls': CC:497 Ex A205).

429. At 9.45pm on 27 March 2023, Mr Pesutto sent a WhatsApp message in a thread including the Leadership Team and other staffers (CC:408 Ex A203)) in which he said:

WhatsApp Message sent on 27/03/2023 9:45:43 PM

I've had a request from Peter Dutton that we don't do any more media on Moira. We might have to cancel tomorrow's media. I think in the

circumstances, it's a reasonable request and it might be good to avoid further criticism from the Feds.

430. This prompted the following exchange of messages:

- (a) Mr Woff: *I think it's unavoidable, there will be a day two from this regardless if we engage or not.*
- (b) Mr Johnston: *Agree. Can we say we have committed to it in the morning and then we will do no more after that.*
- (c) Mr Pesutto: *I hear you, but I really don't want another hostile front opening up. It's been a difficult day and I think it would be better to cancel tomorrow's media. I can see the feds blaming me for Aston to lying low, at least as far as we can see, makes sense for us.*
- (d) Mr Southwick: *I think you should do the media already committed to otherwise it will be more of a story and then lie low. The Feds have never done us any favours.*
- (e) Mr Pintos-Lopez: *I think we're locked in for the morning. We want to have a good relationship with the media rather than Dutton. We can fix him later. They'll report we pulled out. Let's do the morning and then that's it.*

431. These messages demonstrate that the reputation of the Liberal Party was not what motivated Mr Pesutto – despite his claims in evidence to that effect. What is also clear from the chronology is that Mr Pesutto had resolved to expel Mrs Deeming, and that he intended to do so despite his set back on 27 March.

432. At 9.05pm on 27 March 2023, Mr Johnston sent the following WhatsApp message to Mr Pesutto and the Leadership Team Ex A70):

Re Herald Sun story - we were careful today to make sure Moira's statement reflected her email to MPs this morning. 1) She was remorseful about attending the rally and 2) she condemned the use of Nazi symbols and analogies by Keen and Jones. I think with media tomorrow morning we can say this if asked but re her tweets tonight we can say that she is currently suspended from the party and she will need to earn her place back. Ultimately it's a matter party and how she conducts herself over the next nine months. That includes what she says and what she does. And she will need to show she is a team player. Then wait as she blows herself up.

Escape to Queensland

433. Following the accumulation of the emotional impact of the Publications in the period between 19 March 2023 and 27 March 2023, Mrs Deeming and her family escaped to Queensland.
434. Mrs Deeming gave evidence she 'needed to physically get away from everything': CB:1, 43[210]. Mr Deeming gave evidence that Mrs Deeming said she 'had to get out' and so they travelled to far north Queensland from 29 March 2023 to 12 April 2023: CB:4, 127[82].
435. Mrs Deeming gave evidence that, while they were away, she had 'a terrible nightmare where[*she*] was being followed and about to be attacked by Mr Pesutto and Mr Southwick': CB:1, 44[212]. Mr Deeming gave evidence that he had to wake her up but she was so out of it she thought he was someone attacking her and did not know where she was and tried to fight him off: CB:4, p127-128[83]. 'She was covered in sweat and looked absolutely terrified'. Mr Deeming gave evidence that Mrs Deeming had had nightmares over the years 'but they had decreased in frequency and severity', and that he 'had never seen her like this'. He gave evidence: 'When I woke her, and when she was pushing and flailing, it was like she was in a trance. It still haunts me when I think about it.'
436. Mrs Deeming appeared distressed and told Mr Deeming 'she was stressed about having to go back to Victoria where she would go back to being recognised and abused and back to Parliament where, she felt, Mr Pesutto and the Leadership Team were out to get her and where she was constantly denigrated and publicly and privately': CB:4, 128[84].
437. When they were returning from Queensland to Victoria, Mrs Deeming's son asked if she was okay and she broke down in tears: CB:1, 44[214] (Deeming); CB:4, 128[85] (Mr Deeming). Mrs Deeming gave evidence (CB:1, 44[214]):

That was the first time I have ever cried in front of my children. It has been a principle of mine not to emotionally lean on my children or any children, and not to put the weight of my problems on their little shoulders. So for me to have cried in front of them was deeply upsetting to me, because I felt it meant I had failed to protect and shield them from all worrying about me and all the injustices directed at me. But now they knew. They were all very upset, but I could tell that out of all four of my children, my tears had been most deeply shocking and upsetting to my son - and I wished that I had been able to put on a stronger front for him.

Mr Deeming gave evidence (CB:4, 128[85]):

Prior to this, I do not recall Moira ever crying in front of our children. She only cried for a few seconds but all the children were upset because they had never seen her like that. Moira and I had worked so long and hard on undoing the damage done to her from her prior abuses but after Mr Pesutto's attacks she appeared to me more of a wreck than she had ever been.

Mrs Deeming's requests for the minutes of the 27 March Meeting

438. Following the 27 March Meeting, Mrs Deeming had not been provided with any written record of the resolution which had been voted on and approved: CB:1, 44[216].
439. Accordingly, on 28 March 2023, Mrs Deeming sent an email to Mr Pesutto and Ms Heath requesting 'a copy of the minutes and a copy of the terms of the suspension motion' from the 27 March Meeting: CB:1, 44-35[216]-[217]; CC:500 Ex R46).

Mr Pesutto did not address my concerns, or even contact me, about the lack of documentation of the 27 March Compromise, or his refusal to honour it, or his failure to produce the minutes of the 27 March Meeting , or his false public statements about each of those matters. I felt shut out and upset.

440. On 29 May 2023, Ms Heath had emailed to Mrs Deeming the first version of the 27 March Minutes. But Mrs Deeming gave evidence she wanted to receive the 'official' minutes: e.g. T32637-39.
441. On 30 March 2023, Chris Crewther MP sent an email to Ms Heath (CC:501) with a copy of his notes from which he had read at the 27 March Meeting and Mrs Deeming sent an email to Ms Heath (CC:502) with the text of the speech she had read at the 27 March Meeting.

442. After that, Ms Heath sent an email to Gary Anderton (CC:505) attaching, amongst other documents, the second version of the 27 March Minutes as well as a copy of Mr Crewther's Speech and a copy of Mrs Deeming's Speech. Ms Heath explains the difference between the first version of the 27 March Minutes and the second version of the 27 March Minutes at paragraph [40] of her first affidavit.

April 2023

443. After the 27 March Meeting, Parliament went into recess for the Easter break during April: CB:27, 301[38]. Mr Wells gave evidence he had numerous conversations with Mrs Deeming 'who was very bitter about the way she had been treated' and that 'she felt she had been double crossed' and he agreed. Mrs Deeming gave evidence she realised she 'actually had no official internal dispute resolution mechanisms to appeal to now [she] was outside the party room' and the situation was 'bitterly distressing': CB:1, 44[213].

444. On 9 April 2023, Mrs Deeming sent an email to Mr Pesutto (copying in Ms Heath) again requesting the minutes (CC:511 Ex R250).

24 April 2023

445. On 24 April 2023, Mr Southwick sent a text to Mr Wells to set up a meeting between them and Mr Pesutto: CB:27, 301[39]. Mr Wells' text referred to 'the legal aspect of the[D]eeming case'. That was a reference to Mr Wells' understanding that, if Mr Pesutto and the Leadership Team did not resolve the situation, Mrs Deeming would commence defamation proceedings against Mr Pesutto: CB:27, 301[39].

446. Mr Pesutto called Ms Heath to discuss the minutes of the 27 March Meeting. He said to Ms Heath words to the effect of 'You need to change the compromise which is recorded in the minutes' and 'I didn't agree to issue a joint statement on a joint letterhead with Moira': CB:9, 176[49]. Ms Heath gave evidence he was 'really pushing hard' for her to change this. She said words to the effect of 'I'm not comfortable changing the words of the compromise' and 'At best it's in contempt of the Party Room; at worst, it's fraud' and 'Whatever your issue is with the minutes, you should take it the Party Room'.

26 April 2023

447. On 26 April 2023, at 12.50pm, Mrs Deeming sent an email to Mr Wells: CB:27, 302[40]. The email is at CC:520 Ex R53.
448. At 1.06pm, Mrs Deeming sent another email to Ms Heath (CC:521) seeking the suspension conditions.
449. Mr Pesutto refused to allow the draft minutes to be sent to Mrs Deeming: CB:9, 177[51]. Ms Heath thought this was ‘unfair’: CB:9, 177[53].
450. At 2pm on 26 April 2023, there was a meeting between Mr Pesutto, Mr Southwick and Mr Wells (**26 April Meeting**): CB:27, 302[41].
451. Mr Wells’ evidence of the 26 April Meeting was as follows (CB:27, 302[41]-[43]):

Pesutto restated that he stood by the wording of the original Expulsion Motion and the only thing that had changed was the punishment - that is, it was no longer an expulsion but a suspension. I understood he stood by his accusations against Deeming.

I responded by saying that if the party room knew that the wording of the original motion still stood, then Deeming would never have accepted the suspension. I said that it was obvious to me that the Leadership would tamper with the minutes from 27 March 2023 to suit a desired outcome. The meeting became quite heated.

I said there needed to be a joint statement from Pesutto and Deeming providing her with full exoneration as was agreed in the party room. Pesutto said it was agreed to be a jointly prepared statement for Deeming with his office. I said "that's not true".

452. Mr Wells prepared contemporaneous notes during the 26 April Meeting: CB:27, 302[44]. The notes are at CC:526.

27 April 2023

453. On 27 April 2023, Mr Johnston prepared a draft statement for Mr Pesutto announcing his intention to move a second motion to expel Mrs Deeming from the Victorian Parliamentary Liberal Party: CC527 Ex A212).

30 April 2023

454. On 30 April 2023, Mr Johnston sent the following draft statement to Mr Pesutto: CC:540 Ex A213):

WhatsApp Message received on 30/04/2023 9:48:58 AM from Nicholas Johnston ([REDACTED]

Could even take a couple of I's out and make them We's. She will play female and misogyny card this time

WhatsApp Message received on 30/04/2023 9:43:25 AM from Nicholas Johnston ([REDACTED]

Just in case. Don't want to make it sound like it's you versus her but her against the party.

When Moira Deeming was suspended by the Victorian Liberal Parliamentary Party in March she committed to supporting the leadership team and working with her colleagues in the party to win Government in 2026.

It's now clear that she has breached this commitment and her position has become untenable. With the support of my colleagues, I will be moving a motion at the next party room meeting to expel her from the Liberal Party.

I remain firmly committed to leading a united and inclusive Liberal Party that will continue to take the fight up to the tired, corrupt and incompetent Andrews Government. Our focus is on winning the 2026 election so we can make Victoria the best state in Australia.

Victorians deserve nothing less and those who seek to undermine this have no place in our team.

May 2023

455. On 1 May 2023, Ms Heath sent an email to Mr Anderton (CC:545) ahead of the meeting of the Victorian Parliamentary Liberal Party scheduled on 2 May 2023. Her email attached, amongst other documents, the third version of the 27 March Minutes (CC:491 Ex R243)). Ms Heath explains the difference between the second version of the 27 March Minutes and the third version of the 27 March Minutes at paragraph[56(b)] of her first affidavit.
456. At the meeting of the Victorian Parliamentary Liberal Party on 2 May 2023 (**2 May Meeting**), Mr Pesutto rejected Ms Heath's minutes of the 21 March Meeting and the 27 March Meeting.
457. Ms Heath gave evidence that there was the following exchange between them (CB:9, p178-179[57]): he said words to the effect of 'Renee – I'm just giving you a heads up that I'm going to be moving to reject your minutes of 27 March because they're far too detailed. They're a transcript'; she said words to the effect of 'No they're not a transcript'; he said 'Yes they are'; then he said to the Party Room words to the effect of 'I'm in a strange

situation. I'm in the awkward position where I have to reject the minutes because the Secretary has provided three sets of minutes which are all completely different'.

458. Mr Hodgett had thought Ms Heath's notes of the 21 March Meeting and 27 March Meeting were accurate and were consistent with his recollection of what had been said at those two meetings: CB:12, 199[31]. Mr Smith thought they 'were as accurate as you could get and the criticism of them was unfair': CB:23, 272[38].
459. Nonetheless, the Party Room did not accept Ms Heath's minutes of the 21 March Meeting or the 27 March Meeting. Instead, it was agreed in the 2 May Meeting that Mr Pesutto and his office would work with Ms Heath, Mr Wells and Mr Southwick to prepare an agreed set of minutes for the 21 March Meeting and the 27 March Meeting: CB:9, 178[58] (Ms Heath); CB:23, 272[39] (Mr Smith); CB:27, 302[45] (Mr Wells).
460. The minutes of the 2 May Meeting, which are at CC:547, recorded that the following agreement was reached (**the 2 May Agreement**):

John Pesutto MP: Moved motion to decline the versions of minutes.

I move that:

- 1) *The Party Room does not accept the minutes from 21 March 2023 and 27 March 2023 at this stage; and*
- 2) *That the Leader and his office work with Mr Southwick, Mr Wells and Dr Heath to present a set of minutes for each of the meetings on 21 and 27 March 2023 for consideration of and, if acceptable, approval of the Party Room.*

Seconded: Mrs Hermans

Against: Mrs McArthur

Motion carried.

461. Following the 2 May Meeting, Ms Heath sent an email to members of the Victorian Parliamentary Liberal Party: CC:546. In that email:
- (a) Ms Heath explained the differences between the three versions of the minutes of the 27 March Meeting; and
 - (b) she alleged she had been bullied.
462. At around this time, Mrs Deeming bumped into Ms Heath on the street outside Parliament – she was in tears and told her Mr Pesutto had accused her of lying: CB:1, 46[223]. Mrs Deeming 'was devastated that everyone who told the truth and supported [her] seemed to be being punished'.

463. Ms Heath thought that Mr Pesutto would approach her immediately, with Mr Southwick and Mr Wells, so they could prepare an agreed set of minutes of the 21 March Meeting and the 27 March Meeting, pursuant to the 2 May Agreement: CB:9, 179[60]. She even cancelled plans she had at home so she could stay at home to meet with them. But this never happened. Mr Pesutto never approached her. Eventually, Mr Wells told her she should just go home and proceed with her plans. She gave evidence that, over the period from 2 May 2023 to 12 May 2023, she kept asking Mr Wells when the meeting would occur but neither Mr Pesutto nor Mr Southwick ever approached her about trying to prepare an agreed set of minutes.
464. On 3 May 2023, Mrs Deeming and Mr Wells had a meeting with Mr Southwick (**3 May Meeting**): CB:27, 302[46].
465. Mrs Deeming gave evidence that she informed Mr Southwick of her position, as she had relayed it to Mr Wells, and emphasized that she wanted exoneration by the next day or she ‘was going to demand a re-do of the 27 March Meeting with a lawyer to arbitrate to make sure everything was recorded properly this time because it was unfair[*she*] was honouring[*her*] half when Mr Pesutto was not honouring his’: CB:1, p46-47[226]. Mrs Deeming gave evidence that Mr Southwick agreed and assured her ‘that tomorrow[*her*] promised exoneration would be delivered’.
466. Mr Wells gave evidence that Mr Southwick ‘agreed to sort out Pesutto’s part of the full exoneration, and that it would be done by the next day’: CB:27, 302[46]; CB:28, 313[24].
467. That night, however, Mrs Deeming became worried that she had no written record of the agreement she and Mr Wells had reached with Mr Southwick: CB:1, 47[227]. She decided to write to the Leadership Team so she would have a record in writing of the agreement.
468. At 10.03pm on 3 May 2023, Mr Johnston sent Mr Pesutto the following WhatsApp message Ex A79:

WhatsApp Message received on 3/05/2023 10:03:52 PM from Nicholas Johnston [REDACTED]

Roma, Cindy, Wendy, Georgie, Newbury, Southy, Farnham, Rowswell, Bach, Groth, Davis all happy to do doors tomorrow and go hard. Working on Jess, MOB and others

469. Early in the morning on 4 May 2023 (6.27am-6.36am, Mr Pesutto exchanged the following WhatsApp messages with Mr Johnston Ex A79):

What! You mean none of this:



WhatsApp Message received on 4/05/2023 6:36:58 AM from Nicholas Johnston ([REDACTED])

Yes you need to think about what you say. You can't be angry today. You need to be very calm and almost relaxed about it. We can't be drawn into a tit for tat with Renee. But we do need to portray that group as fringe and wreckers while we are getting on with the job. I'd also like to see what Andrews says so you can respond to him with a line like: "It's a bit rich for Daniel Andrews to accuse somebody of bullying"

WhatsApp Message sent on 4/05/2023 6:27:59 AM

I think a string of MPs starting with non-leadership figures like Sam Groth will be very powerful this morning. Along with Roma Cindy, Wendy all the others and then Bach Crozier and Southwick. I should do a presser later in the morning.

470. At 6.45am on 4 May 2023, Mrs Deeming sent an email to Mr Pesutto (CC:551 Ex R55) stating:

To the Victorian Liberal Party Leadership team,

As I have made clear from the day John emailed the entire party room with the allegations against me, my principle priority has been to have my name cleared for the sake of my children. And that is what I was promised in the party room. Kim Wells negotiated with you all and persuaded me to accept a 9 month suspension to save Johns Leadership, in exchange for exoneration from all allegations and imputations made against me (and automatic reinstatement). And I accepted those terms in desperation, just to get my family's name cleared.

But instead, as is well documented, Leadership went right out and did the opposite, continuously, right up until this very week.

My family and I have been suffering unjustly. This entire saga has been unjust. I have tried for 6 long weeks to mediate a mutually satisfactory joint statement, when it should have been done that same day.

Thus, as per our discussions via Kim Wells and David Southwick, if by 2pm today, we do not have an agreed upon statement that exonerates me from the charges laid against me, (as per the party room agreement) I will consider that the Leadership have failed to honour the suspension agreement and I will be forced to challenge it officially, demand reentry to the party room and instruct my lawyers to commence legal proceedings.

471. Mrs Deeming gave evidence that, when she referred to the potential for ‘legal proceedings’, she had intended this to mean, and she thought in the context it was obvious she meant, legal proceedings to seek to challenge her suspension and/or enforce the resolution of 27 March 2023: CB:1, 47[228]. This is what she discussed with Mr Wells and Mr Southwick on 3 May 2023.
472. Mrs Deeming forwarded her 6.45am email to Mr Wells at 10.38am: CC:554 Ex R271. According to Mr Wells, she explained ‘that she did not trust[the Leadership Team] to not double cross her again unless she had it in writing’: CB:27, 302[48]. Mr Wells had not agreed to the email but he ‘understood her frustration’: CB:27, 302[48].
473. Mr Southwick met with Mrs Deeming and Mr Wells. According to Mrs Deeming: (CB:1, 47[230]):

Mr Southwick said he was furious that I had written an email to the Leadership Team and accused me of writing the email for the sake of lawyers or the media . I said I wrote it to see if the Leadership Team was genuine about the deal to provide Mr Pesutto's half of the 27 March Compromise by the next day. Mr Southwick said he had no recollection of any such agreement. I looked at Kim and said, "See?". I said to Mr Southwick words to the effect "Well , at least now I know for sure you never intended on honouring your part of the deal ". Mr Southwick said that he had intended to. I said I didn't believe him. I said words to the effect "You just said you don't even remember your promise from yesterday ". He said that the Leadership Team would not be mediating further because I had sought to impose a deadline. I said words to the effect "You were never mediating with me anyway; you were just wasting my time; and now I know it" .

According to Mr Wells (CB:27, p302-303[48]-[49]):

When Southwick arrived at my office, he was furious about the email and asked Deeming if she had written that with a lawyer so that she could sue them. I said that was was complete rubbish and that the Parliamentary Party was never going to be sued. Deeming said words to the effect "No, I just wanted to see if you were wasting my time all along or if you were going to fulfil/

your side of the deal about the exoneration". Southwick backtracked on the deal that was made the previous day and said that he did not remember making the deal and that if Deeming was putting a deadline on the exoneration, then all deals were off.

Deeming said she had had enough and that she was going to email the Parliamentary Members and ask for a lawyer to arbitrate a redo of the meeting.

474. Mr Pesutto was quoted by the ABC as having said (CB:1, 47[231]):

I can say categorically that the exoneration that Moira has sought in the email this morning...will not be happening. What was in the motion stands. Nothing in the dossier ever accused Moira Deeming of being a Nazi or herself having Nazi sympathies.

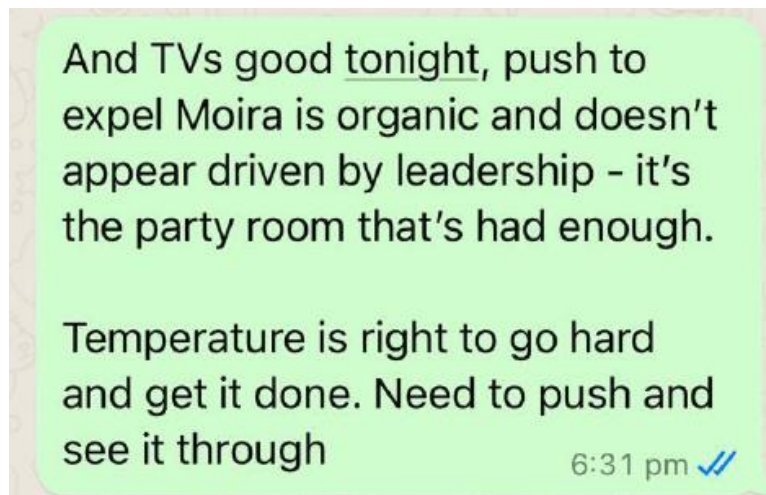
475. Mrs Deeming gave the following evidence about this (CB:1, 48[232]):

I found this humiliating and enraging. I considered his comments to be mocking and smug. I felt that he knew full well that his own words, in public and private, had accused me of Ex Actly those things and that he had deliberately led the whole world to believe Ex Actly those things. I thought he didn't care about me, my children, or the damage he had done to me. I thought I was dealing with a monster. I felt gaslit and humiliated.

476. By this time, it was being discussed in the media whether she should be expelled from the Party Room over her threat of legal action: CB:1, 48[234]. Accordingly, in those circumstances, Mrs Deeming sent an email to members of the Victorian Parliamentary Liberal Party at 3.28pm on 4 May 2023: CB:1, 48[235]; CC:558 Ex A54.

477. On 5 May 2023, Mr Pesutto arranged to meet Ms Crozier and Mr Southwick at 12:30p,: CC:563 Ex A47.

478. At 6.31pm, Mr Woff sent a WhatsApp message to Mr Johnston (CC:564 Ex A214) saying:



479. Later that day, Mr Pintos-Lopez sent a draft expulsion motion to Mr Boffa and Mr Pesutto: CC:565 Ex A48).

The Second Expulsion Motion

480. At 1.19pm on 6 May 2023, Mr Woff sent to Mr Johnston a draft proposed statement from Mr Pesutto announcing his intention to move a motion to expel Mrs Deeming: CC572 Ex A49).

481. At 1.54pm on 6 May 2023, Mr Pesutto sent a message to Michael O'Brien MP asking if he would be one of the five signatories to a motion to expel Mrs Deeming: CC:573 Ex A50). When Mr O'Brien declined, Mr Pesutto then asked whether he would 'be prepared to do a motion on Renee' instead.

482. At 1.59pm on 6 May 2023, Mr Woff sent to Mr Johnston a draft proposed statement from Mr Pesutto announcing an intention by himself and others to move a motion to expel Mrs Deeming: CC574 (Ex.51).

483. At 2.08pm on 6 May 2023, Mr Johnston to himself copied to Mr Woff a draft proposed statement from Mr Pesutto announcing his had received a notice of motion from five Liberal Party MPs to move a motion to expel Mrs Deeming: CC575 Ex A52).

484. At 2.29pm on 6 May 2023, Mr Pesutto was trying to persuade Wendy Lovell MP to be a signatory to a motion to expel Mrs Deeming: CC:570 Ex A53).

485. On 6 May 2023, five MPs – James Newbury, Matthew Guy, Cindy McLeish, Roma Britnell, and Wayne Farnham – moved a second expulsion motion (**Second Expulsion Motion**). It was sent to Ms Heath (copying in Mrs Deeming) at 3.53pm: CC:576. The only reason provided for the proposed expulsion was as follows “*that Moira Deeming has engaged in conduct in violation of Clause 57, bringing discredit on the Parliamentary Party.*”
486. Mr Smith considered the lack of reasons was unfair: CB:23, 272[42]. Mr Wells considered it did not provide reasons as required by the Constitution and that Mr Pesutto ‘should have ruled it out of order but as Chairman and Leader accepted it regardless’: CB:23, 303[50].
487. At 4.10pm, Mr Pesutto forwarded Mr Newbury’s email to the Victorian Parliamentary Liberal Party (CC:577 (Ex,R280).
488. Mrs Deeming gave evidence that she did not know how to defend herself in relation to the Second Expulsion Motion, since it did not specify what ‘conduct’ I had ‘engaged in’ and did not state the reasons why she had allegedly violated clause 57 of the Constitution (CC:84; Ex R121) or why she had allegedly brought discredit on the Parliamentary Party: CB:1, 49[241].
489. At 4.21pm on 6 May 2023, Liberal Nationals Media issued a statement from Mr Pesutto about the Second Expulsion Motion: CC:578 Ex A55). It was deceptive, in that it stated that Mr Pesutto had ‘received’ the Second Expulsion Motion ‘from five Liberal Party MPs’ but without revealing that he had been the driving force behind them deciding to sign it.
490. On 7 May 2023, Mrs Deeming sent an email to Mr Pesutto (and others within the Victorian Parliamentary Liberal Party) asking: ‘Could I please have a copy of the alleged conduct that has apparently brought the Party into disrepute?’: CB:1, 49[242]; CC:579 Ex A56 and Ex R60).
491. On 9 May 2023, at 10.51am, Mr Riordan sent an email to Mr Pesutto expressing his view that the Second Expulsion Motion was not compliant with the Parliamentary Constitution because it did not give a specified reason for the proposed expulsion and had no signatures: CB:20, 251[31]; CB:21, 259[22].

492. On 9 May 2023, at 3.32pm, Mrs Deeming sent an email to Ms Heath (copying in Mr Pesutto and the five movers of the Second Expulsion Motion) stating (CB:1, 49[243]); CC:584 Ex A57)):

Good afternoon,

Upon receiving notice of the latest motion to have me expelled, I immediately requested a description of the conduct for which I stand accused of bringing the party into disrepute.

I received no reply.

I did see in an email thread the advice from John Pesutto, that I'd be permitted to attend the meeting to defend myself from the allegations (but no description of the conduct referred to in the allegations).

I also witnessed members of the Liberal Party publicly accuse me of threatening to sue the Liberal Party and every Liberal Party MP. This is untrue. I notified the Leadership first, and then all Liberal MPs, that due to a total breakdown in mediation and internal party processes, I intended to pursue a legally negotiated resolution to the dispute over the terms of my suspension- and I asked for support to do so. When I was informed that no support was forthcoming even from the wider group of MPs, I accepted that any unwelcome dispute resolution wouldn't serve the purpose of genuine closure anyway, and notified the Leadership and the Party President that I wouldn't pursue that avenue any further.

I have now received a calendar invite for the expulsion 2.0 meeting.

I am writing for a second time; can I please have a copy of the Ex Act conduct to which the expulsion motion refers so that I can prepare my defence.

493. On 11 May 2023, Mrs Deeming's First Concerns Notice was served: CB:1, 50[247]; CC:588 Ex R282).
494. In circumstances where Mrs Deeming had not received any reply to her emails of 7 and 9 May 2023, had not been provided with any official version of the minutes of the 27 March Meeting or any official written record of the resolution of 27 March 2023, and had not been provided with an explanation of the reasons for the Second Expulsion Motion or any documents or evidence in support of it, she refused to attend the 12 May Meeting. She had no way to defend herself from unspecified allegations and had lost all faith in the fairness of the Party Room process and the integrity of Mr Pesutto and the Leadership Team: CB:1, 49[244].
495. On 12 May 2023, there was a further meeting of the Victorian Parliamentary Liberal Party (**12 May Meeting**). Three things occurred at the 12 May Meeting:

496. First, Mr Pesutto presented his own version of minutes of the 21 March Meeting and the 27 March Meeting.

497. Ms Heath gave evidence that, in Mr Pesutto's version of the minutes of the 27 March Meeting, 'he had changed the description of the resolution from the 27 March Meeting to words that suited him, that were different to what was passed by the Party Room at the 27 March Meeting' and that she thought '[t]his seemed completely inappropriate as it meant it was not a compromise moved and passed by the Party Room, but by him alone': CB:9, 180[65(a)]. In Mr Pesutto's version of the minutes of the 27 March Meeting, he described the following:

Amended Motion

After discussion led by Mr Pesutto, the meeting agreed that Mrs Deeming not be expelled and that:

1. Mrs Moira Deeming be suspended from the Parliamentary Liberal Party, effective immediately for a period of nine months (until 27 December 2023);
2. The Leader's Office to work jointly with Mrs Deeming on an agreed statement to be made by Mrs Deeming;
3. The Leader confirms that there is no allegation made that Mrs Deeming is a Nazi or Nazi sympathiser.

Motion put and agreed to.

498. Mr Wells gave evidence that Mr Pesutto, 'without proper authority, reneged on the motion from 2 May 2023' (i.e. the 2 May Agreement) 'and strangely provided his own set of minutes': CB:27, 303[51]. He gave evidence that '[t]his was a first for the Parliamentary Liberal Party' and that he 'thought it was designed to support[Mr Pesutto's] own narrative to suspend Deeming'. Mr Pesutto's version of the minutes of the 21 March Meeting are at CC:596 Ex R285 and his version of the minutes of the 27 March Meeting are at CC:597 Ex R64.

499. Secondly, the Second Expulsion Motion passed and Mrs Deeming was expelled from the Victorian Parliamentary Liberal Party. The vote was 17 to 12: CB:27, 303[52].

500. Mrs Deeming gave evidence that she was subsequently informed that some people had argued that the Second Expulsion Motion should not be accepted because it contravened the Constitution, but that Mr Pesutto defended it by saying that the reason for the expulsion was "obvious": CB:1, 51 at 249(e). She was also subsequently informed that Mr Pesutto had claimed that the reason for the proposed expulsion was because of her threat to sue him

for defamation. This could not have been true because the First Concerns Notice was only served on 11 May 2023.

501. Thirdly, Michael O'Brien moved that Ms Heath's position as Secretary be made vacant and Mr Trung Luu was elected to the role to replace Ms Heath: CB:9, 180[65(d)] (Ms Heath); CB:23, 273[46] (Mr Smith).
502. During the meeting, Mr Pesutto also falsely suggested that Mrs Deeming might sue the other MPs: Pesutto T890.16-17. Mr Wells gave evidence that Mr Pesutto told the MPs to keep all communications because they might be sued by Mrs Deeming, that Bev McArthur MP asked to see the letter making the threat, and that Mr Pesutto failed to produce it: CB:27, 303[52].
503. Mr Riordan still does not understand why Mrs Deeming was expelled: CB:20, 251[32].
504. Mr Smith gave evidence that in his view Mrs Deeming 'was denied any natural justice in the process by which she was attacked following her attendance at the Rally until she was expelled' and that it was 'a poor reflection on the Leadership Team and on the party': CB:23, 273[45].
505. Ms Crozier gave evidence it was appropriate to expel Mrs Deeming on 12 May 2024, "Because she was suing the leader": T1163.42-43.
506. On 13 May 2023, Mr Pesutto and Mr Southwick issued a 'Joint Statement' condemning Nazis who had protested on the steps of the Victorian Parliament that day: Ex A45.

Mrs Deeming's and Mr Pesutto's November 2023 statements

507. On 20 November 2023, Mrs Deeming posted a statement to Facebook and to Twitter, in an attempt to explain why she felt she had no choice but to commence defamation proceedings against Mr Pesutto in an attempt to clear her name and restore her reputation: CB:1, 53[258]. A copy of the statement posted to Facebook is at CC:651 Ex R302 and a copy of the statement posted to Twitter is at CC:652 Ex R303.
508. Also on 20 November 2023, Mr Pesutto published his own statement in reply, which is at CC:653 Ex R304. Mrs Deeming's evidence of her reaction to this statement is at CB:1, 53[259].

Commencement of proceedings

509. On 5 December 2023, Mrs Deeming commenced this proceeding. Mrs Deeming gave evidence: ‘I felt backed into a corner, and that commencing these proceedings was the only way I could publicly refute Mr Pesutto's claims against me and vindicate my reputation - for my sake and the sake of my children and family’: CB:1, 54[261].
510. Subsequently, Ms Keen and Ms Jones also sued Mr Pesutto.
511. On 17 May 2023, Mr Pesutto issued a statement about the resolution of Ms Keen’s and Ms Jones’ proceedings: CC:690 Ex A221).

D. CREDIT OF MRS DEEMING AND HER WITNESSES

Unchallenged witnesses

512. Mrs Deeming gave evidence and called twenty-two additional witnesses. Twelve of Mrs Deeming’s witnesses (Raewyn Clark, Andrew Deeming, Angela Dennis, Rukshan Fernando, Renee Gorman, Sarah Henderson, Anna Hughes, Nyungai Mundine, Sussanah Oddi, Helen Papadimitriou, John Ruddick, Dayna Thompson) were not cross-examined.

Mrs Deeming

513. Mrs Deeming swore two affidavits in these proceedings and was cross-examined over three days. Mrs Deeming was an honest witness who gave her best endeavours to assist the Court under the extreme pressure of a lengthy cross-examination in the most public of trials. To the extent that her memory of details was unreliable that does not affect any fact in issue.
514. Such difficulties are understandable because from about 5:24pm on 19 March 2023, escalating after the publication of the matters in question, she was under the most intense stress and public scrutiny imaginable. It is unsurprising that her evidence in her affidavits recalled facts from that time period out of order or in a different context. In most substantive respects the documentary evidence has corroborated her account and overall impression of events and any discrepancies were immaterial and not matters of substance.
515. Mrs Deeming was not challenged in relation to a significant portion of her evidence, in particular the impact of the publications on her and all of that unchallenged evidence should be accepted.

Geoffrey Campey

516. Geoffrey Campey was an expert witness who discharged his obligations under the Expert Witness Code of Conduct and greatly assisted the Court honestly and diligently as to the opinions he expressed and the documentary evidence he considered and collated in preparing his reports.
517. The second report helpfully summarises the actual readership where available from subpoenaed material and the viewership figures from social media that Mr Campey collated and reviewed which he sourced from objective documentation. Although criticism was levelled on this methodology in estimating the likely reach of online news content in his first report – that evidence is very useful in illustrating to the Court the accessibility and potential audience of that material republishing or reporting on the respondent’s defamatory matters, which is highly relevant to the assessment of the likelihood of harm from such a public defamation.
518. In contrast, the respondent has tendered numerous obscure purported internet-based articles, websites and videos where there is no evidence before the Court as to any potential audience. On the basis of this material he but invites the Court to infer that information was publicly known to establish serious defamatory allegations against third parties and Mrs Deeming.

Ms Heath

519. Renee Heath’s evidence in her affidavit was almost entirely corroborated by contemporaneous documentation and the evidence of other witnesses. Although her independent recollection of detail more than 18 months later was in parts patchy, she was an honest witness and there can be no genuine dispute about almost all her evidence.
520. Significantly, Mr Pesutto in his first affidavit at [154], adopted her notes sent to him that day as the minutes of the 27 March 2023 party room meeting, and accepted under cross-examination that those notes accurately recorded the substance of what was resolved - describing the notes as a transcript: T854.17-20. Dr Bach gave evidence that having read a version of her notes in the media they were so accurate that he believed there must have been a recording of that meeting: Bach T933.4-7, 934.5-22, 985.23-28.
521. As outlined above in the chronological narrative in detail, Mr Pesutto under cross-

examination did not dispute Ms Heath's evidence about her conversations with him throughout this time: see T836.41-837.28; T866.22-45.

522. Ms Heath readily conceded under cross-examination that she made a mistake in the last sentence of [47] in her first affidavit by deposing that she had not sent Mrs Deeming a copy of her notes of the 27 March 2023 meeting. As she explained under cross-examination she had forgotten that she had done so and had not reviewed her personal email mailbox before preparing her affidavit: see T425.28-29.
523. It is unsurprising that Ms Heath forgot having sent the notes to Mrs Deeming on 29 March 2023 at the time she prepared the affidavit. By 30 March 2023, Ms Heath had edited her notes and forwarded them to Mr Anderton asking to send the "current minutes" to Mrs Deeming for her review: Heath [39]-[40]. Subsequent to that communication, Mrs Deeming requested the minutes on both 9 and 26 April 2023 and there arose a dispute about the release, media reporting on and content of the minutes: see Heath [42]-[52], [55]-[60]. This evidence, also based on contemporaneous documentation, save her mistake in the last sentence of [47], was unchallenged in cross-examination and supported by other witnesses.

Witnesses not seriously challenged

524. Christopher Duke, David Hodgett, Joseph McCracken, Ryan Smith, Naomi Walton, and Rachael Wong were cross-examined but their evidence was not challenged in any material respect and should be accepted in its entirety.

Mr Wells

525. Kim Wells was challenged in cross-examination. He was, however an impressive witness and his evidence should be accepted in its entirety. The challenge to his evidence related to two topics involving Mr Wells' conversations with Mr Pesutto on 19 and 27 March 2023.
526. As to the former conversation, Mr Wells' version is consistent with the representations made by Mr Pesutto, Mr Southwick and Dr Bach in the meeting with Mrs Deeming (that occurred shortly before the Pesutto/Wells telephone call) that Ms Keen was a Nazi or Nazi sympathiser:
- (a) At Exhibit A2 line 874-875 near the very end of the meeting, Mr Southwick said: "*If at any point in time, up until this point, there has not been any alarm bells, in fact,*

quite the opposite having a champagne with effectively known individuals that have very stated views about this issue [in this context referring to Nazis].” Mr Southwick was talking about Nazis and continued at lines 882-883 “your friends effectively, have not denounced any of these Nazis. Have been taking selfies with them. So you know, they’ve used it – they’ve used it [the Nazis] as part of their posse.”

- (b) This immediately followed Dr Bach at lines 851-857 who said: *“the issue is your friends, the people you worked with, the people you showed through Parliament, very openly and publicly have a long history of sympathising with neo-Nazis and white supremacists. These are your people, and I don’t mind saying also, I don’t think a reasonable person would believe you, that you had no idea that these are the long standing, stated views of your people ... Your mob have stated white supremacist views.”*
- (c) Earlier at lines 391-393, Mr Southwick said: *“I understand you didn’t attract these people and didn’t set out to attract those people [the Nazis], but you’re now connected right in the middle of these people and for you to then go and have a little champagne with those people.”*
- (d) At line 359-363, Mr Southwick said: *“But, the issue on top of all of that is it’s even more than just turning up, you’ve actually had someone ... who has now a known history of being connected to white supremacists, supremacists and you’ve escorted her through the back of Parliament”.*
- (e) At lines 237-250, Mr Pintos-Lopez read out a series of accusations intended to establish Ms Keen was a Nazi, suspected Nazi, or at least a Nazi sympathiser with stated white supremacist views.
- (f) Finally at line 210, Mr Pesutto said: *“But how do you know that people working around you, people you might be associating with, who you're working with, don't have Nazi sympathies or”* in direct response to a question by Mrs Deeming *“Because I had no ability to know that actual Nazis are going to turn up. No ability to know that.”*

527. The next morning in the 3AW Interview at lines 102-103 Mr Pesutto said *“I know Moira’s not a Nazi but my point is she’s associating with people who are.”*

528. Mr Wells' evidence in [11] is entirely consistent with the allegations put to Mrs Deeming at the meeting and what Mr Pesutto alleged in his first press interview the following day. It is likely that in speaking to MPs straight after the meeting on the evening of 19 March, Mr Pesutto, Mr Southwick and Dr Bach repeated those same allegations and sentiments.
529. Further, the unchallenged fact at [8] of Mr Wells' first affidavit was that before 19 March 2023, he had limited or no involvement with Mrs Deeming. This strongly corroborates his version of events as to why he ended up helping her, [11]-[26], and his concern over what Mr Pesutto told him on 19 March 2023.
530. Mrs Deeming also gave evidence in her first affidavit at [133] that on 20 March 2023 Mr Wells gave a prior consistent statement to her of what Mr Pesutto said to him on 19 March 2023. The Court should accept Mr Wells' evidence about what was said to him by the respondent on the evening of 19 March 2023.
531. The second issue that Mr Wells was challenged on was his evidence at [30]-[31] about the agreement with Mr Pesutto at the 27 March 2023 party meeting and whether Mr Pesutto told him that Mrs Deeming was to get a full exoneration.
532. Mr Well's evidence at [30]-[31] was that Mr Smith was present when the compromise was agreed with Mr Pesutto: see also Wells T504.20-44. Mr Smith said at [36]: "The compromise was that there would be a 9 month suspension and that Mr Pesutto would put out a statement, jointly with Moira, recanting what he had said about her." Mr Smith's understanding that the third part of the compromise read out to the party room was for Mr Pesutto to recant what he had said about Mrs Deeming must have reflected his understanding formed from the private discussions between Mr Pesutto and Mr Wells rather than what was recorded in Ms Heath's notes. Mr Wells' version is also consistent with Mrs Deeming's evidence in her first affidavit that she was told by Mr Wells and Mr Smith that her demand for an exoneration had been met: [187]-[188].
533. There was no challenge to Mr Wells' evidence about his conversations with Mr Pesutto and Mr Southwick on 3 and 4 May 2023 and his evidence should be preferred over theirs.

Mr Riordan

534. Mr Riordan was challenged about his evidence in [10] of his first affidavit being a conversation with Mr Southwick on the evening of 19 March. Although he made appropriate concessions as to the precise words he remembered, the substance of his evidence in the paragraph was unshaken: see T440.20-441.26.
535. Significantly, Mr Riordan's evidence is entirely consistent with what Mr Southwick alleged to Mrs Deeming at the conclusion of the 19 March 2023 meeting at lines 874-875 and 882-883, and as outlined above the accusation made throughout that meeting that damned Ms Keen as a Nazi or Nazi sympathiser. Mr Riordan's account of their conversation should be preferred over Mr Southwick's.

E. CREDIT OF RESPONDENT AND HIS WITNESSES

536. These submissions are in addition to the specific credit attacks made on the respondents and his witnesses relating to facts in issue as set out in the narrative, above.

The respondent

537. The respondent was an entirely unsatisfactory witness who should not be believed on any contentious issue not corroborated by objective evidence or adverse to his interest. Specific areas where Mr Pesutto's evidence should be rejected have been discussed above. Mr Pesutto's approach to giving evidence was not indicative of a person who came to this Court to give honest evidence.

Approach to answering questions

538. Mr Pesutto's evidence was replete with completely unresponsive answers or speeches. At T564.4-36, it took seven questions before he gave a responsive answer. Some other examples of Mr Pesutto's completely unresponsive answers or speeches include: T564.13-19, T564.26-29; T569.34-37; T577.10; T586.22; T591.13-17; T649.9-10; T659.34-660.5; T672.14-15; T729.26-30; T801.19-28; T807.19-26; T807.29-33; T808.5-6; T808.9-14; T823.29-30; T823.32-40; T859.3-12; T867.8-15; T869.2-12.
539. From early in his cross-examination at T563.14ff, Mr Pesutto gave long-winded responses to questions that were particularly unresponsive or included unnecessary additions that were more in the form of submissions, argument or political speech. Mr Pesutto repeated this

approach to answering questions routinely throughout his cross-examination, see also for example, T586.14-20; T590.17-19, T590.44-591.6; T612.23-29; T614.33-40; T614.47-615.7; T615.19-29; T618.9-18; T619.6-15; T621.16-19; T623.19-36; T625.16-21; T626.40-44; T627.7-23; T628.6-9; T631.8-12; T636.21-28; T638.22-35; T639.2-8; T639.14-18; T641.44-642.15; T642.33-48; T642.41-47; T645.37-39; T650.20-29; T654.41-655.5; T656.8-12; T657.23-30; T661.12-32; T668.30-36; T670.7-8; T671.43-672.2; T674.3-8; T678.7-12; T678.41-45; T679.6-15; T679.21-31; T681.27-36; T682.15-19; T695.40-43; T734.43-735.2; T746.37-40; T781.17-21; T781.42-47; T782.46-783.6; T789.41-44; T801.35-44; T802.26-32; T804.14-17; T805.20-23; T807.40-43; T811.4-11; T814.35-42; T819.22-29; T835.21-24; T841.20-27; T841.40-43; T848.40-46; T849.4-19; T852.30-34; T852.38-42; T853.30-34; T859.40-44; T859.25-27; T861.21-26; T862.21-25; T864.43-47; T867.31-33; T867.43-47; T870.2-7; T870.11-17; T878.13-17; T878.25-34; T879.12-18; T883.6-11.

540. An early example of the defensive, less than frank and politically motivated manner in which Mr Pesutto gave his evidence was his inability to recognise or acknowledge the impact of his comments about African gangs before the 2018 election. At T594.45-46, after some obviation, he admitted that political opponents accused him of fanning racist sentiment with comments about African gangs – quite a serious and potentially damaging accusation even from political opponents. He admitted that he was “criticised, but that’s what opponents will do in that context”: T596.9. Ex A33, a message from a local Dymocks book store owner in his electorate (T616.6-7) suggested that the African gangs issue from 2018 was so significant that he needed “help to wipe out” the issue. The publicity was so significant and connected to Mr Pesutto, just re-entering Parliament, that his constituent Mr Kelly-Kobes identified it 5 years later as something that needed to be “wiped out”. Mr Pesutto’s evidence at T619.6-18 as to the seriousness of this issue on Mr Pesutto’s record was not frank and fundamentally dishonest.

Bad reputation

541. In paragraph [45] of his first affidavit, Mr Pesutto purported to give evidence of Mrs Deeming’s reputation in the community. This evidence was conveniently tailored to create bad reputation. When his Honour questioned this evidence at T666.28-667.21 the most the respondent could identify was that some people thought she gave succour to hateful or extreme political views. This is not evidence of bad reputation but should nonetheless be

rejected in light of Mr Pesutto's concurrent conduct in promoting Mrs Deeming's candidacy to Party whip in December 2023 (T650.1-29) and being happy to attend and be photographed with her at the event she promoted and organised on 4 February 2024 (T652.1-47). He would not have do so had he considered it was a widespread view in relevant circles: c.f T667.13-16.

Apology objection

542. An issue in cross-examination arose at T624.22-28 in relation to a public statement the respondent made on 17 May 2024 (CC:690 (Ex.A221)) about Ms Jones and Ms Keen (**Statement**). The Statement was used in cross-examination as to the credit of the respondent which affects his defences and is also intended to be used as an admission in relation to the facts particularised in support of the defences about both women. The respondent addressed this objection to the Statement and cross-examination at T624.4-630.41 in his admissibility of apology submissions dated 9 October 2024 (**RAAS**).
543. Mr Pesutto admitted that the statement was truthful, it was genuine on his part and still on his website: T624.10-18. At T774.40, Mr Pesutto declined to adopt the description "apology statement" and described it as "range of things" and said "that statement was, certainly at the time it was made, I was very conscious of preserving my position".
544. It appears to be common ground that s20(2) *Defamation Act 2005* does not apply in this Court: RAAS[3.4]; *Herron v HarperCollins Publishers Australia Pty Ltd* (2022) 292 FCR 336 (**Herron**) at [363]. Contrary to RAAS[3.5], s20(1) on its plain wording is inconsistent with both s55 and 81 of the *Evidence Act 2005*. Section 55 defines that evidence is relevant if it "*is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding*". Section 20(1)(b) changes that definition of relevance by exclusion and is therefore inconsistent on its face.
545. "[A]dmission" as used in s81 of the Evidence Act is defined in the Dictionary as "*a previous representation that is (a) made by a person who is or becomes a party to a proceedings (including a defendant in a criminal proceeding), and (b) adverse to the person's interest in the outcome of the proceeding*". Section 20(1)(a) changes the definition of admission in s81 by exclusion and is therefore inconsistent on its face. To the extent that cases such as *Edwards v Nine Australia Pty Limited (No 6)* [2024] FCA 758 about s40 are correct,

contrary conclusions have been reached about s10A(5) (*Russell v S3@Raw Pty Ltd* (No 3) [2024] FCA 991 at [47] per Meagher J and ss21 and 22 (*Wing v Fairfax Media Publications Pty Ltd* [2017] FCAFC 191; 255 FCR 61 per Allsop CJ and Besanko J at [23], Rares J agreeing at [49]). The considerations for s20 which is expressed in mandatory terms are much closer to s10A(5) and ss21 and 20 than s40.

546. To the extent that the above submissions are not accepted there is a question as to what s20(1) (or s20 as a whole) prevents both in terms of what amounts to an apology for the purposes of that section and what that section precludes. First, in the context of this case, it appears the respondent accepts that s20 only applies to the defamatory matters the “apology” was in connection with, and not the ABC Interview or Press Conference: c.f. RAAS[3.2]. The primary objection should be rejected in relation to those two publications.
547. Second, the statement is not framed or described as an apology, and the single sentence that contains an apology or is in an apologetic form, as Mr Pesutto admitted, is one of a range of things the statement covers. Section 20 is addressed towards protecting apologies from the potential consequence that their apologetic nature, involving an assumption of responsibility, may constitute an admission of fault or liability. As the respondent has pointed out in his RAAS footnote 4 it arose in the context of tort liability where the intention, negligence or culpability of the defendant is in issue and an apology may constitute an admission of such elements. In the context of defamation, a concern may be that an apology could constitute an admission of the elements of the tort relating to defamatory matter, that is publication or defamatory meaning, or arguably as an element of serious harm to reputation. Plainly on its terms s20 does not affect the assessment of damages. Similarly, it is difficult to construe the section to apply to defences, let alone general credit.
548. Therefore, in State courts properly construed s20 only limits the admission or use of the apologetic nature of a statement against the maker in relation to any denial of the elements of the tort and does not prevent its admission or use for any other purpose.
549. The respondent’s submission at RAAS[3.2] should not be accepted. *Nguyen v The Queen* (2020) 269 CLR 299 was a criminal appeal where the prosecution at trial had failed to tender a record of an interview with the offender because it contained such mixed representations that were considered too self-serving. The reasoning of the Court was in this context about the operation of s81 and duties of prosecutors. That case which addressed the admissibility

of admissions in that context, and the consequent prosecutorial obligation. has negligible relevance to this case. Section 81(2) does not permit the admissibility of contextual representations, just those that are reasonably necessary to understand the admission. Nonetheless, s20 does not prevent Mr Pesutto from tendering or referring to part of a statement made in connection with a defamatory matter that may be apologetic in nature to explain or put in context other admissions he has made and it should not prevent the use or tender of statements in the same document that are not apologetic in nature or the maker's evidence about those statements or the apologetic material itself.

550. RAAS[3.6]-[3.7] ignores that the reason why s135 had remaining operation in *Herron* is because at the time the evidence was given by Dr Gill over his objection to the Royal Commission, it was years before the Commonwealth Evidence Act was enacted. Dr Gill and his lawyers were therefore entitled to believe that he had the relevant protection: see at [88]-[89] per Rares J; [235] per Wigney J; and [387] per Lee J. Mr Pesutto on the other hand, was at pains to reinforce in his evidence that the Statement was given with complete regard to these proceedings in the Federal Court, and the defences he relied upon. Obviously the relevant law has remained the same at all times – in particular the decision in *Herron* was (or at least should have been) known to the expert defamation lawyers representing him in these proceedings (being the same lawyers representing him in the proceedings brought by Ms Keen and Ms Jones).
551. Submissions as to relevance and probative value will be developed further in consideration of the defences, but the evidence (Statement and cross-examination) is plainly relevant to an assessment of the respondent's general credit, particularly in light of his full cross-examination, and there is no need to further address the RAAS as to admissibility further save one submission. As to RAAS[5.3], the respondent admitted that he had given a genuine and truthful statement that he continued to publish to the world. Mrs Deeming was entitled to test that evidence, which did not involve an assessment of context: see T627.30-45. In any event, it was open for his counsel to re-examine him to provide further context if such additional context exists and was relevant to his answers in evidence. Mrs Deeming was entitled to test his assertion that the Statement was truthful and genuine in light of his defence and evidence in these proceedings and previous conduct and representations.
552. A significant credit point in relation to the statement occurred at T772.45-773.7, where Mr Pesutto suggested that he still believed that Ms Keen had Nazi sympathies. Mr Pesutto had

given evidence at T772.35 that he believed Ms Keen to be a Nazi sympathizer when he spoke during the 3AW Interview. Mr Pesutto falsely claimed to support his evidence that he still believed Ms Keen to be a Nazi sympathiser at T773.15-22, by claiming that he was very careful in his Statement to avoid reference to Nazi sympathiser to maintain the position without prejudice to his defence that she was a Nazi sympathiser.

553. When confronted with his admission “*That it is now clear from public statements made by Ms Keen and Ms Jones, that they share my belief that Nazism is odious and contemptible*”. After obviating the question from T773.42ff, finally at T774.25 he contradicted his previous answer and admitted that he did not currently believe Ms Keen to be a Nazi sympathiser. This exchange is highly probative and material to the Court’s assessment of the respondent’s credit, because like many of his other unsatisfactory answers, it was another gratuitous attempt to make statements in support of his defence or give evidence that smeared Mrs Deeming, Ms Jones and Ms Keen. The Statement caught Mr Pesutto in a lie and, much like the recording, exposed his dishonest approach to the presentation of his knowledge and state of mind throughout the relevant period: see also T774.36-775.18 under examination from the Bench.

554. Mr Pesutto was not an honest witness. His approach to giving evidence in this Court was similar to his approach to his communications and negotiations with Mrs Deeming discussed in the narrative chronology above.

Dr Bach

555. Dr Bach’s cross-examination commenced with a dishonest response about his attitude towards Mrs Deeming’s maiden speech which was contradicted by his own contemporaneous text message to her: T903.8-46; CC.158, Ex A59.

556. Things did not improve from there - Dr Bach was a very unsatisfactory witness. The recording from the 19 March 2023 meeting establishes that he expressed irrational views about Mrs Deeming, Ms Keen and Ms Jones from that time. Dr Bach was prepared to infer from scant primary evidence in the meeting that Ms Keen and Ms Jones were Nazi sympathisers and that both women held white supremacist views: Ex A2 lines 848-859. He initially maintained at T966.32 that he had a proper basis for saying that both women were Nazi sympathisers. A position he maintained in relation to Ms Keen in his evidence (T970.36-39) but not for Ms Jones (T971.38-40).

557. As to the white supremacist views quote, although Dr Bach claimed to this Court that he misspoke (T973.3), his speech at the meeting and his evidence to this Court was consistent with an entirely irrational attitude towards those women and Mrs Deeming and suggests that he did not misspeak. It is open to this Court to find that Dr Bach lied to Mrs Deeming in the meeting to ensure that no compromise that would result in her remaining in the Party would be reached.
558. Dr Bach did not come to this Court to answer questions but to give speeches defending his actions, even his objectively indefensible conduct. Notwithstanding having reviewed the recording of the 19 March 2023 meeting, Dr Bach was mostly unwilling to make concessions when that recording directly contradicted his recollection of Mrs Deeming's conduct and attitude and his description of how he and his colleagues treated Mrs Deeming: see T923.46-924.1; T924.13-20; T924.24-31; T941.10-14; T944.10-12; T958.3-15; T958.26-32; T959.6-12; T959.14-29; T959.41-45; T960.1-3; T960.21-29; T960.42-961.2; T961.14-17; T961.19-21; T961.33-37; T961.41-44; T695.22-29; T973.42-47. When Dr Bach made concessions, these concessions were either obvious or prefaced with self-serving and non-responsive qualifications: T938.40-46; T940.3-7; T941.26-31; T951.30-36; T951.4-11; T952.29-34; T952.42-45; T954.23-27; T960.10-12; T977.13-20.
559. His responses to questions were often following by lengthy, mostly unresponsive additions targeted at Mrs Deeming or her case: see T903.35-40; T905.1-8; T905.44-47; T906.3-8; T907.25-33; T907.43-47; T908.28-35; T908.41-46; T909.8-14; T909.37-910.2; T910.13-21; T911.40-46; T912.21-28; T918.18-27; T918.41-46; T919.3-8; T919.29-33; T919.40-920.2; T920.15-20; T920.43-45; T921.6-17; T923.5-13; T923.22-30; T923.35-43; T924.38-45; T925.7-14; T925.45-926.7; T926.20-26; T927.32-46; T928.4-10; T928.17-24; T929.22-26; T934.14-22; T941.42-47; T943.4-9; T944.7-16; T944.20-28; T945.45-946.8; T946.36-44; T947.10-18; T948.38-42; T951.16-20; T954.36-955.1-4; T957.24-28; T962.13-18; T969.29-40.
560. When questioned by his Honour at T909.16-24 about his specific concerns about Mrs Deeming's International Women's Day speech Dr Bach was only able to respond with generalities. Dr Bach, on occasions, refused to make obvious concessions by responding in a non-responsive manner: T920.31-39; T921.3-20; T944.16-25; T950.7-8; T964.13-19. On other occasions non-responsive gratuitous answers were made against Mrs Deeming: T932.23-34. This Court may conclude that Dr Bach's irrational approach to the women

clouded not only his conduct from 19 March 2023 but his evidence in this Court.

561. The partisan nature of Dr Bach's evidence is illustrated by him only giving evidence of the compromise at the 27 March 2023 involving just a "statement" (T985.15) despite giving evidence that the notes of that meeting were so accurate there must be a recording.
562. One partially honest aspect of his evidence was at T987.34 when he in effect admitted that his answer to the press conference on 27 March 2023 was partially false.
563. Dr Bach brought his political talents into the witness box. He came to this Court to be an advocate for Mr Pesutto on contentious issues, not an honest witness. It is open to this Court not only to reject his evidence on any contentious issue not supported by objective evidence, but to conclude that many of his answers were dishonest.

Mr Southwick

564. Mr Southwick was content for five other witnesses to swear affidavits (including affidavits in reply) about contested events at a meeting they had all attended knowing that he held a recording of that meeting. He was prepared to swear his own affidavit either falsely inconsistent with his own recording or without regard to the recording such that his evidence supported Mr Pesutto's interests.
565. The longwinded evidence that Mr Southwick gave at T998.23-41 at the commencement of his cross-examination about his reasons for making such a surreptitious recording and keeping it hidden was remarkable. The effect of it was to justify his own dishonest conduct by levelling accusations of dishonesty at Mrs Deeming in a telephone call on 18 March. Unsurprisingly when asked about it, he was unable to actually identify any actual dishonesty on the part of Mrs Deeming during his telephone call – claiming that her agreement to issue a press release was a lie.
566. There are no messages in his various exchanges that night on 18 March 2023 or the next morning evidencing his outrage at Mrs Deeming's failure to put out a formal statement or alleging that she had lied. There are no such messages evidencing his outrage when watching the LWS post-event video. There are however messages with Ms Staley, Mr Pesutto and Mr Guy that night discussing expelling Mrs Deeming for her mere attendance at the LWS rally.

567. It is far more plausible that Mr Southwick taped the meeting because he hoped to record incriminating responses from Mrs Deeming “as an insurance policy” (c.f. T999.25-29) in case she refused to resign or contested the planned expulsion. The court should find that the recording did not surface until a week before trial because it is damning of Mr Southwick, Mr Pesutto and others and vindicates Mrs Deeming’s repeated complaints about the meeting.
568. On Mr Southwick’s account he suffered a very triggering and dark event on 18 March 2023 (T998.25-28), and in those circumstances (accepting his own evidence) it is unlikely he acted rationally or has a reliable or objective recall of specific events on 18 March 2023 and the following days. The unreliability of his account is illustrated by his evidence in his first affidavit at [18] of watching the LWS post event video in the afternoon on 18 March 2023: T1029.38-1030.2. The video was not streamed until 7:46pm and was posted at 8:13pm.
569. Mr Southwick’s longwinded and mostly unresponsive answers at T998.25-41, T999.22-29, T999.34-1000.6, T1000.11-26, T1000.30-39, T1001.47-1002.8 to commence his cross-examination were indicative of his overall unsatisfactory approach to giving evidence. Mr Southwick gave unconvincing evidence as to why he did not disclose the recording earlier at T1001.40-46. After claiming he did not disclose the recording to keep the matter from playing out in the media, refused to answer repeated questions about the propriety of Mr Pesutto playing out party room matters in the media: see T1002.12-17, 24-35.
570. Mr Southwick continued to give longwinded and mostly non-responsive answers to questions throughout his evidence: for example, T1004.6-18, T1004.21-29, T1004.13-23, T1009.28-42, T1010.2-12, T1013.20-28, T1018.1-10, T1019.21-31, T1020.7-12, T1021.21-25, T1022.13-20, T1032.8-17, T1043.5-16, T1043.19-30, T1079.17-33, T1084.3-11, T1089.6-16, T1092.40-1092.2, T1097.19-27, T1098.4-8, T1098.19-19.
571. Mr Southwick’s evidence that Mrs Deeming lied to him (T998.38) because she failed to put out a formal press statement on 18 March 2023 should be emphatically rejected. The evidence was in the context of Mrs Deeming’s 18 March Tweet, about which he was aware at the time and that on his own admission clearly expressed to the public that the Nazis had nothing to do with LWS (T1024.47) and denounced their actions. That tweet was ultimately viewed over 270,000 times. This false narrative, which includes concocted outrage at Mrs Deeming, underlines almost all his evidence on contentious issues in the proceeding.

572. There is no contemporaneous documentation supporting Mr Southwick's version. Despite the apparent urgency for Mrs Deeming to make a formal statement, Mr Southwick did not follow up or mention his request to Mrs Deeming with the media unit, Mr Pesutto or any persons despite Mrs Deeming's proposed expulsion being the subject of multiple messages and discussions that night.
573. Mr Southwick's description of the LWS post-event video as having occurred 24 hours after the event at T1032.24 when the video occurred just hours after the event bespeaks a partisan and irrational attitude towards both Mrs Deeming and the LWS organisers. His repeated mischaracterisation of the video since 19 March 2023 as something highly offensive is equally irrational.
574. Mr Southwick's repeated claim that he found the Pridestapo image on Sunday 19 March 2023 should be rejected. There are no messages or documents recording its discovery. The image was not mentioned at the 19 March 2023 meeting. Mr Southwick's continued assertion that he found the Pridestapo image that day should be rejected and evidences the unreliability of his account of events and his evidence generally.
575. Another concern about Mr Southwick's credit was his inability to identify a single view held by Mrs Deeming that was different to the Liberal Party and mainstream Victoria (see T1042.21-47) and could only identify that she was too focused on two issues he claimed most Victorians were not thinking and talking about each day. At T1043.33-1044.13, Mr Southwick however accepted that the issues Mrs Deeming was focused on were mainstream issues.
576. Mr Southwick gave partisan and essentially dishonest evidence about the 19 March 2023 meeting when he suggested Mrs Deeming's "I think that's what they are" was equivocal (T1052.19-21). As outlined above, in the meeting Mrs Deeming identified the men as Nazis without qualification. Mr Southwick's unresponsive speech at T1055.30-36 attacking Mrs Deeming as gaslighting him should be rejected. It is plain from the recording that Mrs Deeming was explaining her thought processes and how she came to find out the men were identified as Nazis and she repeatedly referred to them as Nazis throughout the recording except when providing descriptions of the men.
577. Indicative of Mr Southwick's partisan approach at T1060.37, Mr Southwick was initially reluctant to call Ms Keen a Nazi sympathiser. However, by T1061.24, after cross-

examination that he perceived challenged the decision to expel Mrs Deeming, Mr Southwick said there was enough evidence to call Ms Keen a Nazi sympathiser. Mr Southwick's confusing and inconsistent evidence at T1061.1-T1062.21 concluded with him even calling Ms Jones a Nazi sympathiser. Mr Southwick's preparedness to call both Ms Jones and Ms Keen that term or a form of that term on such scant evidence is consistent with his conduct in the 19 March 2023 meeting lecturing and attacking Mrs Deeming and corroborates Mr Riordan's account of what Mr Southwick told him later on 19 March 2023.

578. At T1080.15-25, Mr Southwick refused to concede that Mr Bach did not have a basis to claim Ms Keen and Ms Jones openly and publicly have a long history of sympathising with Neo-Nazis and white supremacists and had stated white supremacist views.
579. Mr Southwick did not make obvious concessions about words spoken on the recording of the 19 March 2023 meeting: see T1081.37-46. At T1082.20-21, he failed to answer a question to give the truthful answer that sex-based rights were a large part of the meeting.
580. Mr Southwick presented as a dishonest individual prepared to say anything to suit his partisan agenda. Mr Southwick's evidence should not be accepted unless corroborated by objective evidence or when it was contrary to his (or Mr Pesutto's) interests.

Ms Crozier

581. Ms Crozier gave evidence in a more conventional way as compared to all her male colleagues, but in many aspects she was an unreliable witness. For example, at T1123.46, she showed her partisanship when she gratuitously added that Mrs Deeming had issues about "sheep drench". Further, at T1124.33-45, where Ms Crozier was not prepared to accept from Mrs Deeming on 23 February 2023 that her views on abortion and trans-rights may have been misreported.
582. Ms Crozier's evidence about 21 February 2023 was incorrect. When faced with the text message she had forgotten or ignored in her affidavit evidence, she claimed that she had inferred there was a medical appointment: T1132.42-45. There is no dispute that Ms Crozier did talk to Mrs Deeming after she missed the meeting on 21 February 2023. It may be that Ms Crozier misunderstood Mrs Deeming's message. Nonetheless, Mrs Deeming did everything by the book and the error, if any, was Ms Crozier's assumption. The episode however illustrates the willingness of Ms Crozier to mis-portray Mrs Deeming to make her look bad in these proceedings.

583. At T1134.46-1135.6 Ms Crozier gave an unresponsive answer before answering the question at T1135.13.
584. At T1135.1, Ms Crozier made a gratuitous attack on Mrs Deeming in answering a question about the recording.
585. At T1138.45, Ms Crozier made the claim for the first time that Mrs Deeming had told Mr Southwick she refused to put out a statement on 18 March 2023. This evidence is contrary to Mr Southwick at [10] and is contradicted by the preparation of a draft statement for Mrs Deeming that night (Ex.A9).
586. At T1145.8-10, Ms Crozier gave evidence that Mr Southwick did not attend the lunch at Mr Riordan's house on 19 March 2023 because he had to do media because issues with Mrs Deeming were blowing up. The evidence establishes that Mr Southwick was already attending a Jewish festival that day and had planned to do a press conference on VAGO: Southwick [31].
587. Ms Crozier illustrated her partisan approach in defending the conduct of her colleagues without any concession at the 19 March 2023 meeting: see T1153.8-37, T1156.20. What was clear from her evidence is that there was nothing Mrs Deeming could have said or done at the 19 March 2023 meeting, or subsequently, to prevent Ms Crozier supporting a motion to expel. She almost admitted as such at T1157.34-36.
588. Each of these examples illustrate the partisan approach Ms Crozier took to her evidence and the unreliability of aspects of her evidence. Ms Crozier is a witness the Court should treat with significant caution on contentious issues.

Mr Woff

589. Mr Woff appeared to be an honest witness, and his evidence should be accepted.

Ms Staley

590. Ms Staley gave evidence in a considered and conventional manner. One aspect of her evidence that should not be accepted is about Mrs Deeming's reputation and views.
591. As identified in T1195.30-34 the basis of that evidence was apparently negative media in the preceding week. As the question from his Honour at T1195.44 identifies that does not

evidence a settled reputation. That evidence and the earlier evidence that mimicked Ms Crozier describing Ivermectin as sheep drench (T1194.10) reflects an approach to her evidence on this subject matter that is partisan and will not assist the Court.

Mr Pintos-Lopez

592. Mr Pintos-Lopez was an unreliable and sometimes combative witness. His ability to recall events and facts was limited and inconsistent. Significant caution should be taken to his evidence unless corroborated by objective evidence or against his interest.
593. A significant difficulty in his evidence is the lack of documentation annexed to his affidavit or detail about his almost three hours of research he apparently conducted that underpins the matters complained of. At least as to the EMD it is clear from the absence of information and graphics in CC:328 and CC:331 created shortly before the issue of the Media Release that more significant information collation occurred on 20 March 2023 by unknown from unknown sources and edited by unknown persons throughout the day as evidenced by the drafts at CC:379; CC:381 and CC:391.
594. At T1224.38, Mr Pintos-Lopez began to give unresponsive answers that supported the position taken against Mrs Deeming. The suggestion that the Nazis and women were on the steps together in response to a question about positioning is at best a misleading answer, it is possibly a dishonest answer given the question asked was as to the relative positioning on the steps. Mr Pintos-Lopez gave evidence that he watched all the videos he could find at T1224.6-8. Given the time of his research it is unlikely he watched a full video of the rally or multiple perspectives of the rally. The suggestion that he watched all available video appears to be an exaggeration.
595. A reasonable person who watched the full footage would not describe there being only two groups: T1224.12-14. Mr Pintos-Lopez described the LWS rally and the “Antifa” protestors down Spring Street: T1224.16-18. Those two groups were never close and were never opposing each other. There were clearly visible at least two groups of counter protestors. There was a large contingent of Freedom protestors, Protect the Children protestors and other protestor congregated to the north of the LWS set-up. The LWS set-up was demarcated by female marshals in brightly coloured vests. The Nazis, for much of the available video, were outside the Police line before being let in. The group directly opposing the LWS rally was behind a police line on Bourke Street. There were a large

number of protestors including the distinct Nazi group between the Spring Street protestors and the LWS rally. Mr Pintos-Lopez either has a terrible memory, did poor or limited research or was not giving frank evidence. On any view, he is an unreliable historian and not a credible witness.

596. Mr Pintos-Lopez could only “suspect” he saw Mrs Deeming’s speech at the LWS rally. Given subsequent events it is unlikely he would forget whether or not he saw video of Mrs Deeming speaking on that day if he had actually seen that footage: T1225.4-5. Mr Pintos-Lopez speculated through his cross-examination as to what documents he likely or would have found or read. It is unlikely Mr Pintos-Lopez would have forgotten Mr Sewell speaking if he had watched that footage: c.f. T1224.43-45. It is doubtful that Mr Pintos-Lopez with his limited recall watched “*a lot of video*”: T1225.14.
597. Nonetheless given Mr Pintos-Lopez’ poor or limited recall of events and detail and complete lack of a paper trail there is no reliable or probative evidence to establish that he conducted more research than recorded in CC:328 or CC:331. Mr Pintos-Lopez gave evidence that he cut and paste into a word document as he conducted his research: T1227.14-17. The earliest version of that document is CC:328 and it only contains the information he spoke of in the meeting with Mrs Deeming later that day.
598. There is such limited information in CC:228 and CC:331 that this Court should give limited weight to Mr Pintos-Lopez’s evidence to this Court that he conducted extensive research and reviewed large amounts of material. In response to many questions he did not recall or did not know the answer and many other questions he answered with terms such as “would have”, “suspect” or “likely” such that his recall of what he did or didn’t do on 19 March 2023 is inherently unreliable.
599. He gave definitive evidence he saw the Pridestapo image at T1223.21-43. The objective evidence, the recording on that day and CC:328 and CC:331 evidence that he did not discover or know about the Pridestapo image on 19 March 2023. Mr Pintos-Lopez’s insistence he saw this image on this day put his credibility and reliability in further doubt.
600. Mr Pintos-Lopez’s evidence in his first affidavit at paragraph [30] CB:37 that he took a screenshot of the Jones tweet to show the leadership team is plainly erroneous. Based on the copy of the tweet (Exhibit A72) and the time of the screenshot in the EMD with 209,400 views (Exhibit AX) the screenshot was taken at 8:17am on Monday 20 March 2023 and

therefore could not have been shown to the leadership team on the afternoon of 19 March 2023.

601. Mr Pintos-Lopez gave unsatisfactory evidence at T1237.24-26 that he understood the Jones tweet to be about the LGBTQI+ community. Under examination from his Honour, he conceded the literal meaning of the Jones tweet was directed towards paedophiles and subject to the context of the rally he had understood it to have the broader meaning: T1238.45-1239.5. At about T1239.15, Mr Pintos-Lopez scoffed about a question indicating his combative manner of giving evidence. At T1240.28-30 when shown CC:291, Mr Pintos-Lopez would not admit that Ms Jones was talking about a literal paedophile. He agreed with his Honour at T1241.9-11 that a man who eroticises infancy isn't a transgender person but a paedophile. His earlier false answer evidenced not only his unreliability, but his disdain towards the cross-examiner which was apparent throughout his evidence and clearly influenced his cavalier attitude in giving answers.
602. Mr Pintos-Lopez's evidence at T1246.14-16 that there was a third option at the pre-meeting to put out a statement from Mrs Deeming was contradicted by his failure to have a draft statement prepared despite a request to Mr Johnston to do so that morning. The preparation of a draft statement proposing resignation before the meeting and Mr Pesutto's admission that he saw only two options entering the meeting with Mrs Deeming directly contradicts this evidence.
603. Mr Pintos-Lopez's evidence after listening to the recording of the meeting that the attendees were courteous to Mrs Deeming is contrary to the recorded tone and content of the meeting: T1254.34-43. This suggests a significant partisan bias on the part of Mr Pintos-Lopez that affects his characterisation of events and recall of facts. The latter is significant where there is much he cannot recall and his evidence about his research is light on details and unsupported by documents.
604. In those circumstances his evidence is inherently unreliable and the Court should not accept his evidence on any contentious issue not corroborated by objective evidence. His evidence does not establish that he conducted a rigorous process of research to obtain a series of facts: T1266.24-25.

Mr Johnston

605. Mr Johnston was a cautious witness who gave evidence in a conventional manner. He had limited independent recall of events, but his uncontested evidence should be accepted.
606. There is one significant exception to this, being his evidence about an article published in the Age at 8:44pm on 20 March 2023. Mr Johnston gave evidence in his first affidavit that when he read the *Age Article* at around 8:45pm on 20 March 2023, it was apparent from reading that article that the EMD had been leaked to The Age and that he did not believe it was leaked by Mr Pesutto's office: CB:36, [38]. Mr Johnston says that he had a discussion with Mr Pintos-Lopez and Mr Pesutto where it was decided that, because of the leak, it was in the public interest to distribute the EMD to journalists for publication: [39].
607. Mr Johnston's gave evidence under cross-examination about the *Age Article* at T1286.4-1289.24 confirming the evidence in his affidavit despite admitting at T1288.38 that information could well have come from the internal draft of the EMD created at 11:17am that day that could only have been sourced from Mr Pesutto's office.
608. Mr Johnston's evidence about this issue is entirely false and a dishonest pretext to justify the publication of the EMD without obtaining Mrs Deeming's consent.
609. Mr Pesutto's evidence is also affected by this lie. He gave evidence in his first affidavit that he became aware on the evening of 20 March 2023 that the EMD had been leaked and republished in an article in The Age and was confident that his office did not leak the document: CB:30 [138]-[139].
610. Mr Pesutto also gave evidence that due to media inquiries from the leak he decided it was in the public interest to provide the EMD in response to those media inquiries: CB:30 [140]-[141]. Mr Pesutto gave evidence about the *Age Article* at T833.1-835.34 where he maintained his affidavit evidence. Mr Pesutto's evidence about this is also entirely false and a dishonest pretext to justify the publication of the EMD without obtaining Mrs Deeming's consent.

F. DEFAMATORY MEANING

Pleading and position of parties

611. As at common law, the cause of action under the Act is the publication of defamatory matter and not the imputations themselves: s8. The respondent has admitted that each of the relevant matters is defamatory of Mrs Deeming. He also admits that each of the imputations Mrs Deeming has pleaded is defamatory of her.
612. At the first case management hearing on 2 February 2024 senior counsel for the respondent agreed that it is open to the court to identify the sting or stings of each publication without necessarily adopting the words of the pleaded imputations, provided those findings are within the ambit of the pleaded case. It was further conceded on behalf of the respondent that (T18.30-19.2 CMC 2.2.24):

“The imputation is not the cause of action. It’s a common law cause of action. The cause of action is the publication of defamatory matter. Imputations are a tool to assist in determining whether the publication conveys a defamatory meaning. They no longer have the preternatural significance that they once had in New South Wales, Queensland and Tasmania.”

613. The Court’s evaluation of the precise defamatory imputations carried therefore only arises in the context of the serious harm element, discussed further below, the respondent’s defences, and damages.

Principles

614. The principles for determining meaning are well-settled, summarised in authorities such as *Rush v Nationwide News Pty Ltd (No.7)* [2019] FCA 496 at [71]-[91] per Wigney J and *Schiff v Nine Network Australia Pty Ltd (No. 2)* [2022] FCA 1120 at [5]-[13] per Jagot J, and the cases there cited. The test is objective and considers the position of the ordinary reasonable person (**ORP**). The single meaning rule means that the issue is the single meaning that an objective audience composed of ordinary decent persons should have collectively understood the matter to bear: *Australian Broadcasting Corporation v Chau Chak Wing* [2019] FCAFC 125; 271 FCR 632 (per Besanko, Bromwich and Wheelahan JJ) at [32]-[33].

615. It is the modern pleading practice for an applicant to identify the meaning carried as an imputation: *Chau* [15]. Ordinarily, where there is an issue whether or not the matter in question is defamatory of the applicant, the Court may still find relevant matters to carry imputations that do not differ in substance from the pleaded imputations, and which are not more injurious: see *Chau* [18]. First instance judges of this Court, after *Chau*, have described the boundaries to extend to "*meanings that are not substantively different in that they are comprehended in, or are a shade or nuance of, the pleaded meaning*": *Nassif v Seven Network (Operations) Ltd* [2021] FCA 1286 [80] per Abraham J; *Stead v Fairfax Media Publications Pty Ltd* [2021] FCA 15; 387 ALR 123 at [15] per Lee J. Whether, and to what extent, the Court may find the matters to carry meanings that depart from the pleaded meanings will be ordinarily resolved by considerations of fairness and practical justice: see *Chau* [18].
616. The above authorities in this Court, however, do not appear to address the circumstance in this case where the respondent admits the relevant matters are defamatory and the applicant is therefore entitled to succeed by that admission, at least as to that element of the tort, irrespective of what meanings are carried.
617. Given the sometimes-confusing language used in the publications here and the nature of those publications, it is relevant to recall the often quoted passage from *Lewis v Daily Telegraph* [1964] AC 234, per Lord Devlin at 285:
- "A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that."*
618. His Lordship further pointed out (at 277) that "*whereas, for a lawyer, implication in a text must be necessary as well as reasonable, ordinary readers draw implications much more freely, especially when they are derogatory. That is an important reminder for judges.*"
619. Further of use is the consideration by the High Court of defamatory meaning in *Favell v Queensland Newspapers Pty Ltd* (2005) 79 ALJR 1716. Although the context of the decision was a strike out which considered whether the meaning was capable of being carried, it is an illustration of how implication can be drawn by the ordinary reasonable reader from a combination of two facts in a news story. In that case it was the fact that the

plaintiff's building had burned to the ground by reason of a suspicious fire against the background of a heavily contested development application. Here the question asked by recipients of each of the publications in assessing what was being alleged against Mrs Deeming was – what did she do to warrant being expelled from the party by her own leader?

Key words and terms

620. The matters sued on, being 5 publications made by Mr Pesutto in a less than a 24-hour period, each use a number of words and terms that are worth noting at the outset.
621. The terms “Nazis” and “neo-Nazis” describe persons who hold views and values that would be considered by most Australians to be repulsive. In particular, those terms are associated with the abominations carried out by Hitler in World Word II. Nazism refers to beliefs that go beyond fascism and include antisemitism, anti-communism, white supremacy (in particular the superiority of the “Aryan race”), ableism and the use of eugenics. Notoriously, one of the key aims of Nazis is the creation of a homogenous society based on racial purity to the exclusion of “inferior races”. The ordinary person would thus equate Nazism with white supremacy. Nazism is considered by most Australians to be evil.
622. “Associated with” and “associating with” are terms that potentially have a range of meanings. However, in the context of the matters in this case, a closer connection than an acquaintance, or a mere interaction is imputed. The ORR would understand the terms to impute a deliberate connection with neo-Nazis and an alignment of views or shared values. The ORR would not understand a person to associate with persons who hold Nazi or white supremacist views unless they agreed with those extremist views.
623. “Known links”, “publicly associated with” and similar terms are used in the matters. The clear implication of this language (unless otherwise refuted in the matters) is that Mrs Deeming was aware of the links or associates when she organised and attended the rally with these people.
624. “In league with” is an idiom used to describe working with someone as a team to do something bad or dishonest – “in league with the devil”.

Media Release

625. The Media Release was a statement from the respondent to inform the public that he

intended to move to expel Mrs Deeming from the Parliamentary Liberal Party: c.f. Pesutto [96].

626. In the introductory part, lines 1 to 4, the respondent used very strong language to describe what he identifies in line 5 as the rally Mrs Deeming attended: “Victorians witnessed an abomination”, “violence, prejudice and hate”, “odious action”, “I condemn them”, and “commit to opposing such hate”.
627. In line 5, the respondent informed the ORR “*This afternoon I met with Moira Deeming, who attended yesterday’s rally.*” The ORR would understand Mrs Deeming to have attended the rally, that was an abomination, attended by Neo-Nazis, odious, and an expression of hate that the respondent had condemned and was committing to oppose. The respondent informed the ORR that he discussed her involvement in organising, promoting and participating in it with the other speakers and organisers. He then says those speakers and organisers themselves have been publicly associated with right- wing extremist groups, including neo-Nazi activists. The ORR understands from reading the Media Release that Mrs Deeming was at a rally with Nazis and she organised it with associates of neo-Nazis.
628. Because he says that those other organisers were publicly associated with neo-Nazis, the implication is that Mrs Deeming must have known that she elected to organise, promote and participate in a rally which was attended by neo-Nazis and was organised by persons who she knew to be associates of neo-Nazis. Mrs Deeming’s involvement and culpability in the rally is such that she will be expelled from the Parliamentary Liberal Party because her position is untenable.
629. The ORR is informed that Mrs Deeming’s conduct was so bad that she must be expelled from the broad church that is the Victorian Parliamentary Liberal Party. At line 10, the ORR is informed “*This is not about free speech, but it’s about a member of the parliamentary party*” – in other words, Mrs Deeming – “*associating with people whose views are abhorrent to my values, the values of the Liberal Party and the wider community*”.
630. The people with abhorrent views Mrs Deeming is being accused of associating with, are those people described in lines 1 to 4, the Nazis, the Neo-Nazi protesters and the organisers who themselves hold abhorrent neo-Nazi views that are repugnant to the respondent’s values, the values of the Liberal Party and the wider community. The most notorious neo-Nazi view is genocidal white supremacy. The ORR would understand from the Media

Release that Mrs Deeming's conduct was so bad, so despicable, it cannot even fit within the broad-church model of the Victorian Parliamentary Liberal Party or the Liberal Party more broadly.

631. The Media Release alleges that:
- a. Mrs Deeming organised an event with people who publicly associated with neo-Nazis;
 - b. that event was attended by neo-Nazis;
 - c. Mrs Deeming participated in that event with the neo-Nazis on the steps of Parliament;
 - d. Mrs Deeming associates with neo-Nazis;
 - e. Mrs Deeming should be expelled because of (a)-(d) above.

Those allegations together impute that she is a Nazi sympathiser, she supported Nazis, she agrees with Nazis, she associates with Nazis, and that she is so despicable she must be expelled.

632. The ORR would not understand that Mrs Deeming is being accused of an innocent or unwitting association - otherwise why would she be expelled? The ORR would not understand that Mrs Deeming was being expelled for being in the wrong place at the wrong time or because she spent some time with people and didn't know their abhorrent Nazi views. The only rational conclusion the ORR would reach from reading the Media Release, the purpose of which was to announce the proposed expulsion of Mrs Deeming from the Victorian Parliamentary Liberal Party, is that she is being condemned as a Nazi sympathiser, as someone who espouses, who agrees with, and who has the same views as Neo-Nazis.

633. At lines 12-18, the respondent reinforced to the ORR that in striving to represent all Victorians this does not include Mrs Deeming and her odious (neo-Nazi) friends, and that there is no place for Mrs Deeming or her friends in the Liberal Party.

634. The respondent's counsel have criticised the number and alternative imputations pleaded in this matter. As explained in the principles above, the single meaning rule does not mean the Court must seek to find a single imputation – in most cases an attempt to do so will

result in an imputation, such as the respondent's contextual imputation, that is fundamentally bad in form and would be comprised of multiple defamatory stings.

635. The Media Release seeks to justify the respondent's decision to expel Mrs Deeming from the Parliamentary Liberal Party because her position was 'untenable' (line 8-9), thus giving rise to an imputation of unfitness to hold that membership (imputations 5.13-5.17). By reference to the standards of the Liberal Party (lines 11, 12-18) as a whole, and Victorian society (lines 1-4, 11, 15-18), the ORR would therefore also understand the Media Release to mean that Mrs Deeming was also unfit to be a member of the Liberal Party generally (imputations 5.18-5.23) and unfit to sit in the Victorian Parliament and unfit to conduct herself in decent society (imputations 5.7-5.11). The ORR would understand that Mrs Deeming failed three distinct and different standards of fitness, that may have different impacts on Mrs Deeming's reputation. Each of the three unfitness imputations are carried to the ORR with distinct stings in addition to the conduct and views imputations (5.1-5.5).
636. Significantly, in relation to all five conduct and views imputations the Media Release does not include (in contrast to the earlier drafts) any express statement that Mrs Deeming was not involved in the organisation or actions of the neo-Nazi protestors. In the context of very strong language used in the Media Release (eg "abomination"; "affront"), together with the significant sanction proposed to be taken, the ORR would conclude the worst about Mrs Deeming.
637. The most serious conduct imputation pleaded is that Mrs Deeming is a neo-Nazi: 5.5. The applicant informed the respondent by letter dated 4 July 2024 (CA:5) that she relies on imputation 5.4, and its equivalent unfitness imputations, as an alternative to an imputation that she supports (5.1) white supremacists and Neo-Nazis. As white supremacy is one of the most notorious and central tenants of Nazis or neo-Nazis, "white supremacist" is carried to the ORR by the use of neo-Nazi and otherwise the use of "white supremacists and Neo-Nazis" together does not differ in substance to "Neo-Nazis".
638. As outlined above, the Media Release carries imputations of holding abhorrent views, knowing association, and support or sympathy with neo-Nazis. The ORR would understand that a person accused of holding abhorrent views, knowing association, and supporting or sympathising with neo-Nazis is being accused of being a neo-Nazi herself. To the extent imputation 5.5 is not carried, imputations 5.2 to 5.3 and 5.1 or 5.4 plainly are.

3AW Interview

639. The 3AW interview commenced at 8.55am on 20 March 2023. This interview was the commencement of a media roadshow on 20 March 2023 to explain the Media Release that also included the ABC Interview and the Press Conference.
640. The interview commences with Mr Mitchell describing the political optics in the following terms (line 5): “a Liberal MP at a hate rally with Nazis”.
641. The respondent at lines 11-12, in response to a direct question as to what Mrs Deeming did wrong, describes her associations with organisers who have known links to “Nazis, Nazi sympathisers, far right extremists, white supremacists”. At lines 18-20, in response to a specific question about Ms Keen’s association with the Nazis the respondent informs the ORL that Ms Keen has a “long rap sheet” having done videos with Jean-Francois Gariepy, Richard Spencer, Mark Collett, and David Duke.
642. Mr Mitchell attempts to put Ms Keen’s explanation for her associations - but the respondent rejects that outright at lines 26-28. The ORL is left with the impression from the respondent that Ms Keen’s associations or links are many, well-known, intentional, damning, serious and reflective of Ms Keen’s own views. At lines 30-31, the seriousness of her links are confirmed when the respondent states that Ms Keen is “in league with people whose views I cannot accept” - that is the Nazis he listed at lines 18-20. The ORL would understand that statement to mean not just that she had participated in videos with people but she was working with them, agreed with them, was part of a group with them and shared their Nazi views - that she herself was a Nazi activist or sympathiser.
643. At lines 36-42, the respondent damns Mrs Deeming for her organisation and promotion of the rally (described earlier to the audience by Mr Mitchell as a hate rally with Nazis) with persons with known associations with Nazis. The ORL would understand the respondent to be saying that Mrs Deeming knew that the other organisers of the rally were Nazi sympathisers and had known associations with Nazis. At lines 46-47, the respondent suggests that Mrs Deeming must have known about the “long rap sheets of association with these people” - namely the Nazis.
644. At lines 52-54, the respondent presents Ms Jones’s tweet out of context and immediately after line 51 where he asserts that the Nazis were there to support Mrs Deeming and her rally. The ORL is left with a direct connection between not only Ms Jones and Ms Keen

and the Nazis who attended the rally but a connection between Mrs Deeming and those Nazis.

645. At line 72, the respondent identifies that he knew that Mrs Deeming “was active in this space”. The interview concerns a hate rally attended by Nazis - there was no mention by Mr Mitchell or Mr Pesutto of sex-based rights. As the respondent told the audience at line 41, “It’s not about free speech, it’s about people whose values are not consistent with mine.” The ORL is left to understand that Mrs Deeming herself holds values inconsistent with Mr Pesutto’s, being neo-Nazi values. At lines 74-78, the respondent confirms this understanding because he refutes Mr Mitchell’s suggestion that it was not her fault that the Nazis showed up.
646. At lines 102-103, the respondent, although he concedes that Mrs Deeming is not a Nazi, tells the audience that his point is that “she’s associating with people who are [Nazis].” Then at lines 107-109, the ORL is left with the understanding that he is taking the step to expel Mrs Deeming because of her Nazi connections. Mr Pesutto then clearly accuses Ms Keen and Ms Jones of being Nazi sympathisers: lines 112-118.
647. At lines 124-125, the values of Ms Keen, and by implication Ms Jones, are directly equated to Thomas Sewell and the Nazis. No other odious views or values are mentioned in the matter other than those held by “Nazis, Nazi sympathisers, far right extremists, white supremacists”, that is the views and values of Nazis and Nazis sympathisers. The odious values and conduct of Ms Keen and Ms Jones are confirmed at lines 133-138 where the respondent said he found “it hard to believe they [Ms Keen and Ms Jones] didn’t know the Nazis were turning up”. The respondent does not even reject the possibility that Mrs Deeming knew of this matter (saying twice, “I’m not saying Moria *necessarily* knew”). The ORL is told Ms Keen and Ms Jones must have known the Nazis would attend but the respondent cannot be sure about Mrs Deeming. The ORL is told that Ms Keen and Ms Jones knew the Nazis were coming because by implication they are Nazis themselves.
648. At lines 144-146, after being asked about the pre-selection process with Mrs Deeming, the respondent says he was committed to making sure there were better processes moving forward because hate speech is never acceptable. The implication to the ORL is that Mrs Deeming should not have been selected because she expressed hate speech or at least directly associated with those who did, that is the views of Nazis, and therefore, although she was not a Nazi, she was a Nazi sympathiser.

649. At no stage in the interview are sex-based rights or “anti-trans” rhetoric discussed - only the values and views of Nazis and connections to Nazis. The ORL would understand that the respondent was accusing Mrs Deeming of having direct links with Nazi activists and sympathisers through her organisation, promotion, and attendance with Nazis or Nazi activists. The loose language throughout the interview contrasted with the express statement that Mrs Deeming was not a Nazi in circumstances where the other organisers were unequivocally condemned, given the significant action the respondent proposed be taken against Mrs Deeming, would lead the ORL to adopt loose thinking as to each of the four pleaded imputations, and be satisfied the interview carried the following meanings:

10.1. Deeming helped organise, promote and attended a rally with Nazi activists.

10.2. Deeming had so conducted herself as to warrant being expelled from the Liberal Parliamentary Party by associating with Nazi activists.

10.3. Deeming associates with Nazis.

10.4. Deeming is a Nazi sympathiser.

ABC Interview

650. The respondent’s media roadshow continued with the ABC Interview at 9.39am.

651. At lines 4-7, the respondent explains that he is expelling Mrs Deeming from the Parliamentary Liberal Party because she not only attended the rally but “was actually involved in different ways in the organisation and promotion of this protest at which there were speakers who have known links with Neo-Nazis and white supremacists.” The respondent goes on to say at lines 10-12 that, “these values that we saw displayed on the steps of Parliament are not consistent with the values I and the Liberal Party stand for.” The ORV would understand the respondent to mean that Nazi values are inconsistent with his values and those of the Liberal Party, therefore Mrs Deeming has to be expelled because she has such Nazi values. At lines 15-22 this meaning is reinforced to the ORV when the respondent says “We don't stand with Neo-Nazis. We don't stand with white supremacists.”

652. The ORV is guided to this meaning by Mr Rowland at lines 31-33, a meaning that the respondent implicitly adopts at lines 34-41, when her views and appearance at the rally are described as abhorrent. The only views that have been discussed are Nazi views, white

supremacist views and Neo-Nazis. The respondent confirms that expelling Mrs Deeming is making a statement that the Liberal Party will not accept any association with neo-Nazis or white supremacists or anybody who sympathises with them, namely Mrs Deeming. The ORV understands that the respondent is expelling Mrs Deeming to avoid that association with her.

653. At lines 42-46, the respondent is asked a question about Mrs Deeming's pre-selection and "out-there" views that were known at that time. At lines 47-52, the respondent first draws a distinction between those previously known views and why he is now expelling her:

Can I make a broader point that I think is important for me to emphasise. I support free speech, and there are people who have different views, and what I've always said on the ABC and everywhere else for that matter is that debate should always be civil and courteous - robust, sure, but the debates must be respectful. Now, the reason I'm taking this step is because Nazis and white supremacists don't make debates respectful and civil. That's the first thing I would say.

654. The ORV would understand that the respondent could only be referring to Mrs Deeming, as Nazis and white supremacist who do not make debates respectful. She's the person who the respondent wants to expel from the party. Mr Rowland asked him about her other views, and he says it's not about those views. The respondent does not qualify anything he says about Mrs Deeming or state that she is not a Nazi or white supremacist.

655. At the conclusion of the interview, at lines 64-65, after answering a question about banning the Nazi salute, the respondent concludes "And people who engage in actions and gestures which incite hate and violence will never be acceptable in our state".

656. The respondent in the ABC Interview is answering questions about his decision to expel Mrs Deeming from the Parliamentary Liberal Party (particularly at lines 15-22) that give rise to imputations of unfitness to hold that membership: imputations 14.13-14.18. The respondent then answers questions about her membership of the Liberal Party as a whole (particularly lines 23-41) that give rise to imputations of unfitness to hold that membership: imputations 14.19-14.24. The ORV who listened to lines 51-52 in the context of the whole matter would understand the respondent to be saying that Mrs Deeming, people like her, are unfit to sit in the Victorian parliament and polite society. As with the Media Release, the ORV would understand the respondent to have informed them that Mrs Deeming failed distinct and different standards of fitness, that may have different impacts on

Mrs Deeming's reputation depending on the reader. The applicant submits that each of the three unfitness imputations are also carried to the ORV with distinct stings in addition to the conduct and views imputations (14.1-14.6).

657. Significantly, as mentioned above, in relation to all six conduct and views imputations, the respondent did not make (in contrast to the earlier drafts of the Media Release) any express statement that Mrs Deeming was not involved in the organisation or actions of the neo-Nazi protestors or any express statement that he knew Mrs Deeming was not a Nazi. The absence of such statements was telling, in the context of using very strong language, using the term word "associate", and referring to the significant action proposed to be taken against Mrs Deeming. The ORR would not only adopt loose thinking but seek to understand the real reason for taking such dramatic action.
658. The most serious conduct and views imputations pleaded is that Mrs Deeming is a neo-Nazi, imputation 14.5. The applicant informed the respondent by her letter dated 4 July 2024 (CA:5) that she relies on imputation 14.5 that Mrs Deeming sympathises, and its equivalent unfitness imputations, as an alternative to an imputation that she supports (14.1) white supremacists and Neo-Nazis.
659. As outlined above the ABC Interview carries imputations of holding abhorrent views, knowing association, and support or sympathy with neo-Nazis. The ORR would understand that a person accused of holding abhorrent views, knowing association, and support or sympathy with neo-Nazis, absent some disclaimer, is being accused as a neo-Nazi herself. To the extent imputations 14.5 and 14.6 are not carried, imputations 14.2 to 14.3 and 14.1 or 14.5 plainly are.

Press Conference

660. The respondent's media roadshow continued with the televised Press Conference sometime about lunchtime on 20 March 2023.
661. The entire point of the press conference is the expulsion of Mrs Deeming: see lines 6-7. At line 6-11, the respondent states that it will "never be acceptable for Nazis to get a platform or anyone who shares their views or anyone who works with them to help them promote their odious agenda." The ORV would understand that the respondent is referring to Mrs Deeming, the only person he has named so far. At lines 10-11, the respondent said that was why he had taken action today.

662. At lines 12-13, Mrs Deeming was identified as having participated with and worked with the organisers of the rally. The ORV was informed at lines 14-16 that the rally was organised by people who have known and established links with people who have Nazi sympathies, promote white supremacist views and ethno-fascist views. The ORV in this context would understand what was odious and unacceptable was Mrs Deeming's participation with the organisers of the rally and the protest that attracted Nazis on the steps of Parliament.
663. At line 18, the respondent uses the flexible word "associating" to describe Mrs Deeming's relationship with people who share platforms with people who peddle hate (hatred), division and attack people for who they are (vilification, see also line 62). The ORV would understand the people Mrs Deeming worked with to organise the rally to also be promoting and peddling hateful Nazi views, that is hatred and vilification, because that is why they shared platforms and viewpoints with and promoted Nazis and the like – see lines 40-41, 65-67, 75-76, 109-110, 148-149 and 420.
664. At line 27-28, the respondent informs the ORV that free speech does not include hate speech, and the ORV would understand that the respondent is stating that Mrs Deeming is responsible for the actions of the Nazi, which means she has to be expelled.
665. The ORV would understand that at line 45ff that the reporters are pushing back and trying to understand the real reasons Mrs Deeming was being expelled. It is at lines 49-57 in response to the question about when Mrs Deeming crossed the line the respondent stated a list of her alleged misconduct: escorting Ms Keen through Parliament; attending the rally; staying when Nazis attended; celebrating with organisers of the rally after the scenes involving the Nazis; and Ms Jones tweet. At line 65-67, the respondent identified the unacceptability of the organisers of the rally, Ms Jones and Ms Keen. In response to a follow-up question at lines 68-70, asking if it was Mrs Deeming's conduct after the rally that justified the expulsion, the respondent replies (at lines 72-74) that her conduct before, during and after the rally was relevant. The respondent then identified her failure to leave the rally as having some insidious connotation, and then her failure to disown and dissociate herself from "those very people". Following on from lines 51-55, the ORV would understand that the respondent is referring to both the Nazis who saluted on the steps and Ms Keen and Ms Jones.

666. Throughout the Press Conference, the respondent made repeated reference to Nazis (lines 6, 7, 28, 41, 52, 66, 110, 117, 132, 148, 239, 244, 251, 298 and 420), Nazi sympathisers (lines 15 and 75), white supremacists (lines 15, 41, 65, 110, 149, 239, 251, and 420) and fascists, ethno-fascists or ethno-nationalist (lines 15, 40, 41, 66, 239) in the context of giving his reasons for expelling Mrs Deeming. At line 38, the respondent explained that, “the events of the weekend showed upon further investigation that the association between Moira Deeming and the organisers of the rally were that those organisers have shared platforms with fascist ethno-nationalist, white supremacists and Nazis”. The reference to investigation suggests that there was real evidence associating Mrs Deeming with racist ethno-nationalist, white supremacists and Nazis that explains the “ugly scenes ... on the steps of the Parliament”. The respondent repeats this claim at lines 72-79.
667. At line 108-110, the respondent states that Mrs Deeming was “working with people who have shared platforms and promoted people who have Nazi views and white supremacist views.” The ORV now understands that Mrs Deeming is not being expelled just because of an association with these people but because she was working with them.
668. At lines 130-134, the respondent stated that “every MP has a responsibility not just to this Parliament, but to the people they represent to conduct themselves in a way which respects our democracy and doesn't provide an opening for Nazis or whoever else who pedals odious and hateful views to jump into activities whether they're protests or public meetings each member of Parliament must take responsibility for their actions.” The ORV would understand the respondent to be saying that Mrs Deeming had failed in this responsibility and had conducted herself in such a way as to provide an opening for the Nazis to perform on the Parliament steps.
669. At line 230, a journalist asked if there was a path back for Mrs Deeming. At lines 235-246, the respondent informs the ORV that Mrs Deeming's position was so serious there was no way back. The ORV understands that there is such a connection between Mrs Deeming and the Nazis on the steps of Parliament that her expulsion is unavoidable.
670. At lines 287-288, a journalist asked if it was plausible that Mrs Deeming was unaware of the organisers' extremist links. The respondent gives a negative answer at line 289-290, and at lines 291 to 302 the ORV is informed of the reasons why it was implausible that Mrs Deeming did not know, including the “rap sheet” on the public record that could be found in 20 minutes, her unwillingness to walk away from them (Ms Jones and Ms Keen)

or disown the odious things they had shared. The ORV understands that Ms Keen and Ms Jones are unacceptable not just because they have shared platforms with odious people but they each shared and promoted their odious, that is their Nazi, white supremacist and ethno-fascist viewpoints.

671. At lines 313-316, the respondent was asked about Mrs Deeming's knowledge of the Nazi link and her role in organising the rally. At lines 310-321, after refusing to answer that question the respondent confirmed that expulsion was the appropriate thing to do and invites the journalist and ORV to draw the relevant inferences from that. The ORV is invited to conclude that Mrs Deeming knew about the Nazi links and had some involvement in the attendance of the Nazis on the steps.
672. After the repeated references to Nazis, white supremacists and the like throughout the Press Conference at lines 414-421 the respondent identifies that Mrs Deeming was at fault for the dangerous consequences that occurred.
673. At lines 422-424, a final question was asked whether Mrs Deeming had offered a condemnation of Nazism and other matters. The respondent's refusal to answer that question but instead to confirm that after discussion, he was "completely satisfied" that expulsion was the appropriate step to take, confirmed in the mind of the ORV the culpability of Mrs Deeming and her connections with Nazis.
674. In these circumstances, each of the pleaded imputations is carried to the ORV, in summary as follows:

- (a) **19.1.** Deeming helped Neo-Nazis by working with them to promote their hateful agenda of vilification and hatred.

In the context of those matters discussed above, imputation 19.1 is carried to the ORV particularly from the repeated emphasis on the odious connections between the other rally organisers and Nazis, Mrs Deeming's responsibility for the consequences of her actions including providing an opening for the Nazis, her working with those organisers in a manner that justified her expulsion, and her other actions that suggested she was ambivalent or unwilling to condemn the Nazis or the organisers such that she was complicit in their odious actions.

- (b) **19.2.** Deeming had so conducted herself in assisting Neo-Nazis to promote their hateful agenda of vilification and hate on the steps of Parliament that she should be expelled from the Parliamentary Liberal Party.

This meaning is carried for the same reason as imputation 19.1 and the context of the expulsion from the Parliamentary Liberal Party discussed throughout the Press Conference.

- (c) **19.3.** Deeming deliberately gave Neo-Nazis a platform on the steps of Parliament.

This meaning is carried for the same reason as imputation 19.1. The ORV would adopt loose thinking where the respondent suggests that Mrs Deeming was unwilling to unequivocally condemn the Nazis and their salute.

- (d) **19.4.** Deeming actively participated in a rally and knowingly worked with the key speaker, Kellie-Jay Keen, to promote her Neo-Nazi sympathies of hate and vilification, and promote her white supremacist and ethno-fascist views of hate and vilification.

The material sting of this imputation is working with Ms Keen knowing of Ms Keen's views. The first allegation was made in terms at lines 108-110. The clear implication from Ms Keen's "rap-sheet", her sharing of view-points and promotion of Nazi's and the is that Ms Keen is known to promote neo-Nazi, white supremacist and ethno-fascists views of hate and vilification (see lines 18 and 62); see also the reasons for imputation 19.1. An imputation not different in substance to the pleaded meaning on the basis of Ms Keen is carried.

- (e) **19.5.** Deeming engaged in hateful conduct while a member of the Parliamentary Liberal Party by actively participating in and working with the organisers of a rally who she knew were Neo-Nazi sympathisers.

For the same reasons as imputation 19.4, as outlined above, the clear implication from the description of the links between Ms Keen and Nazis and Ms Jones' tweet is that they are neo-Nazi sympathisers, that is people who share platforms with, promote and share viewpoints with Nazis.

- (f) **19.6.** Deeming knowingly associated with people who share a platform with Neo-Nazis who peddle hate and division and attack people for who they are.

This imputation is carried to the ORV on terms from the respondent's statements in the Press Conference that he was not convinced that Mrs Deeming did not know about Ms Keen's public rap sheet of associations with neo-Nazis and the reasons for imputation 19.5.

- (g) **19.7.** Deeming had so conducted herself in staying at a rally attended by Neo-Nazis and then celebrating with the key speakers of the rally who had Neo-Nazi sympathies after ugly scenes had occurred on the steps of Parliament so as to warrant her immediate expulsion from the Parliamentary Liberal Party.

The material sting of this imputation is Mrs Deeming's association with key-individuals at the rally who had neo-Nazi sympathies. For the reasons in relation to imputation 19.5 above and the facts put forward by the respondent in lines 52-53 and 76-79 in particular an imputation not different in substance to the pleaded meaning on the basis of celebrating with Ms Keen and Ms Jones is carried.

- (h) **19.8.** Deeming had so conducted herself before, during and after a rally at Parliament in associating herself with the key speakers who have shared platforms and endorsed viewpoints of Neo-Nazis so as to warrant her immediate expulsion from the Parliamentary Liberal Party.

The material sting of this imputation is Mrs Deeming's association with key-individuals at the rally who had shared platforms and endorsed viewpoints of Neo-Nazis. For the reasons in relation to imputation 19.7 above and the facts put forward by the respondent in lines 49-57 and 72-79, an imputation not different in substance to the pleaded meaning on the basis of associating with Ms Keen and Ms Jones is carried.

- (i) **19.9.** Deeming supports Neo-Nazi's hateful views towards others by her association with Neo-Nazi sympathiser, Kellie-Jay Keen, the key speaker at the Let Women Speak Rally.

The material sting of this imputation is the consequences of Mrs Deeming's association with Ms Keen and that Ms Keen is a neo-Nazi sympathiser. For the

reasons given in relation to imputation 19.8 an imputation not different in substance to the pleaded meaning on the basis of association with Ms Keen is carried.

- (j) **19.10.** Deeming stands with Neo-Nazis and white supremacists.

This imputation is carried to the ORV from the whole of the Press Conference in the context discussed above and the reasons for imputation 19.9, and in particular the statements (line 76-78) that Mrs Deeming stayed at the rally when the Nazis attended and the fact that she chose not to dissociate from those very people (the Nazis referred to in the preceding sentence) but celebrate.

Expulsion Motion and Dossier

675. The respondent admits that the EMD carries imputations 24.1 and 24.3.

676. The imputations in dispute are imputations 24.2, 24.4, 24.5, 24.6.

677. The EMD on the first page makes two defamatory allegations:

“(a) On[18] March 2023 and on days prior organizing, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker) was the principal speaker in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists.

(b) On[18] March 2023, meeting with and publishing a video with Kellie-Jay Keen, Katherine Deves and Angie Jones, on that day posted on Twitter words that, in the mind of any reasonable and lay observer made association with Nazis including on 4:41pm by posting the words “Nazis and women want to get rid of paedo filth. Why don’t you ...”

678. The dispute on imputations appears to be the effect of the description of the supposed supporting evidence as to whether or not Ms Keen or Ms Jones can be described as neo-Nazi activists or known neo-Nazis or Mrs Deeming was otherwise associated with the men who did the Nazi salute.

679. The EMD does not include any counterpoint or context to the accusations against Ms Keen or Ms Jones. The EMD has been drafted in a way that presents those allegations at their highest and with limited context. The nature of the allegations is scandalous and the ORR would adopt loose thinking in drawing inferences from the information.

680. As to Ms Keen, the issue is what the ORR would take from a description of her supposed association with far-right extremists (described under that heading in bold):

- (a) [7], Ms Keen is said to have appeared in an interview with a far-right YouTuber who advocates for a “white ethno-state” and who has made videos with neo-Nazis. The ORR would understand that Ms Keen is a Nazi associate. The extract in the EMD challenges the Mumsnet women who were praising Ms Keen’s participation and suggests they are hypocritical because of Mr Gariepy alleged personal conduct towards women.
- (b) [8], Ms Keen is said to have given an interview with a far-right network. The implication to the ORR from this presentation in the serious context of expulsion is that this is a significant association with far-right extremists.
- (c) [9], Ms Keen is accused of posting a photograph with a neo-Nazi probed by the police after comments about Jews and the Holocaust. The implication following from [7]-[8] with the smiling photograph is that Ms Keen supports and shares extreme right-wing and neo-Nazi views and people.
- (d) [10], this conclusion is reinforced because Ms Keen is shown using a Nazi uniform Barbie as her profile picture. The clear implication following from [7]-[9] is that Ms Keen is a neo-Nazi – made particularly clear from the Twitter post “Stop calling us Nazis!”.
- (e) [11], this conclusion is further reinforced by the quote about Hitler superimposed with a photograph of Ms Keen at the Let Women’s Speak event.
- (f) [13], the EMD refers directly to the events on 18 March 2023 and a quote from Thomas Sewell. In the context of the EMD, also attended by Mrs Deeming, the direct implication is that the attendance of the Nazis was no accident but a direct result of Ms Keen’s Nazi beliefs and activities detailed in the previous paragraphs.
- (g) [14], the Pridestapo post is included which, in the context provided by the balance of the EMD, supports the conclusion in the mind of the ORR that Ms Keen is actually a Nazi.
- (h) [17], an allegation is made that Ms Keen (and Mrs Deeming) did not condemn, and

by implication, dissociate herself from the men who performed the Nazi salute, implying in context, that Ms Keen supported what those men had done.

681. The ORR would read between the lines of the evidence presented in the context of an expulsion motion against Mrs Deeming. The ORR would understand that only a substantial matter would justify expulsion, which in context would be that Mrs Keen shares and promotes Nazi viewpoints such that she is a Nazi or Nazi activist.
682. As to Ms Jones, in the context of the serious allegations about Ms Keen including the attendance of the Nazis at the event, the description of the video and her tweet, the EMD carries a meaning that Ms Jones is a neo-Nazi or neo-Nazi sympathiser.
683. **As to imputation 24.2**, the ORR having read the full EMD, would understand that document to mean that Mrs Deeming, by participating in the video on 18 March 2023, had associated herself in a disreputable way with the neo-Nazi activities. The attendance and actions of the neo-Nazi activists are described in the EMD [13] and [15], Mrs Deeming is described drinking champagne following the rally as evidence in support of the second charge, and [17], Mrs Deeming is associated with those men by being criticised for failing roundly to condemn them and dissembling. The allegations against Ms Keen and Ms Jones described above reinforce the meaning, that Mrs Deeming had so conducted herself in associating with Neo-Nazi activists on 18 March 2023 that it warranted her expulsion from the Victorian Parliamentary Liberal Party.
684. **Imputation 24.4** is carried for the same reasons as imputation 24.2.
685. **Imputation 24.5** is carried for the reasons above as to how the EMD presents Ms Keen.
686. **Imputation 24.6**, is carried for the reasons above as to how the EMD presents Ms Keen and Ms Jones.

G. SERIOUS HARM

Principles

687. Section 10A *Defamation Act* 2005 (VIC) (s10A) (the **Act**) is based on s 1 of the *Defamation Act* 2013 (UK) (s1). The formal differences between the two provisions have to date not so far been regarded as significant: *Newman v Whittington* [2022] NSWSC 249 per Sackar J at [67]-[68]; *Selkirk v Wyatt* [2024] FCAFC 48 at [42].

688. Australian courts have applied the English cases as offering guidance as to the interpretation of s 10A: see, eg *Newman* at [68]; *Selkirk v Wyatt* at [41]-[52]; *Peros v Blackburn*[2023] FCA 177 at [41]-[42]; *Selkirk v Hocking (No 2)*[2023] FCA 1085 at [17]; *Peros v Nationwide News Pty Ltd & Ors (No 3)*[2024] QSC 192 at [46] ff. A formal difference between the two provision may be that referred to in *Rader v Haines* [2022] NSWCA 198 at [17], namely that English courts, in accordance with different statutory language, needs to determine the serious harm test before finding a statement or matter defamatory. Section 10A applies in this Court: *Selkirk v Hocking (No 2)* at [15].
689. The leading United Kingdom case on serious harm is *Lachaux* and the applicable principles have been summarised in a number of recent cases since including *Banks v Cadwalladr* [2022] 1 WLR 5236 at [51] (Steyn J); [2023] EWCA 219; [2023] 3 WLR 167 at [55]-[57],[61]-[62]; *Rader v Haines* per Brereton JA at [28]-[29], quoted with approval in *Selkirk v Wyatt* at [51]; *Supaphien v Chaiyabarn* [2023] ACTSC 240 at [104]-[121]; see also *Peros (No 3)* at [46]ff.
690. The Full Court in *Selkirk v Wyatt* at [94] (see also *Peros (No 3)* per Applegarth J at [51]-[52] and *Newman v Whittington* per Sackar J at [54]-[69]), which binds this Court, found s10A removed a common law presumption that the publication of defamatory matter causes damage or some harm. Mrs Deeming submits this reasoning is plainly wrong: c.f. *Whittington v Newman* [2024] NSWCA 27 at [41]-[42] where the NSW Court of Appeal only contingently proceeded on the basis *Lachaux* was correct on this issue. The Full Court followed *Lachaux*, which as recognised in *Rader v Haines*, applied a statutory test that changed the common law as to what was defamatory. The *Selkirk* reasoning does not appear to address this issue – namely that the reasoning in *Lachaux* as to the “abolition” of the presumption of damage turns on the fact that the UK legislation alters the meaning of what is defamatory. No such change to the common law has been affected by s10A, which adds serious harm as an element of the cause of action.
691. The common law test for defamatory meaning that applies in this jurisdiction requires the Court to make an assessment that the matter published was likely to lead an ordinary reasonable person to think less of a plaintiff: *Radio 2UE Sydney Pty Ltd v Chesterton* (2009) 238 CLR 460, at 467 [5], [36]. This test of defamatory meaning is what gives rise to a presumption of damage at common law. Unlike, UK s1, s10A does not change the test for whether or not a statement or matter is defamatory such that there is room for the

presumption to subsist. Section 10A is thus not incompatible with the common law position and its application does not require a change to the common law assessment of defamatory meaning as to any presumption of damage that arises from that determination. Unlike in the United Kingdom, because the common law test for defamatory meaning subsists, the presumption that follows from that test may also subsist with s10A: see also s6(2) of the Act. The Full Court and other Courts were plainly wrong in finding that s10A changed the common law in this regard. Irrespective, the NSW Court of Appeal in *Whittington* [42]-[48], explained “*that actual serious harm, or the likelihood of serious harm, to the plaintiff’s reputation, may also be established by inference from other facts, including the nature of the publication and the imputations it contains*”: see also the cases cited within especially *Lachaux* per Lord Sumption at [21].

692. *Peros (No 3)* in analysing the principles (at [79]-[88]) took a necessarily more circumspect approach because of unique and unusual facts (see [77]) where the plaintiff sued on the distinct harm caused by the 13th episode of a podcast where the previous 12 episodes would have already convinced listeners that the plaintiff had unlawfully killed the victim. It is clear from the reasoning that the determination of the serious harm question turned on this unique substratum of facts: see e.g at [350].
693. In contrast, mass media publication of fresh allegations that a person is associated with or sympathises with Nazis or white supremacists satisfies the serious harm test. Indeed, even just the fresh contention from the leader of a political party that a newly elected parliamentarian holding a leadership position within the party should be expelled and the reasons for that decision would similarly satisfy the serious harm test.
694. It may be best when determining whether harm to reputation is “serious harm” to simply apply the statutory language: *Rader*, per Basten AJA at [91]; *Selkirk v Hocking (No 2)* at [29]-[32].
695. Although prior reputation may be relevant to the serious harm test it must be in the same sector of the applicant’s reputation. Although, the applicant need not have a good or unblemished reputation to establish serious harm: see *Peros (No 3)* at [67]-[68]. To have a remedy in defamation, a person is not required to prove that he or she had a pre-existing reputation among or known by all of the recipients of the defamatory publication: see *Peros (No 3)* at [69].

696. Where a respondent publishes *a specific allegation of a seriously damaging kind* which would ordinarily lead to an inference of serious reputational harm, the fact that the recipients are politically opposed or already dislike the plaintiff does not mean serious harm is not caused: *Banks CA* at [55]. Thus, in *Monroe v Hopkins* [2017] EWHC 433; [2017] 4 WLR 68 at [71(8)] it was said “*if someone is hated for their sexuality or their left-wing views, that does not mean they cannot be libelled by being accused of condoning the vandalization of a war memorial*”. See also discussion in *Greenwich v Latham* [2024] FCA 1050 at [168]-[172].

Respondent’s allegation of prior bad reputation

697. The respondent alleges that Mrs Deeming had a prior bad reputation for giving succour to hateful views. This is analysed further under the heading ‘Applicant’s prior ‘bad’ reputation’, below.

698. At any rate, it is difficult to see how evidence of so-called bad reputation as to Mrs Deeming’s political or social positions, or language about those positions, unrelated to Nazis or white supremacy, has any relevance to the serious harm element in these proceedings: c.f. *Peros (No 3)* where all the disputed evidence was about whether or not the plaintiff unlawfully killed or murdered a woman and reporting about the same. The respondent has the onus if he seeks to rely upon bad reputation on the question of serious harm: *Peros (No 3)* at [72].

Multiple publications about same topic

699. Where there are multiple publications at one time, the applicant may rely on the combined and indivisible harm to her reputation from the publications: see *Peros (No 3)* at [75].

700. There were earlier press reports about the Nazi salute on the steps and about Mrs Deeming’s presence. There was even a report that the neo-Nazis were there to support Kelly-Jay Keen. However, there was no allegation that Kelly-Jay Keen or the other women speakers or organisers supported or agreed with the neo-Nazis. There was no allegation in the press before the Media Release that Mrs Deeming was somehow associated with or was sympathetic to or agreed with neo-Nazis.

701. The media summary prepared by the communications team that was distributed on the morning of Sunday 19 March contained no such reports: Ex.A77. However, after the

Media Release, on the morning of 20 March the press was replete with the allegation: Ex.A78.

702. Further, there was no media report suggesting that Mrs Deeming’s conduct in connection with the LWS rally warranted her expulsion from the party. There was no allegation that the matter had been carefully investigated or considered. There was no assertion the evidence against Mrs Deeming was such that her own party leader had no choice but to move for her expulsion.
703. The fact is that these arguments about bad reputation and causation, still maintained by Mr Pesutto, that are the subject of a body of evidence that is largely irrelevant, are a waste of time because they are untenable. They mischaracterise the serious harm element of the cause of action, and misstate its purpose and effect.
704. Serious harm was introduced in 2021 in an attempt to reduce the number of “backyard” defamation claims between individuals that concerned less serious allegations and involved miniscule publication numbers: *Hansard* (Legislative Assembly, 29 July 2020), pages 2867-2868. That is not to say that it only applies in those cases. However, once a person has been found to have been defamed in the mass media, it is an unusual case that would result in a finding of no serious harm. This is plainly not such a case.
705. Even without resolving arguments about defamatory meaning, the publications were calculated and were inherently likely, using mass media, to communicate a message to the general public at least in Victoria, to cause serious harm to Mrs Deeming’s reputation.

Evidence of serious harm to reputation

Whether the Media Release created the story

706. Mrs Deeming gave evidence that she does not recall receiving any calls from journalists on 18 March 2023 about the LWS Rally and that she does not recall receiving any calls until after the Media Release was published: CB:2, 81[79].
707. Many of Mrs Deeming’s witnesses gave unchallenged evidence that they had not seen any media reporting connecting Mrs Deeming to the LWS Rally until the Publications:
- (a) Andrew Deeming gave evidence that, prior to the Media Release, he does not recall seeing any negative press about Mrs Deeming having attended the LWS Rally and

that, although he recalls there was negative press about the presence of the Nazis and reporting which he and Mrs Deeming regarded as inaccurate (for example, characterising the LWS Rally as an ‘anti-trans’ event), he does not recall seeing anything about Mrs Deeming until after the Media Release: CB:4, 121[52].

- (b) Raewyn Clark recalls seeing media reports about the LWS Rally (which she thought was misreporting that Nazis had attended or were associated with the LWS Rally) but prior to the Media Release she had not seen any media reporting, or any social media posts, referring to Mrs Deeming being at the LWS Rally: CB:3, p109-110[17]-[18].
- (c) Ms Heath had not seen any media reporting about Mrs Deeming having attended the LWS Rally prior to the Media Release: CB:9, 168[8].
- (d) Mr Hodgett MP gave evidence he was unaware that the LWS Rally had taken place until Mr Pesutto called him in the evening of 19 March 2023: CB:12, 195[5]. He gave evidence that, other than Mr Pesutto’s call to him, the Media Release was the first he had heard of any concerns about Mrs Deeming’s attendance at the LWS Rally and that, as far as he can recall, ‘nobody was speaking about Moira’s attendance at the Rally until the Media Release’: CB:12, 195[7].
- (e) Joseph McCracken MP saw the evening media on 18 March 2023 which reported that neo-Nazis had gate crashed the event but does not recall seeing any media reporting that Mrs Deeming had any association with the neo-Nazis: CB:15, 212[10].
- (f) John Ruddick MP, being a Member of the New South Wales Legislative Council, recalls watching footage of the LWS Rally and ‘keeping an eye on it’, including because a member of his party, the Liberal Democrats, was there. He does not recall Mrs Deeming being mentioned in the news as having attended or been involved in the LWS Rally until Mr Pesutto said so on 19 and 20 March 2023: CB:22, 263[9].
- (g) Mr Riordan MP had not heard anyone express any concerns about Mrs Deeming, or talk about the LWS Rally, during the lunch at his house on 19 March 2023: CB:21, 258[17]. He does not recall any media about it on 19 March 2023.
- (h) Ryan Smith MP had not heard of or seen any media reporting which linked Mrs Deeming to the LWS Rally or to the neo-Nazis in the vicinity of the LWS Rally until after the Media Release: CB:23, 269[16]. In response to paragraph [110] of Mr

Pesutto's first affidavit (Mr Pesutto's suggestion that Mrs Deeming's involvement in the LWS Rally 'would be a major news story if not the story for every masthead and network in the coming days'), Mr Smith said: 'I think he was wrong about that. At any rate, his actions ensured that it was a major news story': CB:24, 280 [18].

- (i) Kim Wells MP saw 'a brief report on the television news' on 19 March 2023 'of a rally outside Parliament House on 18 March 2023' but to the best of his recollection it did not mention Mrs Deeming: CB:27, 297[10]. He gave evidence that he did not agree 'that Mrs Deeming's involvement in the LWS Rally would have become a news story, or a significant news story, if Mr Pesutto had not himself generated the story by issuing the Media Release and then making other public statements on 20 March 2023' and that, to his observation, Mr Pesutto 'created the controversy by going public': CB:28, 309 [12(f)].

708. Mr Hodgett gave evidence, based on his experience in politics, that Mrs Deeming's attendance at the LWS Rally would not have been a focus for the media if the Media Release had not been published and that the focus would have been on the Nazis on the steps of Parliament but not on Mrs Deeming or the LWS Rally: CB:13, 203 [10].

709. At any rate, as Mr Riordan put it, 'regardless of what the media may or may not have been reporting, it was the responsibility of Mr Pesutto as Leader to take a considered decision, after having examined the facts and sought the views of the Party Room': CB:21, 258 [17].

The Publications generally

710. There is evidence as to how real people (i.e. not the hypothetical ordinary reasonable person) understood the Publications:

- (a) Raewyn Clark gave evidence that her impression of the Media Release was that it was saying that Mrs Deeming should be expelled from the Liberal Party because she had associations with Nazis: CB:3, 110 [18].
- (b) Ms Heath understood from the Media Release that Mr Pesutto 'was saying that Moira had associations with the Nazis who had turned up in the vicinity of the Rally, and that she was a Nazi sympathiser, and that was why he was proposing to expel her': CB:9, 168[9]. It seemed to her 'the common theme' in what Mr Pesutto was saying on 20 March 2023 was that he 'wouldn't tolerate anyone with any associations to

Nazis within the Liberal Party and that Moira had such associations which is why she had to be expelled’: CB:9, 168 [12]-[13]. When she read the Expulsion Motion and Dossier, she understood that Mr Pesutto ‘was suggesting Moira should be expelled because she had associations with Kellie-Jay Keen and others who had organised the Rally who he was suggesting were Nazis or Nazi sympathisers’: CB:9, 168 [14].

- (c) In the evening of 19 March 2023, Senator Henderson read an article published by The Age entitled ‘Liberals move to expel Moira Deeming over neo-Nazi rally links’: CB:11, 189[9],[10]. That article, first published at 8.55pm on 19 March 2023, is at CC:407. The article quotes from the Media Release. Senator Henderson gave evidence that she understood from the article that Mr Pesutto was seeking to expel Mrs Deeming for attending the LWS Rally because of its alleged links to a neo-Nazi protest held on the front steps of Parliament House at the same time which involved the performing of the Nazi salute: CB:11, 189[11].
- (d) When Mr McCracken received Mr Pesutto’s email at CC:329, which was in substantially the same terms as the Media Release, he understood it was suggesting that Mrs Deeming ‘was associated with Neo-Nazis’: CB:15, 212 [11]. When he received the Expulsion Motion and Dossier, he understood from it that it was being claimed that Mrs Deeming ‘was linked with Neo-Nazis, and that is why she should be expelled’: CB:15, 213 [16].
- (e) Warren Mundine understood the Media Release ‘was suggesting that Moira was fraternising with Nazis’: CB:17, 226 [22].
- (f) Ms Oddi gave evidence that she understood from seeing media reports in the evening of 19 March 2023 that Mr Pesutto had announced that he was seeking to expel Mrs Deeming for organising the LWS Rally and that he ‘was calling Deeming a Nazi or an associate of Nazis’: CB:18, 239 [35].
- (g) Mr Riordan recalls that ‘the repeated theme of wh[Mr Pesutto] was saying[on 20 March 2023] was that Moira had links with Nazis and white supremacists’: CB:20, p248-249[13]. He gives evidence: ‘I thought it was pretty obvious what he was implying. I thought he was suggesting that Moira had stood with and supported Nazis and white supremacists, and that this implied she was herself a Nazi or white supremacist. He was saying Moira should be expelled for those reasons.’ He thought

the purpose of the Expulsion Motion and Dossier ‘was meant to prove that Moira either was a Nazi or had hung around with Nazis’: CB:20, 249 [14].

- (h) Mr Ruddick recalls Mr Pesutto making public statements on 19 and 20 March 2023 in which, Mr Ruddick himself understood, ‘he was suggesting that Moira was associating or hanging around Nazis’: CB:22, 263 [9]. Mr Ruddick also gave unchallenged evidence that, in his experience of politics (having been a member of the Liberal Party for over twenty-five years before joining the Liberal Democrats), ‘many people would have believed as a result of Mr Pesutto’s statements about Moira that she is a Nazi’ and that ‘[o]thers will think she is not a Nazi but is at least racist or supports Nazis’: CB:22, 265 [14].
- (i) Mr Smith understood the Expulsion Motion and Dossier was suggesting that Mrs Deeming should be expelled ‘because of her associations with extremists and Nazis or Nazi sympathisers’: CB:23, 269 [20].
- (j) Mr Wells gave evidence, in relation to the Media Release, that he and others around him did not understand that the reason Mr Pesutto was giving in the Media Release for proposing Mrs Deeming’s expulsion was that she had associations with people who were themselves associated with far right-wing extremist groups including neo-Nazis: CB:28, 308 [10]-[11].

My view at the time was that he was accusing Mrs Deeming of associating with extremists and Nazis, but that what he was really suggesting , without saying it directly, was that she was herself a Nazi. It soon became clear to me this is how people I spoke to and observed were in fact understanding his words. He may not have explicitly labelled her a Nazi , but this was, to my belief and observation, the practical effect of his words.

- (k) Mr Wells understood that Mr Pesutto in the 3AW Interview was accusing Ms Keen of being associated with Nazis and of being a Nazi and that he was saying that Mrs Deeming should be expelled because she associated with Ms Keen: CB:27, 298 [15]-[16].

711. The allegations were made by Mr Pesutto as Leader of the Victorian Parliamentary Liberal Party, making it more likely they would be regarded as credible. Mr Mundine gave evidence of a telephone conversation with a senior member of the Victorian Parliamentary Liberal Party who said ‘that if the leader of the party is willing to make such a public accusation that Moira is a Nazi, then it must be true’: CB:17, 227 [22]. This evidence is significant for two reasons – first, as another example of someone who understood that Mr Pesutto was accusing Mrs Deeming of being a Nazi; and secondly, as an indication that people were more likely to, and did, believe the claims because they were being made by the Leader.

Further evidence of harm to reputation

712. Under the heading ‘Damages’, below, the evidence demonstrating harm to reputation is set out. It is extensive and amply proves the element of serious harm to reputation.

Likelihood of harm

713. Any mass media publication seeking to justify the proposed expulsion of a politician from her own party room would likely cause serious harm. The fact that Mr Pesutto relied, as a basis for that expulsion, an association with one of the most evil groups in history plainly reinforces that likelihood.

H. DEFENCE OF CONTEXTUAL TRUTH

Principles

714. Section 26 of the Act is currently in the following form:

26. Defence of contextual truth

It is a defence to the publication of defamatory matter if the defendant proves that:

- (a) the matter carried one or more imputations that are substantially true (contextual imputations), and*
- (b) any defamatory imputations of which the plaintiff complains that are not contextual imputations and are also carried by the matter do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.*

Imputations

715. The contextual imputations on which the respondent may rely to establish the defence now include imputations of which the applicant complains. The section was amended by the *Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020* (VIC). There have not been any superior court decisions considering the construction of the amended wording.
716. Under the current version of s 26, it is open to the publisher to rely on imputations pleaded by the applicant as contextual imputations, as s26(2) makes clear. That is what the respondent in this case has done in relation to the imputations in SOC paragraphs:
- (a) 19.6 to 19.8 for Press Conference; and
 - (b) 24.1 and 24.3 for the Expulsion Motion and Dossier.
717. The respondent has also pleaded his own contextual imputations which he has the onus of proving are carried by the relevant publication.
718. The respondent must establish that the contextual imputations are:
- (a) carried by the matter;
 - (b) substantially true; and
 - (c) because of the substantial truth of the contextual imputations the plaintiff's imputations do not further harm the reputation of the plaintiff

Substantially true

719. Proving the *substantial* truth of an imputation requires proof that every material part of the imputation is true. The material parts of the imputation are each element which alters or aggravates the sting of the imputation: *Howden v Truth & Sportsman Ltd* (1937) 58 CLR 416 at 420-421 per Dixon J, 424-425 per Evatt J; *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335 at [138] per McColl JA; *Rush v Nationwide News Pty Ltd* (No. 7) [2019] FCA 496 at [223]-[224] per Wigney J.

720. In *Transport Workers' Union of Australia v Qantas Airways Ltd* (2021) 308 IR 244[284], Lee J summarised some of the fundamental common law principles relating to fact-finding emphasising the requirement of actual persuasion of the existence of a fact before it can be found. The facts proved must form a reasonable basis for a definite conclusion affirmatively drawn.

721. The meaning of “actual persuasion” is explained in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-363 per Dixon J. Actual persuasion is not the product of a merely mechanical comparison of the probabilities. As his Honour said at 362:

[R]easonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters, “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency.

See, recently, *Roberts-Smith v Fairfax Media Publications Pty Ltd (No.4)* [2023] FCA 555 at [110] per Besanko J.

722. The allegations of “not a fit and proper person” are often of an extremely serious character for Mrs Deeming. Actual persuasion of the substantial truth of allegations of this kind, as Dixon J said in *Briginshaw*, should not be the product of “inexact proofs, indefinite testimony, or indirect inferences”.

723. As the High Court recently explained in *GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* [2023] HCA 32 at [57] per Kiefel CJ, Gageler and Jagot JJ, s140(2) of the *Evidence Act* reflects the common law principle that the gravity of the fact sought to be proved is relevant to “the degree of persuasion of the mind according to the balance of probabilities”. Or, as expressed in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia v Australian Competition and Consumer Commission* (2007) 162 FCR 466 at [30] per Weinberg,

Bennett and Rares JJ, the more serious the consequences of what is in issue, the more a court will have regard to the strength and weakness of evidence before it in coming to a conclusion.

724. In considering the seriousness of the consequences flowing from a particular finding, the effect which the finding would have on the reputation of a person is relevant. Where a finding would be seriously damaging to a person's reputation, the Court would exercise the kind of caution mandated by *Briginshaw* before making the finding: *Commonwealth v Fernando* (2012) 200 FCR 1[130] per Gray, Rares and Tracey JJ; *Ashby v Slipper* (2014) 219 FCR 322[68]-[69] per Mansfield and Gilmour JJ; *Duma v Fairfax Media Publications Pty Ltd (No. 3)* at [2023] FCA 47[466] per Katzmann J; *Roberts-Smith (No. 41)* at [112] per Besanko J.

Further harm

725. The comparison for the purposes of s26 is carried out publication by publication, in cases where multiple publications are sued on. This is because the statutory language is cast as a defence to the publication of "defamatory matter" and looks at the impact of "contextual imputations", each of which arise by reference to a particular publication. The audience to each respective publication may be different, and in any event separated by time and context, and the statute clearly addresses each publication separately.
726. Because the defence under s26 operates as a defence to the publication of "defamatory matter" as a whole (not to a particular imputation), is that s 26 requires consideration of all the applicant's imputations collectively – the defence cannot succeed in relation to only some of the applicant's imputations: see, for example, *Fairfax Media v Kermode* [2011] NSWCA 174; (2011) 81 NSWLR 157 at [78]. Likewise, a further consequence of the language is that one considers the impact of all the respondent's contextual imputations from each publication collectively: *Kermode* at [79].
727. There is one aspect of the operation of the language which is contentious, which is how one determines "further harm" - that is how one determines if the applicant's imputations ("any defamatory imputations of which the plaintiff complains that are not contextual imputations and are also carried by the matter") do not further harm the reputation of the applicant because of the substantial truth of the contextual imputations (further harm requirement). The Court is required to form a view of the harm done to the applicant's reputation by the

contextual imputations, and see if that damaged reputation can be further harmed by the applicant's imputations. The point of contention arises as to basis on which this evaluation is to be carried out, and in particular how the impact of the contextual imputations is to be assessed.

728. The same question arose in relation to the predecessor of s 26, which is to say s16 of the *Defamation Act 1974* (NSW) which was in the following terms:

16 Truth: contextual imputations

(1) *Where an imputation complained of is made by the publication of any report, article, letter, note, picture, oral utterance or other thing and another imputation is made by the same publication, the latter imputation is, for the purposes of this section, contextual to the imputation complained of.*

(2) *It is a defence to any imputation complained of that:*

(a) the imputation relates to a matter of public interest or is published under qualified privilege,

(b) one or more imputations contextual to the imputation complained of:

(i) relate to a matter of public interest or are published under qualified privilege, and

(ii) are matters of substantial truth, and

(c) by reason that those contextual imputations are matters of substantial truth, the imputation complained of does not further injure the reputation of the plaintiff.

729. The present point in relation to s16 arose for consideration in *John Fairfax Publications P/L v Blake* [2001] NSWCA 434; (2001) 53 NSWLR 541. In dismissing the appeal, the judges differed on a point of construction, with Spigelman CJ saying at [5]:

Section 16(2)(c) does not focus attention on a contextual imputation as such but on the proposition that such an imputation is a "matter of substantial truth". It is "by reason" of such "substantial truth" that a defence to an imputation pleaded by a plaintiff can be made out on the basis that the plaintiff's imputation does not "further injure the reputation of the plaintiff". For purposes of determining whether the s16 defence is capable of being made out, the Court must focus on the facts, matters and circumstances said to establish the truth of the contextual imputation, rather than on the terms of the contextual imputation itself.

730. Conversely, Hodgson JA said^[61]:

In his judgment in this case, Spigelman CJ has taken the view that s 16(2)(c) does not require “weighing imputation against imputation”: rather, the court must focus on the facts, matters and circumstances said to establish the truth of the contextual imputation itself. In my opinion, the use of the words “further injure” in s 16(2)(c) precludes this approach: the reputation of the plaintiff is not in fact injured at all by the facts, matters and circumstances in question, but only by the publication carrying the contextual imputation; so in my opinion it is a matter of weighing imputation against imputation.

731. Rolfe AJA agreed with Spigelman CJ with the result that the interpretation of s16 became that the further harm requirement was assessed by reference to the facts matters and circumstances establishing the contextual imputations, rather than the contextual imputations themselves. Some later cases suggested that it was not the facts matters and circumstances said to establish truth per se, but rather the evidence adduced at trial, which was the material upon which the Blake principle operated: see, eg, *Sharp v Harbour Radio Pty Ltd (No 2)* [2016] NSWSC 223 at [25]. Whichever precise criterion is adopted stands in contrast to an approach which compares the impact of the imputations themselves.

732. In interpreting the present form of the contextual truth defence, the starting point is the statutory language. Section 26 focuses on the harm to the applicant’s reputation caused by the “substantial truth of the contextual imputations” rather than the fact the contextual imputations are “matters of substantial truth”, language that apparently led Spigelman CJ in *Blake* to consider, in effect, the particulars of such a “matter” (that is, the facts, matters and circumstances establishing such a “matter”), as being the focus of attention. Given the change of the statute, the correctness of *Blake* is not in issue. One can, with respect, see that an inquiry whether “by reason that ... contextual imputations are matters of substantial truth”, could be considered to direct attention to the way in which the imputations in question were true, rather than merely their reputational impact.

733. The cases which have followed *Blake* in the context of s26 have not specifically addressed this distinction, nor indeed returned to reconsider the statutory language more generally, but rather have applied *Blake* (or its variants) directly. In *Nassif* at [125]-[127], Abraham J proceed on the basis that *Blake* was applicable (there was no argument to the contrary): see especially at [125]. Similarly in *Greiss v Seven Network (Operations) Limited (No 2)* [2024] FCA 98, Katzmann J at [114] rejected an argument that *Blake* did not apply to the

earlier version of s 26, although without express reference to the argument that had been made in that case about the difference in statutory language.

734. On the other hand, recently in *Edwards v Nine Network Australia Pty Limited (No 5)* [2024] FCA 422, Wigney J stated the law, and applied it, in terms that are consistent with proceeding by reference to the imputations themselves: see [334],[338]-[340],[357]-[359], concluding that the contextual imputations, even if true would not, taken together have overcome the defamatory imputations. His Honour determined the question by reference to the statutory language, which was plainly the correct approach.
735. In *Kermode*, McColl JA (with whom Beazley and Giles JJA agreed) observed at [75]-[76] by reference to the history of the adoption of the uniform defamation laws in 2005, and following a extensive review of the pre-existing common law, that it was not appropriate to discern the purpose or proper construction of s26 from s16 jurisprudence; see also per McColl JA at [77]-[79]. While that conclusion was in the context of another feature of s26 (“pleading back” plaintiff’s imputations), it applies with equal force to the present question of interpretation of s26. It is, in short, necessary to approach s 26 directly, attending to its language and purpose. Doing so, her Honour concluded in terms which have present application at [85]:

*Both the language of s 26, the context in which it appears and the extrinsic materials (in particular the explanation of s 26 in the Explanatory Note) make it apparent that the mischief to which the s 26 defence was directed was the defect in the common law position identified in *Plato Films Ltd v Speidel* (see[69]). Hasluck J understood that to be the purpose of s 26 as it appears in the Defamation Act 2005 (WA): see *Wookey v Quigley*[2009] WASC 284 ([62]). A defendant will be able to defeat a plaintiff’s cause of action if its substantially true contextual imputation(s) outweigh the plaintiff’s defamatory imputations. A plaintiff will not be able to avoid serious stings in defamatory matter by selective pleading. This represents a substantial advance for all jurisdictions other than New South Wales which had no contextual truth defence. (Emphasis added.)*

736. This original purpose, namely, dealing with the selective or evasive applicant, can be seen to be based in a simple matter of fairness, or similarly, in the balance between protection of reputation and freedom of expression. Where a publication carries multiple meanings to recipients, it is unjust that a publisher ought to be held liable for failure to defend one such meaning if the truth of the balance meant that the publication as a whole had no reputational impact. That conforms to the notion of reputational harm in the law of defamation which

looks to the defamatory matters' effect on the esteem or standing in which ordinary reasonable recipients hold the plaintiff: see *Radio 2UE Sydney P/L v Chesterton* at 467 [5], [36]. The 2021 amendments furthered this notion of fairness by allowing the respondent to also prove true one or more of the applicant's imputations the matter carried to establish the defence.

737. The focus of s26, is now explicitly on the harm to the reputation of the applicant by the applicant's imputations that are not true, and whether such harm is possible having regard to the truth of the contextual imputations. The reason why the truth of the contextual imputations matter, is that the contextual imputations were carried by the same defamatory matter which carried the applicant's imputations to the same audience.
738. At common law, that would not matter on liability, although could be taken into account on damages – see *Kermode* at [59(c)].
739. However, s26 provides that because of the truth of the contextual imputations, they may be taken into account as a defence – that is, because the reputation of the applicant is taken to be relevantly diminished by the true contextual imputations being published as part of the same publication.
740. The words “because of the substantial truth of the contextual imputations” direct attention to the impact of the contextual imputations (that is, as published) on the applicant's reputation, and the reason why there is reference to their truth is to point to their defamatory impact accordingly. It may be noted that s26 does not require that the contextual imputation be “defamatory”; the notion of its causal impact on reputation is addressed by the use of the notion of the truth of the imputation.
741. Neither the statutory language nor the purpose of s26 directs attention to the particulars or evidence, or findings on the evidence, supporting a finding of the truth of a contextual imputation. Such matters are after the fact and irrelevant on the question of relative defamatory impact, even though they may be relevant to damages.
742. In many cases, there will be no difference between the two approaches to s26. However, in some cases, it will be important. Where a respondent seeks to refer to issues (whether by reference to particulars or evidence or findings) which were not before the readers or viewers of the defamatory publication, those matters can have no direct relevance to the defamatory impact on such recipients.

743. In some cases, they may feature indirectly, because they may be permitted in proof of a permissible general contextual imputation, but in that case it is the fact that the general contextual imputation is carried and true, and not the particulars or evidence or findings which make it so, which accounts for its defamatory impact – that must be so, because neither the particulars or evidence in question were part of the publication.
744. For these reasons the further harm requirement in s 26 should be understood as involving an assessment of whether the applicant’s imputations (taken together) harm the applicant’s reputation in light of the defamatory impact (truth of) the respondent’s contextual imputations. The impact needs to be considered in light of the context provided by the publication (see *Greek Herald Pty Ltd v Nikolopoulos* (2002) 54 NSWLR 165 at 172 [19]-[27]; *Australian Broadcasting Corporation v Chau Chak Wing* [2019] FCAFC 125; 271 FCR 632 [169]) but not the context comprising evidence relied on by the respondent.
745. Given the change in statutory language and context, it is appropriate to approach the statute directly. When that is done, the correct or better interpretation is that (as s 26 says) one considers the harm to the reputation of the applicant because of the substantial truth of the contextual imputations, not because of the facts matters and circumstances, or the evidence, which underlies those imputations.
746. Care is needed in cases in which the contextual truth defence is raised, just as in cases where mitigation of damage is raised, not to permit the pleadings to justify a wide-ranging inquiry, the limits of which are set by the publisher’s capacity to pay for it: per McColl JA in *Kermode*[67], referring with evident approval to Mildren J in *Hart v Wren v Australian Broadcasting Corporation* (1995) 5 NTLR 17, at 25.
747. The respondent’s contextual imputations which he seeks to prove true (including the applicant’s imputations which the respondent also seeks to prove true) are as follows:

Media Release

Imputation not carried

Defence	Contextual Imputation
5.3(a)	Deeming, by reason of having been involved in organising, promoting and participating in, and attending, a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

748. This imputation is not carried by the Media Release. The reason stated for Mrs Deeming's expulsion is at lines 10-11, is her "associating with people whose views are abhorrent to [Mr Pesutto's] values, the values of the Liberal Party and the wider community."

749. The Media Release imputes that Mrs Deeming associates with neo-Nazis and also attended, organised, promoted and participated in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists. It is not her mere involvement in attending, organising, promoting and participating in the rally that is impugned.

750. The imputation as pleaded is therefore not carried.

Not substantially true

751. Mrs Deeming's involvement in the LWS Rally is incapable of rendering her not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership. The respondent has failed to prove any conduct on the part of Mrs Deeming in her attendance, organisation, promotion or participation in the LWS rally that would satisfy that standard.

752. Further, the respondent has not established that there were speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

753. Ms Jones has not been proved to have been publicly associated with far right-wing extremists groups including neo-Nazi activists. The applicant as it a loss as to what the

respondent relies on here and will respond orally after the written submissions are exchanged.

754. As stated above, association is a closer relationship than acquaintance or mere interaction.

755. In relation to Ms Keen, there is no cogent evidence that she is publicly associated with far right-wing extremist groups including neo-Nazi activists:

(a) Hans Johansen is alleged to be a far-right political activist of the Alliance-Alternative for Norway Party (CA:3, 130 [59]). That has not been proved by any admissible evidence. Hearsay articles, translated on the Edge browser from Norwegian have been tendered (for the fact that the article existed and not for their truth). In any event, the respondent has not proved that political party “is a far right-wing extremist group”. The fact that Ms Keen appeared in one picture with Mr Johansen in February 2019 does not prove that she is publicly associated with his group.

(b) Keen appeared in a video on 23 September 2019 with Sherona Bishop known as America’s Mom. It is alleged that Bishop had posted a video 3 days earlier on 20 September 2019 with Proud Boys members. Further it is alleged that Proud Boys are a far-right, neo fascist militant organisation that promotes and engages in political violence: CA:3, 130 [60]-[61]. Even if these allegations were each true, it would not establish as fact that Ms Keen associated with far right-wing extremist groups. The respondent has not proved that Ms Bishop posted a video with Proud Boys members on 20 September 2019. Nor has the respondent proved by admissible evidence that the Proud Boys are in fact a far-right, neo-fascist militant organisation.

(c) Keen appeared in a video with Jean-Francois Gariepy in October 2019. It is alleged that Mr Gariepy is a French-Canadian white supremacist who also did videos with:

i. Nick Fuentes (said to be an American far-right political commentator known for his white supremacist, misogynist, homophobic and Islamophobic views);

ii. David Duke (former grand wizard of the Ku Klux Klan) (CA:3, 130 [62]-[64]).

The respondent has not proved by admissible evidence that Mr Gariepy is a white supremacist or that he promoted antisemitic and white supremacist content. The respondent has not proved that Nick Fuentes is a far-right political commentator or

that he was interviewed by Mr Gariepy. He has tendered articles that claim that a person with that name has white supremacist views. The applicant admits that Gariepy interviewed David Duke, former grand wizard of the Ku Klux Klan. The Court has watched the interview with Ms Keen and Mr Gariepy in which Ms Keen challenges his attitudes towards women. None of this proves that Ms Keen has publicly associated with a far-right extremist group.

- (d) Keen was interviewed on the Richie Allen radio show on 2 July 2020 – in a live telephone interview from one hour and seven minutes into the episode: 131 [65]. Earlier in that episode a person called Mark Collett was interviewed. It is alleged that Mr Collett is the founder of the UK white nationalist group Patriotic Alternative and a neo-Nazi political activist. There is no evidence establishing that allegation about Mr Collett as a matter of truth. In any event, he did not interact with Ms Keen and nor is it suggested that Mr Allen is anything other than a radio host. This is incapable of proving that Ms Keen publicly associated with a far-right extremist group.
- (e) Keen was interviewed twice in 2020 by Kay Soco. The respondent has not proved that it is a far-right YouTube channel which includes disgraceful anti-semitic content or extreme racist and anti-Muslim sentiments: 131 [66]-[68].
- (f) On 2 February 2021 the Proud Boys were listed as a terrorist entity in Canada. That does not prove that the Proud Boys are a notorious far-right neo-fascist militant organisation that promotes and engages in political violence as alleged: 131 [69]-[70]. On 5 November 2022 at the end of and LWS in Miami rally a male speaker who described himself as a GOP committee member spoke. The respondent alleges that his name is Chris Barcenas and that he was a Proud Boys member but there is no evidence to establish the truth or either of those allegations. There is also no evidence that Ms Keen knew him to be a Proud Boys member or former Proud Boys member.
- (g) On 15 February 2023 Lisa Morgan referred to the big lie at a Standing for Women event in Newcastle, UK: [71]-[72]. This does not prove that Ms Keen publicly associated with a far-right extremist group. The point being made by Ms Morgan has been misconstrued.
- (h) There is no evidence proving the allegations about LWS Auckland as alleged in [73]. In any event, unless those persons actually participated in the LWS rally it is hard to

see what could be made of it.

- (i) It is alleged that at unspecified times Ms Keen and Mrs Deeming supported Jennifer Bilek. This was not put to Mrs Deeming. Bilek is alleged to be an anti-trans activist who promotes Keith Woods, said to be a notorious white nationalist and anti-semitic: [74]-[76]. None of this is proved.

756. The respondent has failed to prove this contextual imputation true.

No further harm

757. The contextual imputation would not outweigh any of the applicant's imputations because of the passive guilt alleged in it compared to the active culpability that forms part of each of the applicant's imputations.

3AW Interview

Imputation not carried

Defence	Contextual Imputations
10.3(a)	Deeming, by reason of having helped to organise and promote a protest rally and associating with persons with known links to Nazis, Nazi sympathisers, far right extremists and/or white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.
10.3(b)	Deeming, by reason of not having left a protest rally that she had helped to organise and promote when neo-Nazis turned up, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.

758. The 3AW interview imputes that Mrs Deeming associated with persons who were Nazis and Nazi sympathisers and who also had links to such persons. Imputation (a) is not carried.

759. Imputation (b) is not carried because it is not suggested that her mere failure to leave is why she is not a fit and proper person.

Not substantially true

760. Nothing in the Defence establishes that either Ms Jones or Ms Keen has known links to Nazis or Nazi sympathisers. The fact that this allegation is maintained is scandalous.

761. For the reasons set out in relation to the Media Release, the respondent has not proved any known links with far right-extremists and/or white supremacists. This requires proving the link as a matter of fact and that it is well known. Engaging in an interview with a person and arguing with them is not proof of a known link.
762. The neo-Nazis did not attend or participate in the LWS rally. They were on Spring Street conducting their own demonstration on the northern end before the LWS rally began and well before Mrs Deeming arrived. The unchallenged evidence is that Mrs Deeming did not see the neo-Nazis until they were being escorted away from the area. The neo-Nazis did not interact with Mrs Deeming or the LWS rally. This conduct is incapable of rendering Mrs Deeming not a fit a proper person to be a member of the Victorian Parliamentary Liberal Party. It is a disgrace that the respondent expected Mrs Deeming to be silenced at a rally to Let Women Speak by a group of disgusting male misfits who had nothing to do with her or the rally she was attending.

No further harm

763. The applicant repeats the submission that the passive contextual imputations are incapable of satisfying the no further harm test in relation to any of the applicant’s imputations.

ABC Interview

Defence	Contextual Imputations
14.3(a)	Deeming, by reason of having attended and been actively involved in the organisation and promotion of a protest on the steps of the Victorian Parliament at which there were speakers with known links with neo-Nazis and white supremacists, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto’s leadership.

764. This contextual imputation fails for the same reasons as those set out above in relation to the 3AW Interview.

Press Conference

Imputations carried

SOC	Applicant's Imputations	Defence	Contextual Imputations
19.6	<p>Deeming knowingly associated with people who share a platform with Neo-Nazis who peddle hate and division and attack people for who they are.</p> <p>[The respondent denies the imputation is conveyed (Defence at [19.2] and [60])]</p>	19.3(a)	<p>Deeming, by reason of having worked with organisers of a rally with known and established links with people who have Nazi sympathies and who promote white supremacist and ethno-fascist views, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.</p>
19.7	<p>Deeming had so conducted herself in staying at a rally attended by Neo-Nazis and then celebrating with the key speakers of the rally who had Neo-Nazi sympathies after ugly scenes had occurred on the steps of Parliament so as to warrant her immediate expulsion from the Parliamentary Liberal Party.</p> <p>[The respondent denies the imputation is conveyed (Defence at [19.2] and [60])]</p>	19.3(b)	<p>Deeming, by reason of not having left a protest rally that she had helped to organise when neo-Nazis arrived, and not immediately disowning or disassociating from them, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.</p>
19.8	<p>Deeming had so conducted herself before, during and after a rally at Parliament in associating herself with the key speakers who have shared platforms and endorsed viewpoints of Neo-Nazis so as to warrant her immediate expulsion from the Parliamentary Liberal Party.</p> <p>[The respondent denies the imputation is conveyed (Defence at [19.2] and [60])]</p>	19.3(c)	<p>Deeming, by celebrating her involvement in a protest rally, which she helped to organise with people who have shared platforms and viewpoints with people who promote Nazi views or sympathies, and which was attended by neo-Nazis, is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under Pesutto's leadership.</p>

765. Imputations 19.6, 19.7 and 19.8 are carried by the Press Conference for the reasons set out above.

766. Contextual imputations (a), (b) and (c) do not differ in substance from the applicant’s imputations.

Not substantially true

767. None of these imputations are substantially true for the reasons already stated.

768. The new element for this publication is the LWS post event video. That video was prepared in response to the request by Mr Southwick that Mrs Deeming ask the organisers to distance themselves from the neo-Nazis. It was published after Mrs Deeming’s 18 March Tweet in which she distanced herself from the neo-Nazis and condemned their conduct. In those circumstances that video could not render her not a fit and proper person as alleged.

769. The other elements of the imputation cause a serious challenge for the respondent. They involve proof that the women had neo-Nazis sympathies, that the women endorsed neo-Nazi viewpoints and shared platforms with neo-Nazis. None of that is true.

No further harm

770. The weighing exercise in this case, which involves some of the applicant’s imputations is difficult to assess in the abstract. However, the remaining applicant’s imputations are so serious that if any of them are carried then the contextual truth defence would fail.

Expulsion Motion and Dossier

Imputations carried

SOC	Applicant’s Imputations	Defence	Contextual Imputations
24.1	Deeming had so conducted herself on 18 March 2023 in relation to a public rally that it warranted her expulsion from the Victorian Parliamentary Liberal Party. [The respondent admits the imputation is conveyed (Defence at [24.2])]	24.4(a)	Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by organising, promoting and attending a rally where Kellie-Jay Keen (also known as Posie Parker) was the principal speaker, in circumstances where Ms Keen was known to be publicly associated with far right-wing extremist groups including neo-Nazi activists.

24.2	<p>Deeming had so conducted herself in associating with Neo-Nazi activists on 18 March 2023 that it warranted her expulsion from the Victorian Parliamentary Liberal Party.</p> <p>[The respondent denies the imputation is conveyed (Defence at [24.3] and [64])]</p>	24.4(b)	<p>Deeming conducted herself in a manner likely to bring discredit on the Victorian Parliament or Victorian Parliamentary Liberal Party, by meeting with and publishing a video with Kellie-Jay Keen, Katherine Deves and Angie Jones.</p>
24.3	<p>Deeming conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by organising, promoting and attending a rally on 18 March 2023.</p> <p>[The respondent admits the imputation is conveyed (Defence at 24.2)]</p>		
24.4	<p>Deeming conducted activities in a manner likely to bring discredit on the Victorian Parliament or Parliamentary Liberal Party by publicly associating with Neo-Nazi activists on 18 March 2023.</p> <p>[The respondent denies the imputation is conveyed (Defence at [24.3] and [64])]</p>		

771. Imputations 24.1, 24.2, 24.3 and 24.4 are carried by the EMD for the reasons set out above.

772. Contextual imputations (a) and (b) do not differ in substance with the applicant's imputations.

Not substantially true

773. None of these imputations are substantially true for the reasons already stated.

774. There was nothing about Mrs Deeming's conduct in organising, promoting and attending the LWS rally that was likely to bring the party into disrepute. She did nothing discreditable and cannot be held accountable for the conduct of the neo-Nazis who attended the precinct.

775. It has not been proved true that Mrs Deeming associated with neo-Nazi activists.

776. Otherwise the imputations have not been proved to be substantially true for the reasons set out in relation to the other publications.

No further harm

777. The weighing exercise in this case, which involves some of the applicant's imputations is difficult to assess in the abstract. However, the remaining applicant's imputations are so serious that if any of them are carried then the contextual truth defence would fail.

I. DEFENCE OF HONEST OPINION

Principles

778. Section 31 of the Act relevantly requires that (a) the defamatory matter was an expression of opinion of the defendant, (b) the opinion related to a matter of public interest and (c) the opinion was based on proper material. There were minor amendments to s31 of the Act that took effect from 1 July 2021 which apply to this matter.

Fact v opinion

779. As to (a), the inquiry requires consideration of the meanings found to be conveyed but is not constrained or dictated by their terms: *Stead v Fairfax Media Publications Pty Ltd* [2021] FCA 15; (2021) 387 ALR 123, per Lee J at [131]; *Dutton v Bazzi* [2021] FCA 1474, per White J at [72]-[74]; *Kumova v Davidson (No 2)* [2023] FCA 1 at [272]. The question is whether the matter would have been understood by the ORP to be an expression of opinion: *Kumova* at [271]. For the defence of honest opinion to be available, the respondent must satisfy the Court that the matter was an expression of opinion rather than a statement of fact: s 31(1)(a), 31(2)(a), 31(3)(a) of the Act. As is apparent from the words "rather than" in ss 31(1)(a), 31(2)(a) and 31(3)(a), the defence is only available when the matter can be characterised as opinion to the exclusion of being a statement of fact.

780. The defence is one of confession and avoidance and it must therefore address the applicant's case, even if the precise words of the imputations adhered to so as to not raise a false issue in the proceedings: *Channel Seven Adelaide Pty Ltd v Manock* [2007] HCA 60; (2007) 232 CLR 245 at [84]-[86].

781. A statement may qualify as a comment if it appears to be a deduction, inference, conclusion, judgment, remark or observation come to by the writer or speaker from facts stated or referred to by him, or in common knowledge: *Manock* at [35]; *State of New South Wales v IG Index plc* [2007] VSCA 212; (2007) 17 VR 87 per Nettle JA at [48].

782. However, where the opinion being asserted is impermissibly mixed up and intermingled with factual material, it cannot qualify as opinion: *Manock* at [41]-[42]. Defamatory matter which would not be true if conveyed as fact will rarely be able to be protected as opinion where fact and opinion are inextricably intermingled: *O'Brien v Australian Broadcasting Corporation* [2016] NSWSC 1289 at [52]; *Green v Fairfax Media Publications Pty Ltd (No 4)* [2021] WASC 474, per Le Miere J at [147]. The critical question is whether there is a clear separation of the facts from the defamatory expressions of opinion: *O'Brien* at [52].

783. The point was clearly explained in *Hunt v Star Newspaper Co Ltd* [1908] 2 KB 309 at 319:

...[C]omment in order to be justifiable as fair comment must appear as comment and must not be so mixed up with the facts that the reader cannot distinguish between what is report and what is comment... The justice of this rule is obvious. If the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negated by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer though not necessarily set out by him.

784. See also *Smith's Newspapers Ltd v Becker* (1932) 47 CLR 279 at 303-304. Both of these passages were followed and applied in *Channel Seven Adelaide Pty Ltd v Manock* (2007) 232 CLR 245 at [41]-[44] per Gummow, Hayne and Heydon JJ (Gleeson CJ agreeing) in holding that the matter was not conveyed as opinion, because “*facts and comment are closely and inseparably intermingled in the publication*”. In turn, these authorities were recently cited as a correct statement of the position under s 31 of the Act in *Massoud v Nationwide News Pty Ltd* (2022) 109 NSWLR 468[209] per Leeming JA (Mitchelmore JA and Simpson AJA agreeing).

Related to a matter of public interest

785. As to (b), this element is admitted for each matter and is not in issue.

Based on proper material

786. As to (c), principles relevant to the operation of these provisions were summarised in *Dutton v Bazzi* at [106]-[113],[120]-[124] and [139]-[149] per White J.

787. The material on which the opinion is based is determined by reference to what the ORP would have understood from the impugned matter to have been intended by the author to be considered the basis for his or her comments: see *Dutton v Bazzi* at [123]; *O'Neill v Fairfax Media Publications Pty Ltd (No 2)* [2019] NSWSC 655 at [106]. It may include hyperlinked material (*Dutton v Bazzi* at [126], and see now s 31(5)(a)(iii)). Once that is done, that material will be proper if it was substantially set out in the defamatory matter or otherwise apparent: see UDA s 31(5). The requirement that the opinion be “based on proper material” means the opinion must be capable of being rationally based on that material: *Dutton v Bazzi* at [150].
788. The material which the respondent relies on as proper material is particularised in paragraph 44 to 48 of the Defence, and he relies only on s 31(5)(b)(i) to submit that that material was “proper”, i.e. they contend that the material was proper because it was substantially true. To this end, he relies on the particulars in Annexure A.
789. Notably, the respondent does not need to establish that he was aware of the proper material or that he believed it to be true to satisfy the requirement of “based on proper material” under s31. Conversely, the fact that he held such a belief is not sufficient to establish this element.
790. A contrary submission appears to have been made by the applicant and accepted by the Court in *Greenwich v Latham* [2024] FCA 1050 at [210]-[215]. The submission is not supported by authority and is not correct and contrary to the authorities. The defence turns on whether the ORP understood the matter to be an expression of the respondent’s opinion based on facts stated or referred to in the publication that are substantially true. None of those elements require any consideration of the state of mind of the respondent. (Consideration of the state of mind of the respondent is relevant to questions of defeasance, as set out below, under s 31(4) of the Act, but that is a different matter.) This submission is adverse to the applicant in this case, but is made nonetheless on her behalf in order to avoid leading the court into error.

Defeasance

791. Section 31(4) sets out, respectively, the basis on which a defence established under s31(1)(a) may be defeated. The onus of establishing such matters is on the applicant.

792. In *Stead* Lee J found that, had the defence been otherwise established, defeasance had been proved in relation to some of the imputations – namely that the journalist, Joe Aston did not honestly hold opinions said to have been expressed by him in the publications.

793. This is purely a factual question.

Media Release

Fact v opinion

794. The defence is pleaded at [44] as an expression of opinion by Mr Pesutto that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership: CA:3, 105.

795. The Media Release cannot be characterised as an expression of opinion as opposed to an allegation of fact because of the defamatory factual allegations against Mrs Deeming – particularly in lines 5-7 and 10-11.

796. There is in fact no opinion expressed at all. Mr Pesutto asserts as a matter of fact in lines 8-9 that Mrs Deeming’s position is untenable and that he would be moving a motion to expel her. This is a statement of intent, not an expression of opinion.

Proper material

797. The proper material pleaded is particular (iii) after [44.3]. The five facts relied on are:

- (A) *The Rally held on the steps of the Victorian Parliament on 18 March 2023 that was attended by neo-Nazi protestors.*
- (B) *Deeming’s position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.*
- (C) *Deeming’s involvement in organising and promoting, and attending, the Rally.*
- (D) *Other organisers of the Rally were publicly associated with far-right extremist groups including neo-Nazi activists.*
- (E) *By her involvement in organising and attending the Rally, Deeming associated herself with people whose views are abhorrent to Pesutto’s values, the values of the Victorian Liberal Party and the wider community.*

798. The Media Release does set out or sufficiently refer to each of the facts in (A)-(E).
799. This element must fail because those facts are not true. The first difficulty is the definition of Rally – it is has not been proved that the neo-Nazis attended the LWS rally. They were in the precinct amongst many other groups. The footage establishes that:
- (a) they conducted their own rally, first on the northern end of Spring Street;
 - (b) they stood on the northern end of the steps of Parliament where Thomas Sewell spoke into a megaphone over the top of and at the same time as Kelly-Jay Keen;
 - (c) they were escorted out of the precinct by police when they carried out the Nazi salute again;
 - (d) at no time are they seen participating in, speaking at or even listening to the LWS rally which was protected by vested marshals protecting the perimeter.

Therefore (A) is not substantially true.

800. Fact (B) was substantially true.
801. Fact (C) is not true to the extent it is said to interact with (A). The rally organised by Mrs Deeming was the LWS rally, not a broader rally that included all the groups present in the precinct that day.
802. Fact (D) is false. First no such “organisers” have been proved. At its highest, this case has only been mounted against Kelly-Jay Keen. Second it turns on the meaning of the word “associated”. A mere interaction or acquaintance is not relevantly an association, in the context of the Media Release. Further, multiple “far-right extremist groups” have not been proved.
803. Fact (E) is plainly false. This requires proof that Ms Keen and Ms Jones both hold such abhorrent views. No admissible evidence has been adduced to prove such a serious allegation. The Pink News article and subsequent interviews by Ms Keen prove to the contrary. Similarly, the tweets by Ms Jones contradict any such assertion. Neither woman is a party to the proceedings, and none the documents relied on by the respondent constitute admissions.

804. On the other hand, Mr Pesutto is a party and he has admitted that Ms Keen and Ms Jones are passionate women's rights advocates who share his belief that Nazism is odious and contemptible: CC:690 (Ex. A221).

Defeasance

805. As to defeasance the only information that Mr Pesutto had when the Media Release was drafted was the information set out in the first research document and the Jones Tweet and LWS post event video: CC.328. Mr Pesutto had also read the Pink News article and Mrs Deeming's 18 March Tweet.

806. Mr Pesutto did not honestly believe what is alleged in lines 6-7 and 10-11 having regard to that information.

3AW Interview

Fact v opinion

807. The defence is pleaded at [45] as an expression of opinion by Mr Pesutto that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership: CA:3, 107.

808. The 3AW Interview cannot be characterised as an expression of opinion as opposed to an allegation of fact because a number of defamatory allegations stated as fact are made about Mrs Deeming throughout. For example, at lines 11-12, 39-41, 46, 75, 102-103.

809. Given the defamatory allegations of fact – the defence cannot succeed.

Proper material

810. The proper material pleaded is particular (iii) after [45.3]. The seven facts relied on are:

(A) *The Rally held on the steps of the Victorian Parliament on 18 March 2023 that was attended by neo-Nazi protesters.*

(B) *Deeming's position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.*

(C) *Deeming's involvement in organising and promoting, and attending, the Rally.*

- (D) *Other organisers of the Rally, including Keen, were known to have links with Nazis, Nazi sympathisers, far-right extremists and white supremacists.*
- (E) *By her involvement in organising and attending the Rally, Deeming associated herself with people with those links.*
- (F) *Deeming did not leave the Rally when the neo-Nazis arrived.*
- (G) *After the Rally, Deeming participated in a video with Keen and two other organisers of the Rally, including Jones, who posted a Tweet with the words, 'Nazis and women want to get rid of paedo filth. Why don't you?'*

811. The 3AW Interview does set out or sufficiently refer to each of the facts in (A)-(G).

812. This element must fail because those facts are not true for the reasons set out in relation to the Media Release.

813. Further, there are a number of facts in the 3AW Interview that would be material to any opinion that have been omitted from the particulars. For example, Mr Pesutto alleges that both Ms Keen and Ms Jones are Nazis (102-103) and Nazi sympathisers (lines 112-118). That is plainly not true. Further that Ms Keen did videos with Richard Spencer, Mark Collett and Ku-Klux-Klan leader David Duke (lines 18-20) are also false.

Defeasance

814. The same issue of defeasance arises as with the Media Release – based on the information he had, Mr Pesutto could not have possibly honestly held such views.

ABC Interview

Fact v opinion

815. The defence is pleaded at [46] as an expression of opinion by Mr Pesutto that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership: CA:3, 108.

816. The ABC Interview cannot be characterised as an expression of opinion as opposed to an allegation of fact because a number of defamatory allegations stated as fact are also made about Mrs Deeming throughout. For example, at lines 3-12, 20, 39-41, 51-52.

817. Given the defamatory allegations of fact are intermingled with any opinions – the defence cannot succeed.

Proper material

818. The proper material pleaded is particular (iii) after [46.3]. The five facts relied on are:

- (A) *The Rally held on the steps of the Victorian Parliament on 18 March 2023 that was attended by neo-Nazi protesters.*
- (B) *Deeming’s position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.*
- (C) *Deeming’s involvement in organising and promoting, and attending, the Rally.*
- (D) *The presence of speakers at the Rally with known links to neo-Nazis and white supremacists.*
- (E) *By her involvement in organising and attending the Rally, Deeming associated herself with those speakers.*

819. The ABC Interview does set out or sufficiently refer to each of the facts in (A)-(E).

820. This element must fail because those facts are not true for the reasons set out in relation to the Media Release. Further, there are a number of facts in the ABC Interview that would be material to any opinion that have been omitted from the particulars. For example, Mr Pesutto alleges at line 20 that Mrs Deeming stands with neo-Nazis and white supremacists, and at lines 39-41 that Mrs Deeming associates with neo-Nazis and white supremacists and anybody who sympathises with them. He also says he is expelling her because “Nazis and white supremacists don’t make debates respectful and civil” at lines 51-52.

Defeasance

821. The same issue of defeasance arises as with the Media Release – based on the information he had, Mr Pesutto could not have possibly honestly held such views.

Press Conference

Fact v opinion

822. The defence is pleaded at [47] as an expression of opinion by Mr Pesutto that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership: CA:3, 109.
823. The Press Conference cannot be characterised as an expression of opinion as opposed to an allegation of fact because a number of defamatory allegations stated as fact are made about Mrs Deeming throughout. For example, 12-16, 18-19, 27-29, 39-41, 66-67, 72-79, 108-110, 146-149, 238-240, 287-290, 291-302, 418-421.
824. Given the defamatory allegations of fact are intermingled with any opinions – the defence cannot succeed.

Proper material

825. The proper material pleaded is particular (iii) after [47.3]. The eight facts relied on are:
- (A) *The Rally held on the steps of the Victorian Parliament on 18 March 2023 that was attended by neo-Nazi protesters.*
 - (B) *Deeming's position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.*
 - (C) *Deeming's involvement in organising and promoting, and attending, the Rally.*
 - (D) *Other organisers of the Rally, including Keen, had known and established links and have shared platforms with people who have Nazi sympathies, and who promote white supremacist and ethnofascist views.*
 - (E) *By her involvement in organising and attending the Rally, Deeming associated herself with people with those links.*
 - (F) *Deeming escorted one of the organisers, Keen, through the Parliament to facilitate her presence at the Rally.*
 - (G) *Deeming did not leave the Rally when the neo-Nazis arrived or immediately disown and disassociate from them.*

(H) After the Rally, Deeming celebrated with organisers of the Rally, including Jones who posted a Tweet with the words, 'Nazis and women want to get rid of paedo filth. Why don't you?'

826. The Press Conference does set out or sufficiently refer to each of the facts in (A)-(G).
827. This element must fail because those facts are not true for the reasons set out in relation to the Media Release.
828. Particular (F) is not true – Ms Keen was not escorted through Parliament – she was in the carpark.
829. Particular (G) is not true – Mrs Deeming did disown and disassociate herself from the neo-Nazis by her tweet on 18 March and the video with the other organisers. Further – the neo-Nazis arrived well before she did and she did not see them or know that they were neo-Nazis. By the time she saw them they were leaving.
830. Particular (H) does not support any such opinion because the Jones Tweet does not mean, in context, what the respondent claims it does.
831. Further, there are a number of facts in the Press Conference that would be material to any opinion that have been omitted from the particulars.

Defeasance

832. The same issue of defeasance arises as with the Media Release – based on the information he had, Mr Pesutto could not have possibly honestly held such views.

Expulsion Motion and Dossier

Fact v opinion

833. The defence is pleaded at [48] as an expression of opinion by Mr Pesutto that Mrs Deeming is not a fit and proper person to be a member of the Victorian Parliamentary Liberal Party under his leadership: CA:3, 110.
834. The EMD cannot be characterised as an expression of opinion as opposed to an allegation of fact because its entire purpose is to put forward allegations of fact warranting expulsion. The EMD is intended to convince 26 MPs that an allegation of fact against Mrs Deeming

is true and warrants their vote in favour of the motion. By its nature it would not be understood as opinion.

Proper material

835. The proper material pleaded is particular (iii) after [48.3]. The twelve facts relied on are:

- (A) *The Rally held on the steps of the Victorian Parliament on 18 March 2023.*
- (B) *Deeming's position as a member of the Victorian Parliament and (at the time) a member of the Victorian Parliamentary Liberal Party.*
- (C) *Deeming's involvement in organising and promoting, and attending, the Rally.*
- (D) *The principal speaker at the Rally was Keen (also known as Posie Parker), who runs an organisation known as Standing for Women.*
- (E) *Keen is known to be publicly associated with far right-wing extremist groups and neo-Nazi activists, including Jean-François Gariépy (a far-right activist who advocates for a white ethno-state and has made videos with neo-Nazis and former Ku Klux Klan grand wizard David Duke), Soldiers of Christ Online (a far-right network), Hans Jørgen Lysglimt Johansen (a Norwegian neo-Nazi, anti-semite and Holocaust denier).*
- (F) *Keen has used a Barbie doll wearing a Nazi military uniform as her profile picture on an online profile, and has posted an image online that equates expressions of LGBTIQ+ pride with the conduct of Nazi Germany and the Gestapo.*
- (G) *Standing for Women organised an event on 16 January 2023 at which one of the speakers, Lisa Morgan, quoted Adolf Hitler.*
- (H) *Deeming facilitated Keen's presence at the Rally by escorting her through the secured carpark of Parliament House.*
- (I) *At the Rally, a group of neo-Nazis, organised by the National Socialist Network, occupied the steps of the Victorian Parliament and performed the Nazi salute while displaying a banner bearing the words, 'DESTROY PAEDO FREAKS'.*
- (J) *Deeming did not leave the Rally when the neo-Nazis attended.*

(K) *After the Rally, at around 4.41pm on 18 March 2023, Jones posted a Tweet with the words, 'Nazis and women want to get rid of paedo filth. Why don't you?'*

(L) *After the Rally, on 18 March 2023, Deeming met and published a video with Keen, Jones and Katherine Deves, in which they drank champagne and Deeming did not roundly condemn the neo-Nazis who had attended.*

836. The EMD does set out or sufficiently refer to each of the facts in (A)-(L), with the exception of (E).

837. The EMD alleges that Ms Keen is in fact associated with far-right extremists – not that she is known to be. Further, in relation to Mr Johansen, the EMD asserts that Ms Keen posted a photograph with him. That is plainly false.

838. In any event, this element must fail because those facts are not true for the reasons set out in relation to the Media Release and the Press Conference.

839. Further, (E) is false because Mr Keen is not known to be publicly associated with far-right wing extremist groups and neo-Nazi activists. The evidence establishes that she gave one interview to Mr Gariepy in which she argued with him and gave no indication of agreeing with any white ethno-state views. She did not know about Soldiers of Christ before speaking to them and nor has it been proved who they are or what they stand for. There is no evidence that Mr Johansen is a neo-Nazi, anti-semite or Holocaust denier. Taking one photograph with him, in an unknown context that he posted on social media does not establish any such association.

840. As to particular (G), it is unclear how this could support any allegation against Mrs Deeming or any opinion that she is unfit to be a member of the party.

841. As to particular (L) this is a mischaracterisation of the video and ignores the tweet by Mrs Deeming that preceded the video.

Defeasance

842. The same issue of defeasance arises as with the Media Release – based on the information he had, Mr Pesutto could not have possibly honestly held such views.

J. DEFENCE OF PUBLIC INTEREST

Principles

843. Subsections 29A(1)-(2) of the *Defamation Act 2005* are in the following terms:

29A Defence of publication of matter concerning issue of public interest

(1) *It is a defence to the publication of defamatory matter if the defendant proves that:*

(a) *the matter concerns an issue of public interest, and*

(b) *the defendant reasonably believed that the publication of the matter was in the public interest.*

(2) *In determining whether the defence is established, a court must take into account all the circumstances of the case.*

844. To date, *Russell v Australian Broadcasting Corporation (No. 3)* [2023] FCA 1223 apparently remains the only matter in a superior court in which a defence under s 29A has been determined on a final basis. Substantive consideration was also given to the construction of s 29A in *Murdoch v Private Media Pty Ltd* [2022] FCA 1275, although that was in the context of an application to strike out a defence.

845. Section 29A was introduced by the *Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020 (VIC)*, which came into force on 1 July 2021. It was “modelled on” s 4 of the *Defamation Act 2013* (UK) and was intended by Parliament to provide for a “comparable defence”: NSW Hansard (Legislative Assembly, 29 July 2020) page 2870. Assistance in construing s 29A can be derived from consideration of the English authorities on s 4 and its common law antecedents: *Russell (No. 3)* at [269]-[271] per Lee J.

846. The concept of “public interest” is used in two different senses in s 29A(1): *Russell (No. 3)* at [318] per Lee J.

847. The question posed by s 29A(1)(a) is whether the matter “concerns” an issue of public interest. The “public interest” in this context applies to the topic or subject matter dealt with by the publication, not the characteristics or quality of the publication itself. The question to be decided is whether the publication is relevant to, or about, a topic or subject matter which constitutes “an issue of public interest”. This element is admitted by Mrs Deeming.

848. By contrast, s 29A(1)(b) requires a value judgment on whether the making of the particular publication in question was “in the public interest”. As Mason CJ, Brennan, Dawson and Gaudron JJ observed in *O’Sullivan v Farrer* (1989) 168 CLR 210 at 216:

The expression “in the public interest”, when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only “in so far as the subject matter and the scope and purpose of the statutory enactments may enable... given reasons to be[pronounced] definitely extraneous to any objects the legislature could have had in view.”

849. Similar expressions to “in the public interest” have a history in Australian defamation legislation. In *Bellino v Australian Broadcasting Corporation* (1996) 185 CLR 183, for example, the High Court was concerned with s 377(8) of the *Criminal Code* (Qld), which provided a defence to the publication of defamatory matter:

... if the publication is made in good faith in the course of, or for the purposes of, the discussion of some subject of public interest, the public discussion of which is for the public benefit, and if, so far as the defamatory matter consists of comment, the comment is fair.

850. At 229, Dawson, McHugh and Gummow JJ held that:

The subsection calls for what is essentially a value judgment as to whether the public would benefit from the subject being discussed publicly. In the great majority of cases, the public discussion of a subject of public interest must be for the public benefit.

851. There is a key difference between the statutory language in issue in *Bellino* and the text and structure of s 29A. Section 377(8) of the *Criminal Code* (Qld) turned on the composite phrase “some subject of public interest, the public discussion of which is for the public benefit”. The question it posed was simply whether it was for the public benefit that the relevant subject of public interest should be publicly discussed. As in s 29A(1)(a), the question of public interest related only to the subject matter, not the publication itself. This is, however, only half of the equation in s 29A, as s 29A(1)(b) goes on to direct attention to whether the respondent reasonably believed that *the publication of the matter* which was made was in the public interest.

852. The two-stage test in s 29A(1) recognises that not every publication which concerns an issue of public interest will in itself be in the public interest. As Lord Hobhouse said in a different context in *Reynolds v Times Newspapers Ltd*[2001] 2 AC 127 at 239:

The publisher must show that the publication was in the public interest and he does not do this by merely showing that the subject matter was of public interest.

853. Subsection 29A(1)(b) therefore focuses attention on the character of the particular publication in question: *Russell (No. 3)*[320] per Lee J. Whether it is “in the public interest” for a particular publication to be published will depend on the intrinsic merits of that publication, such as the quality of the sources for the publication, the adequacy of the steps taken by the publisher to check and verify those sources, and the way in which the publication is written or spoken.

854. There are two elements to s 29A(1)(b) – a subjective element, and an objective one. The respondent has the onus to establish both these elements, and Mrs Deeming has otherwise particularised matters at paragraph 5 of her reply as to the respondent’s knowledge that are inconsistent with finding either element satisfied either at the initial time of publication or at later times.

855. The threshold question is whether the respondent believed the publication of the matter was in the public interest, which depends on his, her or its actual state of mind. The existence of a particular state of mind is a question of fact which must be proved by evidence. Justice Lee addressed this issue in *Russell (No. 3)* at [321]-[322]:

Section 29A(1)(b) is concerned with the respondent’s actual state of mind at the time of publication. ...

Put another way, this element of the defence is not made good by showing that a notional reasonable person in the respondent’s position could have believed that publication was in the public interest. The respondent must prove this element by adducing evidence that the publisher turned the publisher’s actual or attributed mind to the issue and did hold the relevant belief. ... Ex post rationalisations are not enough. In some ways it is analogous to a person who made a future representation being required, among other things, to point to some facts or circumstances existing at the time of the representation on which the representor in fact relied to support the representation being made.

856. His Honour also referred to *Turley v Unite the Union* [2019] EWHC 3547[138], where Nicklin J noted that “*if a defendant leaves the issue unaddressed in his/her witness evidence, the defence is likely to fail at this initial hurdle*”.
857. As Wigney J observed in *Murdoch* at [66], where the publisher’s state of mind is in issue, “*The focus is likely to be on ‘things the defendant said or knew or did, or failed to do, up to the time of publication’*”, citing *Economou v De Freitas* [2016] EWHC 1853 at [139] and *Doyle v Smith*[2018] EWHC 2935[73].
858. In addition to the subjective belief of the respondent, s 29A(1)(b) also requires that it was reasonable for him to believe that the publication of the matter was in the public interest. The reasonableness of the respondent’s belief is an objective question for the Court to determine and is not determined by the subjective attitudes of the publisher in question: *Murdoch* at [67] per Wigney J.
859. As Wigney J said in *Murdoch*[67]-[68]:
- The question, essentially, is whether a reasonable person standing in the defendant’s “shoes” – that is, in particular, possessing the information that the defendant possessed at the time – would have held that belief. ...*
860. While all of the circumstances of the case must be considered, the focus of much of the inquiry in respect of the third element is likely to be on the nature and content of the publication, the seriousness of the defamatory imputations found to have been conveyed by the publication, the information possessed by the publisher and its sources, and the steps taken by the publisher to check or verify that information.
861. In determining whether the respondent’s belief that it was in the public interest to publish the matter was reasonable, the Court must take into account “all the circumstances”: s 29A(2). Without limiting what may be taken into account, s 29A(3) contains a list of factors which may be relevant. Although described generally as factors which may be taken into account in determining “whether the defence is established”, these factors have more apparent relevance to s 29A(1)(b) than s 29A(1)(a).
862. It is clear that s 29A(3) should not be used as a checklist. The factors listed in it are not the only ones which are necessarily relevant, and it is not necessary to take into account each one of those factors in every case: see s 29A(4).

863. Nevertheless, inferences can and should be drawn from the fact that the legislature has chosen to list these specific factors to illustrate considerations relevant to whether the defence is made out. The specific inclusion of these factors to illustrate circumstances which may be taken into account in determining whether the defence is made out is indicative of the legislature’s judgment as to what would inform a “reasonable” belief that the making of a particular publication is “in the public interest”. It is consistent with the inclusion of these particular illustrative factors to conclude that it is more likely to be reasonable to believe that the publication of matter is in the public interest if:
- (a) The publication was based on reliable and credible sources – s 29A(3)(e).
 - (b) Information is attributed to named sources unless there is a good reason why the identity of a source should be kept confidential – see s 29A(3)(f).
 - (c) Allegations were based reasonably on the information provided by the sources. See s 29A(3)(b). Distinguishing between a suspicion or allegation and a proven fact requires some level of discernment of what the source material is reasonably capable of establishing.
 - (d) Adequate steps were taken to check and corroborate the information provided by the sources – s 29A(3)(h).
 - (e) Allegations were put to the person who is the subject of those allegations, and his or her side of the story was published – s 29A(3)(g).
864. This is comparable to the factors which were relevant to whether a publisher’s conduct was reasonable for the purposes of the defence in s 30 of the Act. The list in s 29A(3) was copied substantially from the list of relevant considerations in s 30(3) of the Act as it was prior to the 2020 amendments. As such, in *Russell (No. 3)* at [335], Lee J accepted that “*it is clear on the face of s 29A and the explanatory materials that the defence is intended to continue and extend the previous law in this area*”. In other words, s 29A is evolutionary rather than revolutionary in its operation.
865. His Honour also noted Parliament’s intention to “mirror” s 4 of the UK Act: *Russell (No. 3)* at [330]. It is therefore appropriate to say something briefly about how the English defence has been construed and applied by English courts, before considering the application of s 29A in *Russell (No. 3)*.

866. Section 4 of the UK Act provides as follows:

4 *Publication on matter of public interest*

(1) It is a defence to an action for defamation for the defendant to show that –

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

...

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgment as it considers appropriate.

...

(6) The common law defence known as the Reynolds defence is abolished.

867. The Act's explanatory note recorded that s 4 was "*based on the existing common law defence*" established in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 and "*intended to reflect the principles established in that case and in subsequent case law*".

868. A majority of the House of Lords in *Reynolds* held that courts should have regard to all the circumstances in determining whether the publication of particular material was privileged because of its value to the public. Importantly, it was recognised that "*Its value to the public depends on its quality as well as its subject matter*": at 202 per Lord Nicholls. At 205, Lord Nicholls identified ten factors to be taken into account for the purposes of this circumstantial test:

- 1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual is harmed, if the allegation is not true.*
- 2. The nature of the information, and the extent to which the subject matter is a matter of public concern.*
- 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.*
- 4. The steps taken to verify*

the information. 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect. 6. The urgency of the matter. News is often a perishable commodity. 7. Whether comment was sought from the plaintiff. He may have information which others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8. Whether the article contained the gist of the plaintiff's side of the story. 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. 10. The circumstances of the publication, including the timing.

869. As Lord Hobhouse in *Reynolds* at 238 warned in agreeing with Lord Nicholls:

This case is concerned with the problems which arise from the publication of factual statements which are not correct--i.e. do not conform to the truth. This case is not concerned with freedom of expression and opinion. The citizen is at liberty to comment and take part in free discussion. It is of fundamental importance to a free society that this liberty be recognised and protected by the law.

The liberty to communicate (and receive) information has a similar place in a free society but it is important always to remember that it is the communication of information not misinformation which is the subject of this liberty. There is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of a democratic society depends on the members of that society being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being misinformed. These are general propositions going far beyond the mere protection of reputations.
[Underline added]

870. The above extract from Lord Hobhouse applies with even greater force to publications by sitting parliamentarians or persons who aspire to be elected to such roles, let alone as Premier of Victoria.

871. It is no coincidence that the factors identified by Lord Nicholls are very similar to the list of relevant considerations in s 29A(3). In 2002, s 22 of the *Defamation Act 1974* (NSW), the precursor to s 30 of the 2005 Act, was amended to introduce s 22(2A), which contained a list of 8 factors relevant to determining whether the defendant's conduct in publishing the defamatory matter was reasonable. As Lee J noted in *Russell (No. 3)* at [300], the effect of that amendment was to "import *Reynolds* into the 1974 Act". When the 2005 Act was

passed, s 30(3) was substantially based on s 22(2A) of the 1974 Act: *Russell (No. 3)* at [302]. In turn, s 29A(3) is largely based on s 30(3).

872. The defence in *Reynolds* ultimately failed. The allegation that Mr Reynolds had lied to the Dáil was attributed in the article to an unnamed colleague of one of his main political opponents, but the source was in fact merely a staffer. A staffer of one of Mr Reynolds' political opponents was not an authoritative source for such a serious allegation. The publishers did not give Mr Reynolds an opportunity to comment prior to publication, and did not record the explanation he had given for his conduct during a speech in the Dáil, because they had decided for themselves that his version of events was not to be accepted. Each of these circumstances counted against the article being privileged on public interest grounds: at 206 per Lord Nicholls, 226-227 per Lord Cooke.

873. The operation of the defence was helpfully summarised in *Flood v Times Newspapers* [2012] 2 AC 273[113] per Lord Brown in the following terms:

In deciding whether Reynolds privilege attaches... the judge, on true analysis, is deciding but a single question: could whoever published the defamation, given what they knew (and did not know) and whatever they have done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?

874. When the *Defamation Act* 2013 (UK) came into force, s 4 was conceived by Parliament as being “based on the existing common law defence” established in *Reynolds*, and “intended to reflect the principles established in that case and in subsequent case law”, according to the Explanatory Note. In *Serafin v Malkiewicz* [2020] 1 WLR 2455[68],[72], the Supreme Court cautioned that “*the elements of the statutory defence [cannot] be equiparated with those of the Reynolds defence*”, but nevertheless accepted that the rationale for s 4 is not materially different from the rationale for the *Reynolds* defence, and that the principles underpinning *Reynolds* remain relevant to the statutory defence. For that reason, there has been substantial continuity with the *Reynolds* line of authority in the practical application of s 4.

875. The leading authority on s 4 is *Economou v De Freitas*. Significantly, for this matter Mr De Freitas was not a journalist. The parties in that matter proceeded on the basis that s 4 operated in much the same way as the *Reynolds* defence. At trial, Warby J agreed, observing that “*It seems hard to describe a belief as reasonable if it has been arrived at without care,*

in the absence of any examination of relevant factors, and without engaging in appropriate enquiries”: *Economou v De Freitas*[2016] EWHC 1853[237]-[239]. [241], he held:

I would consider a belief to be reasonable for the purposes of s 4 only if it is one arrived at after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case. Among the circumstances relevant to the question of what enquiries and checks are needed, the subject-matter needs consideration, as do the particular words used, the range of meanings the defendant ought reasonably to have considered they might convey, and the particular role of the defendant in question.

876. On appeal, it was held that the parties’ agreed position, that the principles applicable to the *Reynolds* defence were relevant to the interpretation of s 4, was correct: *Economou v De Freitas* [2018] EWCA Civ 2591[76],[86] per Sharp LJ (Ryder and Lewison LJ agreeing. The Court of Appeal expressed no disagreement with Warby J’s exposition of the factors necessary to inform a reasonable belief that the publication was in the public interest. [100]-[102],[110]-[111] Sharp LJ held:

*Section 4 requires the court to have regard to all the circumstances of the case when determining the all-important question arising under section 4(1)(b). ... In my judgment, all the circumstances of the case must include the sorts of factors carefully identified by the judge, including, importantly, the particular role of the defendant in question. The statute could have made reference to the *Reynolds* factors in this connection, but it did not do so. That is not to say, however, that the matters identified in the non-exhaustive checklist may not be relevant to the outcome of a public interest defence, or that, on the facts of the individual case, the failure to comply with one or some of those factors may not tell decisively against a defendant. ...*

I quite accept that an appropriate balance between the rights engaged would not be struck if the bar of “reasonable belief” was set too low, or if all those who took part in a particular publication were able to look to the other participants to fulfil what they would otherwise reasonably be expected to do, given their particular role in the process. But the principles applied by the judge do not lead to that result.

877. In *Serafin v Malkiewicz* [2020] 1 WLR 2455[67]-[69], whilst cautioning against “equiparating” the elements of s 4 with those of the *Reynolds* defence, the Supreme Court in substance approved the statements of principle in *Economou* by both Warby J and the Court of Appeal.

878. English authorities have recognised that, even if the defendant reasonably believed that publication was in the public interest at the time of initial publication, the defence may be lost if circumstances change, such that the defendant no longer holds the belief or the belief is no longer reasonable: *Flood v Times Newspapers Ltd* [2009] EWHC 3275[249] per Tugendhat J; *Flood v Times Newspapers Ltd* [2011] 1 WLR 153[78] per Lord Neuberger MR; *Lachaux v Independent Print Ltd* [2021] EWHC 1797[159] per Nicklin J; *Banks v Cadwalladr* [2022] 1 WLR 5236 at [135] per Steyn J.
879. In *Russell (No 3)*, Lee J accepted that each of the respondents subjectively believed that the publication of the matters was in the public interest, but he found their belief was not reasonable for the following reasons:
- (a) It was not reasonable for the journalist to conclude that a response to his FOI application was “confirmation” of an active criminal investigation. Other readings of the response were available:[366].
 - (b) The unspecific and fuzzy nature of the source’s memory called for caution and meant that it was important to seek to verify his claims and apply critical scrutiny, albeit there were always going to be practical difficulties in establishing what had happened:[367]-[369].
 - (c) The publisher did not do enough to be careful to distinguish what was known and not known, explain to readers the nature of his sources and interrogate their integrity, or accurately convey the applicant’s side of the story. He did little or nothing to attempt meaningfully to test the source’s account:[370]-[374].
 - (d) In his drafting of the articles, the publisher did not distinguish between suspicions, allegations and proven facts:[376].
 - (e) The publications conveyed very serious imputations to the effect that the applicant was the subject of an active criminal investigation and was reasonably suspected by the relevant investigative authority of committing war crimes. Whether the publishers belief was reasonable had to be assessed in light of the seriousness of the imputations conveyed:[377].
 - (f) Importantly, Lee J rejected a submission by the respondents to the effect that the strength of the public interest in the subject matter of the articles (alleged war crimes

by Australian soldiers in Afghanistan) meant the Court should be correspondingly less exacting about the detail of what they were publishing, or that it should allow the respondents a greater margin of error. [346]-[347], his Honour said:

The respondents submitted the gravity of the subject matter meant the public interest in publishing the impugned matters was “sustained independently of the possibility of inaccuracies of detail” and “as much by the broader implications as the specific details”. The public interest is said to have been “engaged at a broader level than the granular detail of a particular incident”.

On one level this is obviously correct, but it is important to understand there is not some sliding scale which means that the greater the public interest in the matter, the greater the margin for error in what is published.

Knowledge of falsity

880. On 18 and 19 March 2024, the respondent was also sued in this Court in defamation by Kellie-Jay Keen and Angela Jones, respectively, in relation to the respondent’s publication of the Media Release, 3AW Interview, Expulsion Motion and Dossier and another matter. Those proceedings resolved on terms unknown to the applicant. On 17 May 2024, the respondent made a public statement titled “*Statement from the Leader of the Opposition*” (**Statement**) on his website that is still available for publication at the date of these submissions.

881. The Statement included the following admissions:

- (a) *Kellie-Jay Keen and Angela Jones are passionate women's rights activists with long histories of advocacy in Australia and internationally. I agree with them that genuine community concerns regarding women's safety and access to single-sex spaces, services and sport warrant meaningful public discussion.*
- (b) *I have never believed or intended to assert that Kellie-Jay Keen and Angela Jones are Neo-Nazis. It is also now clear from public statements made by Ms Keen and Ms Jones that they share my belief that Nazism is odious and contemptible.*

(CC:690 (Ex.A221))

882. The Statement also included one sentence where the respondent apologised to Ms Keen and Ms Jones. To the extent the respondent relies upon s 20 of the Act to object to the admission of the Statement, the applicant submits that the Statement, in its entirety, is not an apology within the meaning of s 20 and that provision does not prevent the admission or use of the above admissions. Second, the applicant otherwise submits that s 20 of the Act is not picked up in this Court by s 79 *Judiciary Act 1903* because that provision is relevantly inconsistent with ss 55 and 81 of the *Evidence Act 1995* (Cth): see *Herron v HarperCollins Publishers Australia Pty Ltd* (2022) 292 FCR 336; [2022] FCAFC 68[363].
883. The Statement constitutes an admission destructive of any reasonableness defence (this equally applies to *Lange* and defeasance of honest opinion). It is also an admission that contradicts allegations founding the contextual truth defence.

Failure of information/ no belief in truth of allegations

884. The information that Mr Pesutto had by the time he published the allegations about Mrs Deeming was sparse, and he had exculpatory material that he did not disclose.
885. First, Mr Pesutto failed to disclose what had been said at the 19 March meeting, including her repeated and reasonable concessions and offers by Mrs Deeming to take remedial action.
886. He also failed to disclose Mrs Deeming's 18 March Tweet, the context of the Jones Tweet and her subsequent tweet condemning the nazis, the exculpatory material regarding Ms Keen.
887. He knew it was not true to make the allegations that were published about Ms Keen, Ms Jones and Mrs Deeming.
888. It is never in the public interest to lie – the authorities are clear on that. Mr Pesutto repeatedly lied in the publications about the information he had about Ms Keen, Ms Jones and Mrs Deeming.

Whether the Media Release should have been published

889. Mr Pintos-Lopez advised that they should be cautious, and take no action on the Sunday. Mr Pesutto ignored this advice.

890. As Mr Wells put it, Mr Pesutto ‘*should have remained calm, and taken time to properly investigate the facts and what happened, and spoken to others within the Party Room*’: CB:28, 310[12(g)]. He did not make any attempt to do that.
891. There is evidence from other MPs who say the Media Release should not have been published.
892. Ms Heath ‘*thought it was ill-advised and inappropriate that [Mr Pesutto] had publicised the Media Release*’ and thought it ‘*could have been sorted out ‘in house’ quickly and privately*’: CB:9, 168[10].
893. Mr Hodgett has been a Liberal Member of the Victorian Legislative Assembly since 2006, representing the electorates of Kilsyth (2006-2014) and Croydon (2014 to date): CB:12, 194 [1]. He was previously the Deputy Leader of the Victorian Liberal Party from December 2014 until December 2018: CB:12, 194 [2]. He currently holds the positions of Shadow Special Minister of State, and Shadow Minister for Employment and Industrial Relations: CB:12, 194[3]. He gave the following evidence about the publication of the Media Release (CB:12, 195 [8] and [9]):

The Media Release was issued on a Sunday. We were about to go into a sitting week. My view was that the Media Release and the issues in it should have been paused, given the sitting week would afford the opportunity for the issues to be discussed internally during the sitting week and kept private. In my view, John should have sounded out his colleagues and sought input and further information about what had happened at the Rally, before deciding/proposing a position.

I thought the proposed expulsion was very serious. An expulsion is a method of last resort. After reading the Media Release, I didn’t understand the grounds for the expulsion. I recall speaking with colleagues, trying to work out what Moira had done wrong. I recall Kim Wells asking ‘What is the charge? What is she guilty of?’. There was confusion about why she allegedly deserved to be expelled. I also did not know what had happened at the Rally. I was trying to work out what had really occurred, including the extent of Moira’s involvement, why the Nazis had turned up, and whether they were part of the Rally or had crashed it.

894. Mr McCracken, who was elected as a Liberal MP representing Western Victoria Region in November 2022 and has served as Opposition Whip in the Legislative Council since October 2023, thought Mr Pesutto ‘had jumped to a conclusion too soon’ (CB:15, 213 [12]-[13]):

The situation was moving very quickly and I thought more time should have been taken to consider the situation carefully. If anybody is to be accused of having links with Neo-Nazis then you'd want to make sure you had clear supporting evidence...

To protect the party and the privacy of individuals, my hope has always been for these matters to be dealt with internally first.

895. Mr Riordan gave evidence in his first affidavit that, based on his experience as the Liberal Member of the Victorian Legislative Assembly for Polwarth since 31 October 2015, he thought it 'highly unusual' that an MP would publicise this sort of statement; that ordinarily 'disciplinary issues should be resolved within the party'; and that he thought 'it was highly inappropriate that the Media Release was provided to journalists and published online': CB:20, 248[12]. He gave the following evidence in his second affidavit (CB:21, p257-258[16]):

I considered it highly unusual, and highly inappropriate, that an MP would publicise this sort of statement. In the past, disciplinary issues had been resolved internally within the Party. This is what should have occurred. I considered that Mr Pesutto took steps in the wrong order - he should have consulted his colleagues first, gathered his facts, taken the time to understand what had really happened at the Rally, then the Party Room should have made a decision whether to discipline Mrs Deeming, and only then should that decision have been relayed to the Victorian public. There is a strong tradition in the Party Room that the Leader should not make a position known without running it past the Party Room. This is especially important in relation to such a serious step as seeking to expel an MP. It was improper for Mr Pesutto to have publicly announced his decision to seek to expel Mrs Deeming without explaining it to the Party Room and seeking the input of the Party Room.

896. Ryan Smith gave the following evidence (CB:23, 269[17]):

Prior to 19 March 2023, I had been in politics since 2006. Based on my experience as a politician since then, including my experience and knowledge of the usual practice and processes within the Victorian Parliamentary Liberal Party, I considered it completely inappropriate that Mr Pesutto publicised the Media Release. It was my view that, if there are alleged disciplinary issues involving members of the team, those issues should be resolved internally. The Media Release announced that Mr Pesutto was proposing to move an expulsion motion against Moira. My view was that any expulsion motion should have been sent to Members and it should have been resolved by Members. I thought Mr Pesutto should not have pre-empted the outcome of the process by anticipating that Moira would be expelled.

I thought it was bad leadership. I thought there was no need for this to be aired in public. My view at the time was that I did not know the details, and therefore did not know whether the substance of the Media Release was accurate or not, but either way it should not have been publicised prior to it being discussed and resolved by the party room.

897. He gave the following evidence in his second affidavit (in response to paragraphs [102]-[113] of Mr Pesutto's first affidavit) (CB:24, 280 [16]):

I do not agree that any of what he says justified him issuing the Media Release. I repeat what I said at paragraph[17] of my First Affidavit - to the effect that, based on my experience as a politician since 2006, including my experience and knowledge of the usual practice and processes within the Victorian Parliamentary Liberal Party, I considered it completely inappropriate that Mr Pesutto publicised the Media Release. Based on my experience, and my observations as to how leaders have responded to similar situations in the past, it is my strong view that Mr Pesutto should have remained silent, and not made any public comments, other than perhaps (at most) that he had some concerns which he would discuss internally within the Party Room, until he and the Party Room understood what had occurred over the weekend and until a decision had been made by the Party Room as to what, if any, punishment Mrs Deeming should face as a result of what had occurred. The Victorian public would have a right to know once that decision had been made by the Party Room, and the reasons for it. Until that time, there should have been no public statement.

898. Mr Wells gave the following evidence (CB:28, 309 [12(b)]):

Based on my experience as a Liberal Party Member of Parliament for 31 years, and a member of the Liberal Party for 44 years, I consider that all decisions relating to discipline of Liberal Party MPs should have been dealt with behind closed doors, internally within the Party, in accordance with the established Party practice and tradition, as had always occurred previously. Publicising his decision to expel Mrs Deeming, by issuing the Media Release, demonstrated a lack of leadership and judgment. The Victorian public had a right to know if a decision was made by the Party Room to expel Mrs Deeming . But issuing the Media Release before a decision had been made, and before the Party Room had even discussed the proposed expulsion, was improper. It put Mr Pesutto in an impossible position in that he had to follow through with the proposed expulsion or risk his own leadership. It also put Mrs Deeming in an impossible position of having to defend the extreme damage to her reputation in public due to her Leader's statements ahead of any consideration by the Party Room of the Expulsion Motion.

899. In response to Mr Pesutto’s suggestion that his decision to seek to expel Mrs Deeming ‘would leak to the media’ (at paragraph [109] of his affidavit):

- (a) Mr Smith gave evidence that the decision ‘*may or may not have leaked, but either way it did not justify him publicising the Media Release*’: CB:24, 280[17]; and
- (b) Mr Wells gave evidence that ‘*there was no good reason based on [his] experience within the Victorian Parliamentary Liberal Party to think [Mr Pesutto’s] decision to seek to expel Mrs Deeming would be leaked to the media*’ but that at any rate ‘*this was not a legitimate reason for him to voluntarily sent it out to the press*’: CB:28, 309 [12(d)].

900. In response to Mr Pesutto’s suggestion that he ‘did not believe that staying silent was an option’ (at paragraph [111] of his affidavit):

- (a) Mr Smith gave evidence (CB:24, 280[19])

Based on my experience, not only was staying silent an option; it was the most sensible (and perhaps the only sensible) option for him to take. He should not have made a public statement until he had gone to the Party Room. To the extent that he felt he had to speak publicly, he could easily have shut this down by saying he wouldn't be talking about it until after the Party Room had made a decision.

- (b) Mr Wells gave evidence that his view, ‘*based on [his] long experience in politics and the Liberal Party, is that a strong leader would have remained silent, and allowed the Party Room to make a decision, before making any public statement, and it was inappropriate for Mr Pesutto to have done otherwise*’: CB:28, 309 [12(f)].

The inappropriateness of the 3AW Interview, the ABC Interview, and the Press Conference

901. There is evidence from other MPs about the inappropriateness of Mr Pesutto’s further publications on 20 March 2023:

- (a) Ms Heath gave evidence that on 20 March 2023 Mr Pesutto ‘*kept talking about Moira and the proposed expulsion*’: CB:9, 168 [12]. She was appalled, and thought ‘he should stop and let this be resolved within the Party Room’.
- (b) Mr Hodgett gave the following evidence about Mr Pesutto’s interviews on 20 May 2023 (CB:12, p195-196 [10]):

While it is understandable that he would field questions from the media, I thought he should have avoided speaking publicly about the details of the proposed expulsion until it had been discussed and voted on by the party.

- (c) Mr McCracken became aware of Mr Pesutto's further media statements on 20 March 2023 and '*felt uncomfortable about this*' and '*hoped that all internal processes had been exhausted*': CB:15, 213 [14].
- (d) Mr Riordan gave evidence that '*[t]here should have been no public statements until after the Party Room considered and discussed the Expulsion Motion and voted on it*': CB:21, 259 [23].
- (e) Mr Smith recalls Mr Pesutto doing various interviews with the media on 20 March 2023: CB:23, 269[18]. He thought it was 'complete madness', and that it was 'inappropriate'.
- (f) Mr Wells gave the following evidence (CB:27, p297-298[14]):

On the morning of 20 March 2023, Pesutto went to the media to explain why Deeming was being expelled. I have been a Liberal Party Member of Parliament for 31 years, and a member of the Liberal Party for 44 years. Expelling a Liberal MP was a serious internal matter and should, in accordance with the established party practice and tradition that I had experienced over my decades within the party, have been dealt with behind closed doors by the Members of the Parliamentary Liberal Party and not in the media. I considered that it was unforgivable that Pesutto had breached this important party practice and tradition. Whoever advised him to run straight to the media should be sacked. If this was his own decision, it showed a dreadful lack of political judgment.

- (g) He gave further evidence that, based on his experience in Parliament and the Liberal Party, '*it was inappropriate for Mr Pesutto to have put out his Media Release in the first place and that, having done so, it was also inappropriate for him to make further public statements about it and he should have refused to answer any questions about it*': CB:28, 314[33].

No publication of Mrs Deeming's version

902. Mr Pesutto intentionally excluded from each publication Mrs Deeming's responses.
903. The Media Release deleted Mrs Deeming's reassurance that was in the first draft. It also did not refer to Mrs Deeming's 18 March Tweet.
904. During the publications on 20 March Mr Pesutto deliberately avoided answering questions about what Mrs Deeming had said when they met and what her attitude was. This was extremely unreasonable and misleading having regard to the concessions offered by Mrs Deeming at the 19 March meeting.
905. It is difficult to how in the circumstances and in accordance with s29A(3)(g) these failures will not be destructive of the defence.

The inappropriateness of the Expulsion Motion and Dossier

906. Mr Wells gave evidence that, even if the Expulsion Motion and Dossier had been leaked to and republished in part by The Age, this was not a reason, in his political experience, for Mr Pesutto to provide the Expulsion Motion and Dossier to the media: CB:28, 310 [14(b)].
907. Several witnesses gave evidence that the leaking of the Expulsion Motion and Dossier by Mr Pesutto was inappropriate:
- (a) Ms Heath gave evidence that seeing the Expulsion Motion and Dossier reinforced her view that the issue 'should have been resolved privately' and that Mr Pesutto 'should not have so hastily publicised the Media Release and now the Expulsion Motion and Dossier': CB:9, 169 [15]. She thought '*he had created a storm in a teacup, and the question now was whether it was too late to resolve the situation*'.
 - (b) Mr Hodgett gave evidence that the leaking of the Expulsion Motion and Dossier to the press 'was really inappropriate and should not have occurred, especially prior to the vote on the Expulsion Motion', that '[t]he matter should have been dealt with 'in house'', and that '[i]t was a matter for the party room, not for the court of public opinion': CB:12, 196 [12].
 - (c) Mr Riordan gave evidence that, based on his experience within the Liberal Party, '*it was inappropriate that the Expulsion Motion and Dossier was provided by Mr*

Pesutto's office to the press': CB:21, 258 [18].

- (d) Mr Smith regarded the leaking of the Expulsion Motion and Dossier to journalists and the public 'as inappropriate': CB:23, 270 [21]-[22].

At paragraph [137] of Mr Pesutto's affidavit, he states that he told Peta Credlin on 20 March 2023 that he 'would consider' releasing the Expulsion Motion and Dossier to the public but that he 'wanted to give Mrs Deeming due process and had to consider that issue, including conventions, carefully' before doing so. Based on my knowledge and experience of Liberal Party conventions, and the usual accepted practice within the Victorian Parliamentary Liberal Party, Mr Pesutto should not have released the Expulsion Motion and Dossier to the public, especially before the 27 March Meeting to vote on it.

I have read paragraphs [138]-[142] of Mr Pesutto's affidavit in relation to the publication of the Expulsion Motion and Dossier. Based on my experience and knowledge of Liberal Party conventions and practices, none of what Mr Pesutto says at paragraphs [138]-[142] of his affidavit justified him providing the Expulsion Motion and Dossier to the media.

- (e) Mr Wells gave evidence that, based on his knowledge and experience of Liberal Party practice and procedure, if Mr Pesutto had given due process to Mrs Deeming, and considered the question of Liberal Party conventions, he would not have released the Expulsion Motion and Dossier to the public: CB:28, 310 [14(a)]. He gave evidence that releasing the Expulsion Motion and Dossier 'showed a lack of judgment', that Mr Pesutto '*added more fuel to the fire by authorising an internal document to be given to the media*', that this '*was contrary to the Liberal Party rules and all they stand for*', and that he '*should never have released the Expulsion Motion and Dossier*': CB:28, 310 [14(b)].

No belief in the public interest, no reasonable belief

908. The entire course of conduct of Mr Pesutto was not in the public interest. He should not have announced the expulsion motion at all, let alone before it was drafted and served and Mrs Deeming could respond. The pretext by which the EMD was made public was plainly false, for the reasons set out above. It was improper to release it as occurred at 8:30am on Tuesday 21 March 2023.

909. Mr Pesutto’s motive was his own personal and political interests, not the public interest. He gave evidence that he wished to protect his own credibility – that is not a matter of public interest.
910. The court should find that Mr Pesutto has failed to prove that he held the relevant state of mind having regard to the information he had.
911. Moreover, the court should find that any such belief was not reasonably held. No person would have reasonably held the belief that it was in the public interest to make the publications about Mrs Deeming in circumstances where she had issued the 18 March Tweet, attended the 18 March meeting, offered to make a statement, and had no knowledge of the alleged associations about Ms Keen.

k. DEFENCE OF COMMON LAW QUALIFIED PRIVILEGE

Lange defence

912. In *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, the High Court recognised and declared (at 571) that each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia. The Court accordingly held (at 571) that the categories of qualified privilege should be extended to protect communications made to the public on a government or political matter.
913. Mrs Deeming admits that each of the matters in question concern government and political matters that affect the people of Australia.
914. The High Court noted, at 572, that:
- Because privileged occasions are ordinarily occasions of limited publication – more often than not occasions of publication to a single person – the common law has seen honesty of purpose in the publisher as the appropriate protection for individual reputation.*
915. The Court considered (at 572) that the common law limitation on the defence of qualified privilege, whereby only occasions where defamatory matter is published to a limited number of recipients were protected (because of the requirement for reciprocity of duty and/or interest: see 570), was inappropriate in the case of the privilege in its now-extended form, “when the publication is to tens of thousands, or more, readers, listeners or viewers”.

916. In that latter situation, the Court observed, “*the damage that can be done when there are thousands of recipients of a communication is obviously so much greater than when there are only a few recipients*”. **For that reason**, said the Court at 572-3 (emphasis added):

a requirement of reasonableness as contained in s 22 of the Defamation Act, which goes beyond mere honesty, is properly to be seen as reasonably appropriate and adapted to the protection of reputation and, thus, not inconsistent with the freedom of communication which the Constitution requires.

917. The Court then confirmed, at 573, that the criterion of reasonableness of conduct, as found in s 22 of the *Defamation Act* 1974 (NSW) (**1974 Act**), and also in the Codes of Queensland and Tasmania, was:

...the appropriate criterion to apply when the occasion of the publication defamatory matter is said to be an occasion of qualified privilege solely by reason of the relevance of the matter published to the discussion of government or political matters.

918. At this point it may be useful to summarise what was, as at 1997 when *Lange* was decided, the content of s 22 of the 1974 Act and the law in relation thereto.

919. In NSW, between 1974 and 2005, s 22 contained the statutory defence of qualified privilege. The central requirement of the defence, at s 22(1)(c), was that the defendant show that his conduct in publishing was “*reasonable in the circumstances*”.

920. Until 2002, there was no statutory “checklist” within s 22, such as those now found in the present s 29A and s 30(3) of the *Defamation Act* (following the 2020 amendments which came into operation on 1 July 2021).

921. However, in 1991 in *Morgan v John Fairfax & Sons Ltd (No 2)* (1991) 23 NSWLR 374 at 387-8 the NSW Court of Appeal identified the following (non-exhaustive) propositions as to what was meant by “*reasonable in the circumstances*” in then s 22, and these propositions remained authority in 1997 when *Lange* was decided:

- (1) It must have been reasonable in the circumstances to publish each imputation found to have been in fact conveyed. The more serious the imputation conveyed, the greater the obligation upon the defendant to ensure that his conduct in relation to it was reasonable.

- (2) If the defendant intended to convey any imputation in fact conveyed, he must[ordinarily] have believed in the truth of that imputation.
- (3) If the defendant did not intend to convey any particular imputation in fact conveyed, he must establish:
 - (a) that he believed in the truth of each imputation which he did intend to convey; and
 - (b) that his conduct was nevertheless reasonable in the circumstances, in relation to each imputation that he did not intend to convey.
- (4) The defendant must also establish:
 - (a) that, before publishing the matter complained of, he exercised reasonable care to ensure that he got his conclusions right, by making proper inquiries and checking on the accuracy of his sources;
 - (b) that his conclusions (whether statements of fact or expressions of opinion) followed logically, fairly and reasonably from the information that he had obtained;
 - (c) that the manner and extent of the publication did not exceed what was reasonably required in the circumstances; and
 - (d) that each imputation intended to be conveyed was relevant to the subject about which he gave information to the recipients.

922. At 388F, Hunt A-JA made plain that these propositions were not exhaustive and that it would be both impossible and unwise to attempt to give any comprehensive definition of what conduct would be “reasonable in the circumstances” in any given case.

923. By an amendment in 2002, s 22(2A) was inserted into the 1974 Act, setting out a list of eight factors drawn from some of the Morgan principles – which the court “may” take into account (along with any other matters considered relevant) in determining the issue of reasonableness.

924. In *Lange*, as to what would be necessary to show reasonableness for the purposes of the newly-declared defence, the High Court said (at 574) (emphasis added):

“Whether the making of a publication was reasonable must depend upon all the circumstances of the case. But, as a general rule, a defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing that the imputation was true, took proper steps, so far as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue. Furthermore, the defendant's conduct will not be reasonable unless the defendant has sought a response from the person defamed and published the response made (if any) except in cases where the seeking or publication of a response was not practicable or it was unnecessary to give the plaintiff an opportunity to respond.”
(Citations omitted, emphasis added)

925. The authorities concerning the requirements under s 22 / s 30 are equally applicable to the *Lange* defence.
926. The critical issue is whether the respondent can establish the “reasonable conduct” requirement. The onus is on the respondent to establish his conduct was reasonable.
927. To defeat the defence if reasonableness is established, Mrs Deeming must show that an improper motive existed and it was the dominant reason for the publication: *Roberts v Bass* (2002) 212 CLR 1,[104]. Mrs Deeming has particularised the matters she relies upon to establish the respondent’s malice in paragraph 6 of her Reply.

No publication of Mrs Deeming’s version

928. Mr Pesutto intentionally excluded from each publication Mrs Deeming’s responses.
929. The Media Release deleted Mrs Deeming’s reassurance that was in the first draft. It also did not refer to Mrs Deeming’s 18 March Tweet.
930. During the publications on 20 March Mr Pesutto deliberately avoided answering questions about what Mrs Deeming had said when they met and what her attitude was. This was extremely unreasonable and misleading having regard to the concessions offered by Mrs Deeming at the 19 March meeting.
931. In accordance with *Lange* itself, this conduct is destructive of the defence.

Exculpatory material

932. The exculpatory materials referred to in relation to the public interest defence above, similarly contradicts the claim that Mr Pesutto was reasonable.
933. He failed to disclosed any exculpatory material and therefore was not reasonable.

L. DAMAGES

Legal Principles

934. If the Court finds that the respondent has published defamatory matter about the applicant, and that no defence has been established, the Court is to determine the amount of damages. The Court is required by s34 to ensure that there is an appropriate and rational relationship between the harm sustained and the amount of damages.
935. The three purposes of the award of general damages for defamation are consolation for hurt feelings, recompense for damage to reputation, and vindication of the applicant's reputation: *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60-61 per Mason CJ, Deane, Dawson, and Gaudron JJ).
936. \$478,500 is the damages amount currently proscribed pursuant to s35(1) to be the maximum the Court can award for non-economic loss in a most serious case (see s35(2)).
937. The accepted construction of s 35 prior to the amendment was that the cap was only a "cut off amount" and did not require the Court to engage in a scaling exercise: *Cripps v Vakras* [2014] VSC 279[599]-[609] per Kyrou J; *Bauer Media Pty Ltd v Wilson (No. 2)* (2018) 56 VR 674[209]-[213]; *Rush (No. 7)*[671] per Wigney J. The fact that s 35(2) directs the Court to award the maximum amount for general damages "only in a most serious case" clearly now requires some comparative evaluation of the relative seriousness of different cases. It is necessary, however, to consider more closely what is meant by "a most serious case".
938. The phrase is equivalent to the language used in other statutory schemes which impose caps on awards of general damages, such as s 16(2) of the *Civil Liability Act 2002* (NSW) ("the maximum amount is to be awarded only in a most extreme case") and ss 79 and 79A of the *Motor Accidents Act 1988* (NSW). In those contexts, attention has been drawn to the legislature's use of the indefinite article. In *Matthews v Dean* [1990] Aust Torts Reports 81-007 at 68,018, Grove J said in relation to the motor accidents legislation:

... No doubt Parliament recognised that comparisons of the extent of bodily injury must be odious, hence the choice of language "A most extreme case", which avoids any requirement to apply the superlative by imagining the most extreme case and put that at the top of some grisly table of catastrophes.

939. This passage was cited with approval in *Dell v Dalton* (1991) 23 NSWLR 528 at 531 per Handley JA (Kirby P and Priestley JA agreeing); followed in *Kim & Darmawan v Minister for Immigration & Ethnic Affairs* [1995] FCA 1088; 37 ALD 481 at [26] per Foster J. At 533, his Honour held that the word "most", in the context of this phrase, effectively meant "very", as in the phrases "you are most welcome" or "this is a most unfortunate occurrence". He said:

The use of the indefinite article in the subsection... provides for the creation of a class of "most extreme" cases which necessarily means that the cases may be different, and some may be worse than others.

940. This means that, in order to award the maximum amount of damages allowed by s 35(1), the Court need not characterise the case as the most serious case imaginable, but only as falling within a class of "most serious" cases. This avoids the need to make invidious comparisons between incommensurables, such as whether it is worse to be called a corrupt politician or a war criminal; or between the degree and nature of the hurt and distress experienced by different individuals.
941. **Aggravated damages** are awarded to compensate an applicant where the respondent's conduct towards the applicant was improper, unjustifiable or lacking in bona fides and does in truth aggravate the applicant's hurt to feelings they have already suffered: see: *Triggell v Pheneey* (1951) 82 CLR 497; *Hubba Bubba Childcare on Haig v Bowden* [2020] NSWCA 28; (2020) 101 NSWLR 729[150]; *Carson* at 50 per Mason CJ and Dean, Dawson and Gaudron JJ.
942. The conduct aggravating damages can be in relation to the publication, after publication and also in the conduct of the proceedings.
943. Section 35(1) does not prevent the Court from awarding aggravating damages separately and in addition to any award for non-economic damage to which s35(1) applies in an appropriate case: see s35(3).

944. It is now settled in this Court that:

- [6] The basic principle as to the admissibility of evidence in mitigation of damages is that evidence that the applicant had a bad reputation is admissible, but evidence of specific conduct is not admissible, and evidence of rumours or suspicions about the applicant is also not admissible: *Fairfax Digital Australia & New Zealand Pty Ltd v Kazal* [2018] NSWCA 77; (2018) 97 NSWLR 547 at [176]-[177] (Gleeson JA, with whom McColl and Meagher JJA agreed); *Rush v Nationwide News Pty Ltd (No 2)* [2018] FCA 550 at [35] (Wigney J); *Australian Broadcasting Corporation v Chau Chak Wing* [2019] FCAFC 125; (2019) 271 FCR 632 at [94] (Besanko, Bromwich and Wheelahan JJ).
- [7] The rationale for the principle limiting the admissibility of evidence in mitigation of damages is “to prevent trials from becoming roving inquiries into the plaintiff’s reputation, character or disposition”: *Burstein* at [35] (May LJ). This is a matter of fairness to an applicant because he or she cannot be expected to come to Court prepared to defend his or her entire life. It is also a matter of good case management, in that it prevents a respondent from introducing material which has only a tenuous connection to the real issues in dispute in the proceedings: *Kazal* at [177]; *Chau Chak Wing* at [94].
- [8] This general exclusionary rule is relevantly subject to three exceptions:
- (a) evidence properly before the Court on a defence of justification, contextual truth or honest opinion can be taken into account in mitigation of damages: *Pamplin v Express Newspapers Ltd* [1988] 1 WLR 116 at 120 (Neill LJ). Since the respondents have withdrawn all such defences, this exception is no longer relevant to these proceedings;
 - (b) evidence of prior convictions or judicial findings against the applicant can be taken into account, provided that they affect the same sector of his reputation as is affected by the defamatory matter: *Goody v Odhams Press Ltd* [1967] 1 QB 333 at 340–341 (Lord Denning MR, Danckwerts and Salmon LJJ agreeing); *Channel 7 Sydney Pty Ltd v Mahommed* [2010] NSWCA 335 at [249]–[254] (McColl JA, with whom Spiegelman CJ, McClellan CJ at CL and Bergin CJ in Eq agreed; and see Beazley JA at [3]–[10]); and
 - (c) evidence of specific conduct by the applicant is admissible in mitigation of damages if it is “directly relevant background context” to the publication of the defamatory matter: *Burstein* at [42] (May LJ, with whom Sir Christopher Slade and Aldous LJ agreed). *Schiff v Nine Network Australia Pty Ltd (No 4)*[2023] FCA 688 (**Schiff (No 4)**) at [6]-[8] per Jackman J.

945. Evidence properly admitted at trial in support of unsuccessful contextual truth and honest opinion defences **only** reduces damages if it is directly relevant to a claimant’s conduct or reputation in the particular sector to which the defamatory material relates for the purpose of mitigating damage: *Australian Broadcasting Corporation v McBride* (2001) 53 NSWLR 43; [2001] NSWCA 322 at [16]–[23]; *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335; (2010) 278 ALR 232 at [162]–[186]; *Holt v TCN Channel Nine Pty Ltd* [2014] NSWCA 90 at [29]; *Gacic v John Fairfax Publications Pty Ltd* [2015] NSWCA 99; 89 NSWLR 538 at [176]–[178]; *O’Brien v Australian Broadcasting Corporation* [2017] NSWCA 338; 97 NSWLR 1 at [225]; *Rayney v Western Australia (No 4)* [2022] WASCA 44, per Buss, Murphy JA and Corboy J at [161].
946. The fact that an applicant’s reputation may have been damaged by another publication to the same effect as the matter complained of “*is legally irrelevant and cannot be taken into account as a basis for reducing the damages awarded*”: *Schiff (No 4)* at [37] and the authorities there cited.
947. At law, bad reputation cannot be proved by tendering newspaper reports of specific incidents of alleged misconduct by the applicant: see *Hayson v The Age Company Pty Ltd* [2019] FCA 1538 (**Hayson**) per Bromwich J; *Chau v The Australian Broadcasting Corporation (No 2)* [2020] FCA 1884 (**Chau (No 2)**) at [4]–[7] per Rares J; *Peros (No 3)* at [162]–[194], esp.[162] and[183] per Applegarth J. A respondent can prove settled bad reputation by calling witnesses to speak of what that reputation actually was at the time of the publication sued on: *Carson* at 99 per McHugh J (in dissent on outcome) cited with approval in *Hayson* at [15] and *Chau (No 2)* at [6].

Extent of Publication

948. Annexed to these submissions, as ‘**Annexure B**’, is a table setting out details of the extent of publication of each of the Publications.
949. Where figures are given in Annexure B for the number of views of a particular publication, only views which can be *specifically verified* have been used, either because the number of views were provided in response to Mrs Deeming’s Subpoenas to Produce or because the number of views are visible via the relevant platform (e.g. Facebook and Twitter). In other words, the Annexure B figures are intended to represent the *absolute minimum* number of views of the relevant Publications. The Court would find that the likely total figures would

be significantly higher, including by reference to Mr Campey's evidence as to the potential reach of each of the publishers.

950. Annexure B shows the following total figures:

- (a) Media Release: 739,316⁵.
- (b) 3AW Interview: 151,205⁶.
- (c) ABC Interview: 516,589⁷.
- (d) Press Conference: 322,525⁸.
- (e) Expulsion Motion and Dossier: 115,987⁹.

Mrs Deeming's Prior Reputation

951. The evidence established that Mrs Deeming enjoyed an excellent reputation prior to the Publications on 19 and 20 March 2023.

952. She had been elected to the position of Councillor for the City of Melton in 2020, where she served from 2020 until 2020; then she won preselection for the number one spot on the Liberal Party ticket for the Western Metropolitan Region in 2022 with support across the various factions of the Liberal Party; then was elected as the Liberal Party Member of the Victorian Parliament for the Western Metropolitan Region on 26 November 2022, with the second highest 'below the line' preference vote of all newly elected MPs behind only Ms Heath; and then was asked by Mr Pesutto, as Leader of the Liberal Party, to run for Liberal Party Whip in the Legislative Council and was unanimously voted to that position in December 2022. None of these events could or would have occurred if Mrs Deeming did not have an outstanding reputation at the time.

⁵ The total of the figures at paragraphs 1(a), 1(b), 1(c), 2 and 3.

⁶ The total of 151,000 (i.e. the average of the two figures at paragraph 5) plus 205 (the figure in paragraph 6).

⁷ The total of the figures at paragraphs 8, 9, 10, 12, 13 and 14.

⁸ The total of the figures at paragraphs 16, 17, 18 and 19.

⁹ The figure at paragraph 20.

Reputations amongst family and friends and generally

953. Amongst Mrs Deeming’s family and friends, the unchallenged evidence as to her reputation prior to the Publications was as follows.
954. Andrew Deeming gave unchallenged evidence that, in general, those he knew who also knew or knew of Mrs Deeming – including their family, friends, and work colleagues – regarded her as a friendly, warm and positive person: CB:4, 118[38]. She was regarded as someone who truly cared about others. She was respected as holding strong principles. Mr Deeming observed regularly over time that, even if people disagreed with some of Mrs Deeming’s views, they nonetheless respected how passionate she was about those views and that she genuinely held them in good faith, and never looked down on others because of their opinions. Over the years to 19 March 2023, he was amazed at how many people ended up as fierce supporters of her because she was friendly and respectful.
955. Anna Hughes gave unchallenged evidence that, within her social circles prior to 19 March 2023, Mrs Deeming ‘was well respected and had a reputation for being honest, driven, devoted to her Christian faith and dedicated to helping others’: CB:14, 206[7]. People ‘admired her honesty and regarded her as a truthful person’: CB:14, 206[8].
956. Renee Gorman gave unchallenged evidence that, within the circles in which she mixed, Mrs Deeming had a reputation for being ‘knowledgeable, kind and generous’ and ‘as someone who was very giving of her time; wanted to help others; and stood by her principles’: CB:8, 159[6].

Reputation amongst faith communities

957. Witnesses gave unchallenged evidence that Mrs Deeming had a particularly good reputation amongst faith communities:
958. Andrew Deeming gave unchallenged evidence that, prior to 19 March 2023, Mrs Deeming’s reputation amongst the church communities of Brimbank Presbyterian Church and Melton Presbyterian Church was as someone who was friendly and warm, fun and inclusive and willing to serve; that her work as the Researcher for the Church and Nation Committee of the Presbyterian Church (CNCPC) was highly regarded; and that he would often hear from Ministers that they loved her work and found it helpful in understanding the issues they

were facing in the world of politics and that they would tell him they would often share her work with their congregations: CB:4, 119[39].

959. Christopher Duke – a Senior Minister of the Presbyterian Church and a member of the CNCPC – gave unchallenged evidence that, within the Presbyterian community within which he mixed, Mrs Deeming had a reputation as ‘someone who had a good heart and a deep desire to help others and protect them from harm, especially children’: CB:6, 140[5]. Those within the Church would regularly ask Mr Duke about her ‘and express a deep interest in her wellbeing and her work, both before and after her election to Parliament’. Throughout her campaign for election to the Legislative Council, and after she was elected, there ‘was broad support within the members of the Presbyterian Church community’ for her and she ‘was seen as a cornerstone of the Presbyterian community and...as a person who embodied its values’. She was also well respected within the CNCPC: CB:6, 140[6]-[7].
960. Mr Duke also gave unchallenged evidence that Mrs Deeming ‘was respected across other faith communities, particularly within the Islamic and Hindu communities in Western Melbourne’: CB:6, 141[8]. He gave evidence she was well received at gatherings in Western Melbourne among these communities. During her campaign for election to the Legislative Council, Mrs Deeming was invited to speak at a mosque in Western Melbourne – in Mr Duke’s experience, ‘it is an honour for a women (who is not Muslim herself) to be received and speak at a mosque’. She was ‘regularly invited to and attended religious gatherings across Western Melbourne’.
961. Anna Hughes gave unchallenged evidence that, within the faith community, Mrs Deeming ‘was described as being a very ‘Godly person’, meaning she is devoted to her faith and displays the teachings of the Bible in her everyday life’: CB:14, 206[8].
962. Ryan Smith gave unchallenged evidence that Mrs Deeming was liked and respected by people within various Islamic communities throughout Victoria: CB:23, 268[11]. He recalls, for example, consistently with Mr Duke, that she was invited to speak in the men’s area of one mosque, which ‘was a big deal’ because in his experience most mosques separate men and women and would not allow a woman to speak in person to the men in the men’s area, such that this indicated to him ‘the level of respect that this particular community had for Moira’.

963. Naomi Walton met Mrs Deeming through the Brimbank Presbyterian Church in Taylors Lakes. She gave unchallenged evidence that Mrs Deeming was loved and highly respected within the Brimbank Church community prior to 19 March 2023: CB:26, 291[5]-[8]. She was known as a person who sincerely embraced the well-accepted creed within the Presbyterian Church that no one is perfect but God and as someone who ‘refrained from judging others for their imperfections’ and ‘was very forgiving and always showed people grace’: CB:26, 291[5]. ‘She was someone that everybody at church wanted to know and be around’: CB:26, 291[7]. People within that community saw her as ‘determined and driven’, they ‘looked up to her and often asked her for advice on difficult life decisions’, and they ‘always valued[her] opinion’: CB:26, 291[8].

Reputation within the Liberal Party

964. There was also an overwhelming weight of unchallenged evidence to the effect that Mrs Deeming had an excellent reputation within the Liberal Party prior to 19 March 2023.

965. Mr Deeming gave unchallenged evidence that, amongst the Liberal Party members and supporters that he mixed with before 19 March 2023, Mrs Deeming had a reputation as a person who was competent and enthusiastic about serving the Liberal Party and the community generally: CB:4, 119[41]. He observed that Mrs Deeming was often asked to help out beyond the election cycle. She was asked to be on the Leadership Committee of the Future Leaders program and did that for a number of years. As Chair of the Sydenham State Electoral Commission (**SEC**), she was often asked by neighbouring SECs to join together for fundraisers. She was sought out by various Liberal groups to speak on Safe Schools as she was known to be across the issue and she was able to explain it clearly to a wide range of people. He observed that, when he was campaigning with Mrs Deeming in the lead up to the election and during the election, her work ethic and her ability to connect with voters was greatly admitted by party members and supporters and constituents.

966. Ms Gorman gave unchallenged evidence that within the Young Liberals Mrs Deeming ‘had a reputation for being an exciting Liberal Party prospect who was passionate and acted with integrity’: CB:8, 159[8]. She said:

I recall many young women within the Young Liberals expressed to me their excitement that Moira was preselected and ultimately elected to the Upper House in Victoria. Many people within the Young Liberals were excited by Moira’s entry into politics and they were optimistic

that she would have a meaningful impact in Victorian politics by voicing their concerns in Parliament. Many within the Young Liberals had recently graduated from high school and were disappointed and disillusioned by the education system in Victoria; they were hopeful that Moira would raise awareness and address this issue in Parliament by proposing sound legislative and regulatory amendments to improve Victorian schooling. My friends in the Young Liberals who knew I had a personal and professional relationship with Moira expressed interest in getting into contact with her so that she could attend and speak at Young Liberal events on university campuses in Victoria.

967. Ms Gorman also gave unchallenged evidence that, within the broader Liberal Party, Mrs Deeming ‘had a reputation for being an exciting young candidate who had great potential to become a major voice within the Liberal Party’: CB:8, 160[11].
968. Ms Heath gave unchallenged evidence that, amongst the people she knew within the Liberal Party, Mrs Deeming had a reputation prior to 19 March 2023 as being ‘a person who was courageous and dedicated in speaking out on issues which mattered to her and those within her electorate’ and that ‘people trusted and respected her’: CB:9, 167[4].
969. Ms Hughes gave unchallenged evidence that she met some of Mrs Deeming’s colleagues in the Liberal Party at events and fundraisers and that, from these interactions, she observed that Mrs Deeming had a reputation prior to the Publications ‘as someone who was passionate and strong and a person who takes a stand for what she believes in’, that she was respected for these qualities, and that she was regarded as being ‘someone who had a bright career within the Liberal Party’: CB:14, 206[6].
970. Mr Mundine gave unchallenged evidence that Mrs Deeming was highly regarded within the Liberal Party prior to the Publications and was known within those circles as ‘being very driven, intelligent and well-spoken’. People within those circles would tell Mr Mundine that ‘they found her approachable and that she was kind and lovely to talk to’, that she was known ‘for having a very common-sense approach to her work’, and that those with whom she had a professional relationship ‘would say she was good to work with and that she was a model leader’: CB:17, 225[15]. Amongst the members of the broader Liberal Party who he knew and who knew Mrs Deeming, ‘she was well respected and was perceived to be a potential leader within the Party and someone who could be a major contributor to the Liberal/National Coalition’s campaign to win government’: CB:17, 225[17]. Liberal Party members would tell him ‘that they regarded Moira as an incredible person who was able to

unite and rally people from across religious and ethnic groups, particularly in her seat in Western Melbourne’: CB:17, 225[17].

971. Mr Mundine also gave unchallenged evidence that Mrs Deeming ‘was well respected and loved by the wider community in Western Melbourne’, including by Muslim communities: CB:17, 225[18]. During her campaign for election, Mr Mundine met with many of Mrs Deeming’s campaigners and constituents, ‘all of whom spoke highly of her’: CB:17, 225[19]. ‘They told[him] they believed she was a woman who cared for and was going to fight for the people in Western Melbourne’. He saw that Mrs Deeming ‘had a strong relationship with the multicultural communities in Western Melbourne, who perceived her as a hard worker for the community’ and who ‘believed that she wanted to speak for them in Parliament’.
972. Mr Riordan gave evidence that, prior to 19 March 2023, he saw Mrs Deeming as being a valuable contributor to the Liberal Party, that the party was seen as having a weakness of being short on younger female MPs with families, and that Mrs Deeming had popular support within the Western Metropolitan Region: CB:20, 247[6].
973. Mr Ruddick is a Member of the New South Wales Legislative Council and a Member of the Libertarian Party (formerly the Liberal Democratic Party): CB:22, 263[1]. Prior to joining the Liberal Democratic Party in 2001, he had been a member of the Liberal Party for over twenty-five years: CB:22, 263[2]. Mr Ruddick gave unchallenged evidence that, prior to 19 March 2023, people he knew who also knew or knew of Mrs Deeming – namely, people in his political circles and members of the public - regarded her as having a reputation for being courageous in that she said things which other people were too afraid to say but believed privately, particularly on gender issues: CB:22, 263[8]. Those he spoke with thought she was an exceptionally courageous and likeable person: CB:22, 263[8]. He gives evidence that ‘[i]t was clear she was not a stock-standard new politician’: CB:22, 263[8].
974. Mr Smith had formed a positive view of Mrs Deeming prior to 19 March 2023; he thought she was a valuable addition to the Liberal Party team; he thought she had a reputation as being popular amongst, and having the support of, her constituents; and he ‘had every hope she would be a good Member of Parliament and would be regarded as such’: CB:23, 268[12].

975. Ms Thompson also gave unchallenged evidence of Mrs Deeming’s reputation within the broader Liberal Party prior to 19 March 2023 (CB:25, 286[4]):

Within the broader Liberal Party, amongst the people I mixed before 19 March 2023, Moira had a reputation for being an exciting young candidate who had great potential to become a major voice within the Liberal Party. Both Moira and I have mutual relationships with current and former Liberal Party Senators, including former Senator Amanda Stoker and Senator Jacinta Price. Both Ms Stoker and Senator Price always spoke very highly of Moira and held her in high esteem even before she was elected to the Victorian Legislative Council. Before 19 March 2023, they would tell me that Moira had great potential to be a successful member in the Upper House, and that she would be a major contributor to any successes of the Liberal Party in Victoria. They would describe her as a rising star within the Liberal Party and that she was doing “great things” as an elected official.

Reputation across the political spectrum

976. There is unchallenged evidence that Mrs Deeming’s prior good reputation was not confined to persons within the Liberal Party but extended across the political spectrum. For example:
977. Ms Clark gave unchallenged evidence of Mrs Deeming’s good reputation not only within the Liberal Party but also people of other political persuasion, including many on the left of politics. Ms Clark has been a member of the Liberal Party since 2020. She lives within the Victorian state electoral district of Sandringham and is a member of the Liberal Party’s Sandringham Branch. Since she became a member of the Liberal Party in 2020, she has interacted regularly with many members of the Liberal Party within the Sandringham Branch and also the Black Rock Branch: CB:3, 105[1]. In addition, she knows and interacts with many people of other political persuasions, including many on the left of politics – these include people in her or her husband’s friendship groups, people she interacts with socially, people she knows from work, parents of her children, people from her church, and other people within the community with whom she interacts and mixes (including people with whom she interacts online): CB:3, 105[2]. Ms Clark gave unchallenged evidence that, within those circles, Mrs Deeming had a reputation ‘as being courageous, eloquent and passionate’, ‘as being a conviction politician’, as being ‘a person willing to speak out about issues which others were too scared to speak about’, ‘as being a new politician who had real world experience, as a mum and as a teacher’, and ‘as giving a voice to those without a voice, or too scared to use it’: CB:3, 106[6].

978. Ms Gorman gave unchallenged evidence that (CB:8, 159[7]):

Before 19 March 2023, in the circles that I mixed, I noted that, even amongst people who belonged to different political backgrounds who were in deep disagreement on numerous issues, all held her in high esteem. They, like myself, were drawn to her skills as a public speaker; they saw her as a talented and captivating speaker. They would remark to me immediately or shortly after seeing her speak at conferences and political fundraisers or events that she was articulate, charismatic and clearly supported her arguments with extensive research.

Reputation for standing up for and protecting women and children

979. Mrs Deeming had a particular reputation for seeking to stand up for and protect women and children.

980. Ms Dennis gave unchallenged evidence that she knew Mrs Deeming was a new MP ‘who spoke about and was passionate about women’s rights’: CB:5, 135[5].

981. Ms Hughes gave unchallenged evidence that Mrs Deeming was respected as having a reputation for committing ‘to furthering the safety and protection of children and women’: CB:14, 206[7].

982. Ms Wong – the Chief Executive Officer of Women’s Forum Australia (WFA) – gave evidence that she and others at WFA perceived Mrs Deeming to be ‘a woman who advocated positively on women’s rights issues’: CB:29, 318[7]. She gave evidence that, prior to 19 March 2023, Mrs Deeming’s reputation in her professional circles (including women who identify themselves as feminists and are from the left wing of politics), and among WFA supporters, was that she was courageous and a person of great integrity who stood up for what she thought was right: CB:29, 318[13]. She gave evidence that Mrs Deeming was respected by people from opposite sides of the political spectrum, that Mrs Deeming was able to work with people who had different political beliefs from herself and could put politics to the side in order to engage in debates about these issues, and that she was greatly respected for this attribute.

Alleged prior ‘bad’ reputation

983. Mr Pesutto alleges in his Defence that Mrs Deeming had a ‘general bad reputation in the relevant sector’: CA:3, 116[68.5]. There were no particulars pleaded in support of that

allegation (and none have ever been provided, despite a request by Mrs Deeming’s solicitors on 30 January 2024). Mr Pesutto’s solicitors have stated that the ‘relevant sector’ for the purpose of paragraph[68.5] of the Defence is ‘her reputation for giving succour to hateful and/or extreme social or political views’.¹⁰

984. The only direct evidence in support of paragraph [68.5] of the Defence seems to have been paragraphs[44] and[45] of Mr Pesutto’s first affidavit (CB:30, 335[45]), in which he said:

44. *However, after several months as Leader of the Party, it was apparent to me that Mrs Deeming's views on social and political issues (most notably, abortion and transgender related issues) were notorious, controversial and regarded as hateful by some, and she had a mixed reputation in the Parliament.*

45. *In my opinion, based on my experience as Leader of the Party (which caused me to mix with and meet a variety of people, including politicians and members of the broader community), while it was clear some people loved Mrs Deeming and shared her views on those issues (in my view, a minority), on the whole, in the circles in which I moved including the more mainstream parts of the community I was trying to attract to support the Party (in my view, the vast majority), Mrs Deeming had a bad reputation, particularly for giving succour to hateful and/or extreme social or political views. I know of no other person with such a bad reputation who has been allowed into the Party.*

985. Under cross-examination, Mr Pesutto could not point to any example of Mrs Deeming having given succour to hateful and/or extreme social or political views (T666.23-30), nor could he give evidence that anyone ever told him they thought she had a reputation for giving succour to hateful and/or extreme social or political (T666.32-42). The most he could say was that ‘controversy’ surrounded Mrs Deeming and that he thought (without being able to explain why) that some people thought she gave succour to hateful and/or extreme social or political views. The Court would not accept this evidence. The applicant submits that it was lacking in good faith, improper and unjustifiable for Mr Pesutto to have pleaded the allegation at paragraph[68.5] of the Defence and given the evidence he gave at paragraph[45] of his first affidavit. The evidence should be rejected.

986. Mr Pesutto obviously did not consider that Mrs Deeming had a bad reputation at the relevant times. He told her she would be ‘great in the Parliament’ in early December 2022 (CC:113),

¹⁰ Letter from Mr Pesutto’s solicitors to Mrs Deeming’s solicitors dated 31 January 2024.

he supported her to become Upper House Whip in December 2022; he ‘spoke very highly’ of her in a conversation with Mr Mundine in January 2023 ‘and said that it was great to have her in Parliament’ and that he was impressed with the number of volunteers and support Moira had received throughout her campaign’ (CB:17, 225[20]); he praised her at the Western Metropolitan Meet & Greet’ event on 4 February 2023 (see paragraph 57 above) and had no concerns about being photographed with her at that time (T652.46-47).

987. At any rate, Mr Pesutto’s evidence is overwhelmingly refuted by the unchallenged evidence of the following witnesses on behalf of Mrs Deeming:

- (a) Ms Clark – who gave unchallenged evidence to the effect that: Mrs Deeming’s views prior to 18 March 2023 were not regarded as ‘hateful’; that she does not recall anyone she knew, within the Liberal Party or outside of it, ever having described Mrs Deeming’s views as ‘hateful’ or similar; that Mrs Deeming was known prior to 18 March 2023 ‘as being someone with strong views about sex-based rights’ but those views were not ‘notorious’ if Mr Pesutto means that ‘in a negative or pejorative sense’ and indeed that Mrs Deeming’s views on sex-based rights ‘were widely supported’; that Mrs Deeming did not have a bad reputation for giving succour to hateful and/or extreme social or political views; that she had never heard anyone describe Mrs Deeming’s views as ‘hateful’ or ‘extreme’ or similar’; and that her impression was that Mrs Deeming’s views on sex-based rights were ‘mainstream and widely supported’: CB:3, p107-108[7]-[8].
- (b) Ms Dennis – who gave unchallenged evidence that she had ‘never heard any suggestion th[Mrs Deeming] had a negative reputation, including a reputation for having hateful or fringe or extreme views’: CB:5, 134[5].
- (c) Mr Hodgett – who gave unchallenged evidence that, prior to 19 March 2023, in the circles in which he mixed¹¹, Mrs Deeming did not have a bad reputation; that people had not raised any issues about Mrs Deeming with him; that it was known that she was passionate and was a person who had principles and strong views, especially in relation to family values, gender issues, and sex-based rights; that in politics different people have different views and that there are those within the Victorian Parliamentary Liberal Party who have staunch views on particular topics, which are

¹¹ As to which, see CB:13, p201-202[3]-[5].

not always agreed by others, but that he had never heard it suggested that Mrs Deeming held hateful views; and that his observation and perception at the time was that her views on sex-based rights had a lot of popular support: CB:13, p202-203[9].

- (d) Ms Heath – who gave unchallenged evidence that, prior to 19 March 2023, in the circles in which she mixed¹², Mrs Deeming did not have a bad reputation and did not have a reputation for giving succour to hateful and/or extreme social or political views and that she had never heard this spoken about or suggested.
- (e) Mr McCracken – who gave unchallenged evidence that, prior to 19 March 2023, in the circles in which he mixed¹³, Mrs Deeming was regarded as brave and courageous for standing up for her beliefs to protect women; that some of her views may have been ‘controversial’ to Mr Pesutto but that they were not controversial to him and that he does not recall anyone he knew saying that her views were controversial or hateful or notorious (and that, if this had occurred, he would expect to recall it); and that she did not have a reputation as someone with hateful or fringe or extreme views: CB:16, 219[12]. He does not recall anyone in Parliament raising any such concerns about her or her views which would have indicated to him that she had a negative reputation within Parliament (and, if this had occurred, he would expect to recall it): CB:16, 219[13]. He was under the impression that she was broadly supported by the Leadership Team and Party Room given she had been elected unanimously to the role of Opposition Whip in the Legislative Council and he had not heard any concerns expressed about her. Within the circles in which he mixed she did not have a bad reputation or a reputation for having or ‘giving succour to hateful and/or extreme social or political views’: CB:16, 220[14]. His observation and perception, having interacted and mixed with members of the public in Western Victoria Region, is that Mrs Deeming did not have a negative reputation prior to 19 March 2023 within the Western Victoria Region and that they were largely supportive of her.
- (f) Mr Riordan disagreed with Mr Pesutto that Mrs Deeming’s views were hateful or notorious: CB:21, 257[13]. He gave unchallenged evidence that her stance on some issues were well known, such as on family values and women’s rights, and that there

¹² As to which, see CB:10, p183-184[4]-[6].

¹³ As to which, see CB:13, p217-218[3]-[5].

were some people who supported them and some who did not. But his observation and view at the time was that ‘Mrs Deeming had navigated her first few months as an MP without causing any controversy or expressing any views that would be regarded as ‘extreme’ or ‘fringe’ within the circles in which he mixed¹⁴. He gave evidence that Mrs Deeming did not have a negative reputation, including a negative reputation ‘for giving succour to hateful and/or extreme social or political views’ (as alleged by Mr Pesutto), and that he had never heard any indication that she had such a reputation.

- (g) Mr Smith gave unchallenged evidence that, within the circles in which he moved prior to 19 March 2023¹⁵, Mrs Deeming was well known for standing up for women’s rights. He gave evidence that not everyone within the Victorian Parliamentary Liberal Party, or the Parliament, shared or supported those views but that, in his circles, ‘her views were widely supported and she had a good reputation’: CB:24, 279[13]. He does not agree that her views were ‘notorious’. He thought it was possible, based on his experience, that some may have regarded some of her views ‘as hateful’, ‘but anything can be hateful to some people (and he can think of left wing views which would be regarded as ‘hateful’ by many on the right wing). In response to Mr Pesutto’s suggestion that Mrs Deeming ‘had a mixed reputation in the Parliament’, in his experience, ‘all participants, at least to some extent, had a mixed reputation in Parliament, depending on who you spoke to. Mrs Deeming may not have been universally liked and respected by each and every member of Parliament, but neither was he, and neither was Mr Pesutto. The current Labor Premier, and former Labor and Liberal Premiers, all had ‘mixed’ reputations in the Parliament.
- (h) Mr Wells knew little about Mrs Deeming prior to 19 March 2023 and gave unchallenged evidence that if she, as a member of the Liberal Party and later the Victorian Parliamentary Liberal Party, had a bad reputation and views which were ‘notorious’, as alleged by Mr Pesutto, he would expect to have known a lot about her and her views. Prior to 19 March 2023, he did not know of her views and as far as he was concerned they were not ‘notorious’. In fact, he was aware that Mrs Deeming had very strong support in the eastern suburbs of Victoria as well as in the Western Metropolitan Region that she represented. Mr Wells gave evidence that, prior to 19

¹⁴ As to which, see CB:21, 255[4]-[6].

¹⁵ As to which, see CB:24, 277[4]-[6].

March 2023, amongst the circles in which he moved¹⁶, Mrs Deeming did not have a negative reputation including a reputation for giving succour to hateful and/or extreme social or political views as alleged by Mr Pesutto. He gave evidence that he interacts in Parliament not only with his colleagues within the Victorian Parliamentary Liberal Party but also with many crossbenchers (mainly crossbenchers who are more right leaning). He had never heard anyone raise any such concerns about Mrs Deeming prior to 19 March 2023. He also gave evidence that Mrs Deeming was elected to the prestigious position of Liberal Party Whip in the Legislative Council in December 2022 which he took to indicate she had strong support from the Leadership Team and from the majority of MPs.

988. Mr Pesutto and some of his witnesses also gave some unpersuasive evidence about:

- (a) Mrs Deeming unsuccessfully seeking endorsement as the Liberal candidate for the federal electoral division of Gorton in 2022, including allegations that either the Liberal Party Federal Secretariat or the Prime Minister's Office intervened in March 2022 to prevent Mrs Deeming's preselection for Gorton;
- (b) 'controversy' said to have surrounded Mrs Deeming's endorsement in July 2022 as the Liberal Party candidate for the Western Metropolitan Region;
- (c) 'concerns' and 'controversy' said to be emerging in December 2022 regarding Mrs Deeming's 'views in relation to transgender and sex-based rights'; and
- (d) media reporting about Mrs Deeming's Maiden Speech, and about the 'FOI documents', in February 2023.

989. These issues are dealt with in in **Annexure C** to these submissions.

990. Other than the affidavit evidence, Ms Staley gave evidence of alleged bad reputation in 2022 before Mrs Deeming was elected, but clarified in oral evidence that it related to her apparent views on COVID vaccinations: T1194.7-10. Indeed it became clear in oral evidence that not only Ms Staley but also Dr Bach and Ms Crozier agreed with many of Mrs Deeming's so-called "hateful views".

¹⁶ As to which, see CB:28, 306[3].

991. Accordingly, the only evidence of any allegedly bad reputation has either been discredited (as above) or is inadmissible. There is no dispute that bad reputation cannot be proved by tendering prior media reports or by adducing evidence of an alleged specific act of misconduct - it must be proved through witnesses.

Damage to Mrs Deeming's Reputation

992. The Publications undoubtedly caused very substantial damage to Mrs Deeming's reputation.

993. Mrs Deeming gave evidence that, in the evening of 19 March 2023 following the publication of the Media Release, her husband had to defend her from people who were asking if it was true that she 'had gone to a Nazi rally': CB:1, 18[91].

994. Immediately after the Media Release, therefore, she had been linked to the Nazis who had gate-crashed but were unrelated to the LWS Rally.

995. Consistently with Mrs Deeming's evidence, Mr Deeming gave unchallenged evidence that, following the Media Release, he began receiving phone calls about the situation from people they knew: CB:4, 122[55]. He had to reassure them that of course Moira did not 'attend a rally with Nazis'. He recalls one call from a close friend and a previously very strong supporter of Mrs Deeming who had heard the stories and needed him to reassure them. He was asked 'Why was she wearing the same colours as the Nazis?'. It seemed to him that the persons he spoke to believed Mr Pesutto and even after his own reassurances they did not seem fully convinced. This is an indication that even people close to Mr and Mrs Deeming thought, or suspected, that the claims made in the Publications were true.

996. Other witnesses gave similar evidence:

(a) Ms Hughes gave evidence of a conversation with a colleague who asked her whether it was true that Mrs Deeming had associations with Nazis or white supremacists: CB:14, 207[12].

(b) Ms Gorman gave evidence that her father asked her about the allegations Mr Pesutto was making about Mrs Deeming and was sceptical about her explanation that Mrs Deeming is not a Nazi or Nazi sympathiser: CB:8, 162[18].

(c) Ms Walton gave evidence that whilst attending Point Cook Presbyterian Church, there have been instances where she has been asked about the allegations Mr Pesutto made

against Mrs Deeming, including questions to the effect of ‘did Moira know that Nazi’s would turn up to the rally’: CB:26, 292[12].

997. Mrs Deeming also gave evidence that, following the Publications, she found herself ‘the target of a wave of abuse and hatred’: CB:1, 32[165] – for example:
- (a) She received abusive and hateful emails from members of the public: CB:1, 32[165(a)]. She had received very few such emails prior to the Publications. Suddenly, for the first time, she was being inundated with these abusive and hateful emails from people who believed Mr Pesutto's narrative that she was knowingly associated with Nazism. These emails are specifically referred to below.
 - (b) She received abusive and hateful private messages on Facebook and Twitter: CB:1, 32[165(b)]. Mrs Deeming gave evidence that: ‘Each time I receive a message like this, it upsets and distresses me because I fear it will never end and the truth will never hold any weight because Mr Pesutto and his supporters refuse to undo what they have done to me’: CB:1, 54[266]. These messages are specifically referred to below.
 - (c) Her office received abusive calls and voicemails: CB:1, 32[165(c)]. Her staffers told her people were calling the office pretending to be Adolf Hitler, or wanting to speak with ‘the Nazi’. She gave evidence that it ‘was all a blur of hate’ but that she was told ‘there were repeated references to Hitler or to Nazis’. Her staff got emotional about this and it was traumatic for them and for her. She ‘felt helpless, and under attack wherever[*she*] was, whatever[*she*] was doing’. These voicemails are referred to below.
 - (d) On approximately 26 March 2023, she read a letter she had received saying she was a disgrace to the Liberal Party and Australia and that Adolf Hitler would love her: CB:1, 33[165(d)]. The letter is at CC:465. Mrs Deeming gave evidence that she ‘felt in despair and humiliated’ and that she ‘felt again a sense that the situation was out of control and[*she*] could never unwind the damage done to[*her*]: CB:1, 33[165(d)].
998. She gave evidence of having been shunned by people as a result of the Publications. She gave evidence that following the Publications she felt ‘isolated’ and as though she were ‘radioactive’: CB1, 33[166]. She gave evidence that colleagues stopped talking to her and sometimes would cross to the other side of the hallway. (CB:1, 33[166]-[167]):

This was not just Liberal members. People I previously would say hello to or interact with in Parliament, now would avoid making eye contact with me and look the other way; they would ignore me and cross to the other side of the hall. It seemed everyone had turned against me.

999. Other specific examples of her being vilified or shunned by people include:

- (a) On or around 17 May 2023, someone defaced her photo outside her office: CB:1, 5[252]; CC:608. Mrs Deeming found this humiliating, it made her feel extremely unsafe, and she worried about her safety and the safety of her staff.
- (b) In October 2023, she attended a meeting in Scotland with two Scottish MPs: CB:1, 52[253]. They took photographs together but the MPs said they did not want the photographs published until her name and reputation were cleared of association with Nazism. This was a humiliating and upsetting experience for Mrs Deeming.
- (c) In November 2023, she was scheduled to speak at a community forum with a Local Government Councillor, Council Watch and local residents at a local Church Hall in Werribee, but the Church was inundated with threats and complaints about her supposed Nazism and so the venue pulled out and the event had to be moved outdoors to a park: CB:1, 52[254].

1000. Consistently with Mrs Deeming's evidence on this topic about being shunned:

- (a) Mr Deeming gave unchallenged evidence that a number of people cut off contact from Mrs Deeming since the Publications, including former friends and members of the Liberal Party, and that people have unfollowed her on Facebook: CB:4, 128[88]; and
- (b) Ms Wong gave unchallenged evidence, while travelling with Mrs Deeming to the United Kingdom in October 2023, Mrs Deeming asked two MPs in Scotland whether she could take a photo with them and they both looked concerned and reluctantly agreed to let Mrs Deeming take the photo but said they did not want her to publicly share the photograph until her name had been cleared in relation to the Nazi accusations: CB:29, 320[15]-[16]. That afternoon, Ms Wong observed Mrs Deeming crying on the journey back to London; she said it had been 'an incredibly hurtful and humiliating encounter and it was just one of many instances where this[had] happened to her since the Publications'.

1001. Mrs Deeming also gave evidence that she observed that articles about her since the Publications include tags such as ‘Extremism’: CB:1, 55[272]. She does not ever recall being labelled and tagged as an ‘extremist’, or linked to ‘extremism’, prior to the Publications. She found this ‘incredibly upsetting’. For example, she observed that an article by The Age entitled ‘*Moira Deeming suffers blow in fight against expulsion from Liberals’ party*’, published on 21 March 2023, included an ‘Extremism’ tag at the top of the page, as shown in the screen-shot at CC:434.



1002. She continues to be linked with Nazism. For example, she gave evidence that, on 22 March 2024 when she Googled her name, one of the ‘Top stories’ in response to that search was an article about notorious neo-Nazi Thomas Sewell: CB:1, 56[273]; CC:687.

Damaged reputation within faith communities

1003. In cross-examination, although Mr Duke accepted that Mrs Deeming may still have a positive reputation in many respects within the Presbyterian community (see T369.13-41), he could not say what her reputation now is amongst other faith communities including Islamic and Hindu communities (T369.43 – T370.8).

1004. Ms Walton gave the following evidence (CB:26, p292-293[13]):

Within the broader Presbyterian community, being called a Nazi is a terrible slur. Nazism is the opposite of what it means to be a Christian. Presbyterians hold the belief that humans are created by God and are equal; no person is superior to another, regardless of gender or race. Within the Presbyterian community, we believe that people should love their neighbour (not hate their neighbour) and that we ought to care for other people as we would like to be cared

for ourselves. Nazism is wholly inconsistent with these beliefs. A person who genuinely holds Nazi beliefs would not be accepted as a member of the Presbyterian community.

1005. The Court would readily infer that any imputations relating to Nazism would utterly destroy Mrs Deeming's reputation within the community generally, including some parts of the Presbyterian community less connected to Mrs Deeming and other religious communities within which Mrs Deeming had previously enjoyed a good reputation.

Reputation within the Liberal Party and Parliament

1006. Following the Publications, Mrs Deeming's reputation was tarnished within the Liberal Party and she was shunned within Parliament.

1007. Ms Gorman gave evidence that those she knew within the Young Liberals no longer wanted to express any public support for Mrs Deeming after the Publications and Mrs Deeming's office stopped getting invitations to appear at campus events: CB:8, 162[19].

1008. Ms Heath gave evidence that people have treated Mrs Deeming poorly since the Publications, including that some people within the Victorian Parliamentary Liberal Party shun her and roll their eyes when she is mentioned: CB:9, 181[69]. She gave evidence that 'it will be difficult for Moira to repair her reputation because of the serious nature of the claims made against her and the measure of the publicity it received'; that '[c]laiming that a person is a Nazi or Nazi sympathiser are amongst the worst claims that can be made about a person'; that in her view 'everybody in politics, and in society, would agree with that' and that she thinks 'Moira may not be able to remove the taint of these claims': CB:9, 181[69].

1009. Ms Hughes gave evidence that Mrs Deeming told her that other Members of Parliament did not want to be seen with her after the Publications and that she had previously been on friendly terms with many members of the Victorian Parliamentary Liberal Party but that many of her colleagues have now distanced themselves from her: CB:14, 207[11]. Mrs Deeming was saddened by this and felt that the Publications made it impossible for others within the Liberal Party to be seen with her publicly. She told Ms Hughes that going to Parliament is now distressing and she feels isolated: CB:14, 207[10]. She feels she has been ostracised in Parliament: CB:14, 208[20].

1010. When Mr Mundine read the Media Release, he and his wife seriously considered that they may have no choice but to publicly disassociate with Mrs Deeming going forward: CB:17, 226[22]. He thought ‘that being called a Nazi was one of the worst labels possible that could be attached to a person’. But after speaking with Mrs Deeming, he formed the opinion this was unnecessary and that the allegations against her were baseless. Others within the Liberal Party would call Mr Mundine ‘and say they would need to distance themselves from Moira since she had associated with Nazis’ and suggest that he should distance himself from her too: CB:17, 227[23].
1011. Ms Thompson gave evidence that Mrs Deeming told her that people within the Liberal Party starting treating her differently and were distancing themselves from her, which she found to be upsetting. She was particularly hurt by the fact she had known many of these people for a long time: CB:25, 287[11].
1012. Several Members of Parliament also give evidence about the likely impact of the Publications on Mrs Deeming’s reputation:
- (a) Mr Hodgett believes, based on his experience as an MP since 2006, that an allegation that an MP has associations with neo-Nazis or Nazi sympathisers would be extremely damaging to that person’s reputation and that, without context, some will think the allegation is true and the person may then be subject to all kinds of unfair repercussions: (CB:12, 199[32]).
- (b) Mr Riordan gave the following evidence (CB:20, 252[34]):
- In my view, an allegation of being a Nazi or Nazi sympathiser is one of the most serious allegations that can be made about a person, and is like an allegation of being a murderer or paedophile or rapist. I think everyone I know, in my personal and political circles, would share that opinion. Those sorts of allegations never leave a person. Nobody wants anything to do with such a person. This was a cruel thing to be inflicted on Moira.*
- (c) Mr Ruddick gave evidence that the Publications ‘will obviously impact on her reputation’, that it ‘will lose her votes and will undermine her standing within her party’, that it ‘will make her a highly polarising person’, and that it will make many people ‘avoid associating with her’: CB:22, 264[14].

Abusive and hateful material

1013. Since and as a result of the Publications, Mrs Deeming has been the subject of a wave of abusive and hateful material – either sent to her privately or published for the world to see. The unchallenged evidence about this is as follows:
1014. Ms Clark gave evidence that since the Media Release she has seen ‘a lot of media’ about Mrs Deeming, much of it repeating what Mr Pesutto said ‘to the effect that Moira has associations with Nazis’. She has also seen ‘a lot of vile, abusive messages about her on Twitter, including messages which call her a Nazi or Nazi sympathiser’. She had never seen any such messages prior to the Media Release: CB:3, 111[26].
1015. Mr Deeming gave unchallenged evidence that, since the Publications, he has regularly seen posts on Facebook and Twitter which have been disparaging of Mrs Deeming: CB:4, 128[89]. He has seen people ‘making explicit claims she is a Nazi or supports Nazis as well as people implying she is a Nazi or supports Nazis’. He thinks this occurs ‘most days’. He has seen Facebook and Twitter posts from Liberal Party members and branches condemning her, including one describing her as the ‘Eva Braun of the West’ (posted on a Facebook group called ‘Web Warriors’, which is a Facebook group for members of the Liberal Party, and which was posted by someone Mr and Mrs Deeming previously had a pleasant relationship with).
1016. Ms Dennis gave evidence she has seen comments on social media directed at Mrs Deeming that have suggested she is a Nazi or Nazi sympathiser: CB:5, 137[15].
1017. Mr Duke gave evidence that, since the Publications, he has seen articles about Mrs Deeming that have received ‘a large number of negative comments’, including comments which ‘directly or indirectly accuse her of being a Nazi’: CB:6, 142[14]. He could not recall having ever seen any negative comments directed at her in the media prior to the Publications.
1018. Ms Gorman, who worked part time for Mrs Deeming as an electoral office (CB:8, 158[1]) gave unchallenged evidence that, *shortly after* the Publications, the voice message machine on Mrs Deeming’s office phone, her publicly listed email inbox, and her social media accounts on Facebook and X were full of aggressive and hateful messages: CB:8, 161[14]. She recalls hearing abusive voice messages, including to the effect of ‘Is this the Nazi recruitment office’: CB:8, 161[15]. She also recalls a colleague in the office reading out aloud a few of the emails that were received shortly after the Publications which she recalls

‘were very nasty’: CB:8, 161[16]. She recalls reviewing social media about Mrs Deeming following the Publications, including both public posts and private messages sent to her Facebook and X accounts, including ‘a lot of social media material that was associating Moira with Nazis’: CB:8, 161[17].

1019. Ms Hughes gave evidence that she saw negative comments about Mrs Deeming on Facebook and X, including comments accusing her of being a Nazi: CB:14, 207[10]. She does not recall ever seeing such comments prior to the Publications: CB:14, 207[10].

1020. Mr Mundine gave evidence that, since 20 March 2023, whenever he published a tweet about Mrs Deeming, there would be multiple comments in reply to his tweets that would be disparaging of Mrs Deeming: CB:17, 227[24]. Examples of those tweets are at CC:408, CC:437 and CC:508 and include:

(a) on 20 March 2023, in response to his tweet that he was ‘100% with Moira Deeming’:

(i) ‘You’re 100% with neo-Nazis’ (CC:408, 2139);

(ii) ‘Warren - can you explain why you are "100% with Moira Deeming" She has had previous form with the neo-nazi right and your support for her suggests you are comfortable with this’ (CC:408, 2140); and

(iii) ‘Who stood beside an avowed neo-nazi and white supremacist and spoke at the rally. You supporting the white supremacists now Warren?’ (CC:408, 2141);

(b) on 21 March 2023, in response to his tweet including the words ‘I stand with Moira Deeming’:

(i) ‘You stand with nazis? Honestly doesn't surprise me..’ (CC:437, 2254);

(ii) ‘You stand with Nazi racists? Wow!’ (CC:437, 2255);

(iii) ‘You mean you stand with Nazis’ (CC:437, 2256);

(iv) ‘so you support nazis...’ (CC:437, 2257)

(v) ‘You stand with Nazis? Nice...’ (CC:437, 2258); and

(vi) ‘Of course, you would - you are happy to stand with people who hat minorities and are supported by neo-Nazis’ (CC:437, 2259); and

- (c) on 2 April 2023, in response to his tweet including the words ‘I support Moira’:
- (i) ‘She was hanging out with the Nazis . Keep it classy’ (CC:508, 2558);
 - (ii) ‘All you nazis stick together’ (CC:508, 2559);
 - (iii) ‘@MoiraDeemingMP embraced the support of NeoNazis on the steps of Parliament House 16 days ago...’ ((CC:508, 2560); and
 - (iv) ‘So you hang out with neo-nazis... good to know’ (CC:508, 2561).
1021. Mr Mundine could not recall ever hearing any suggestion that Mrs Deeming was associated with Nazis, ‘or anything similar’, prior to the Publications: CB:17, 228[25].
1022. Ms Papadimitriou gave evidence that since 19 March 2023 she has observed that, whenever Mrs Deeming posts a tweet on X, she receives comments in reply calling her a Nazi. ‘The people who post these comments never respond to the substance of her tweet, but consistently defer to calling her a Nazi or a Nazi sympathiser.’ Prior to 19 March 2023, Ms Papadimitriou had never seen such comments about Mrs Deeming: CB:19, 243[16].
1023. Mr Riordan gave evidence that, since 19 March 2023, he has regularly seen posts online ‘that refer to Moira being a Nazi and a right-wing nutjob’: CB:20, 252[35].
1024. Mr Ruddick gave evidence that he has seen comments about Mrs Deeming on Twitter since 19/20 March 2023 which were disparaging of her, including many which implied she was a Nazi or Nazi supporter: CB:22, 264[13]. For example:
- (a) when he posted a tweet on 20 March 2023 in support of Mrs Deeming, there were comments which directly suggested she ‘supports’ Nazis (CC:409, p2142-2143) and that she hangs out with Nazis (CC:409, 2144) and comments implying she is a Nazi (CC:409, p2146-2147);
 - (b) comments in May 2023 referring to ‘her mate Hitler’ (CC:604, 2891) and that she has been ‘prostituting herself with Weirdos Nazi’s (CC:604, 2892); and
 - (c) comments in July or August 2023 including that ‘she actually APPEARED with Nazis’ (CC:635, 3084) and that she and Mr Ruddick are ‘nazi bigots’ (CC:636, 3085).

1025. Ms Thompson gave evidence that she has seen several Facebook posts that were disparaging of Mrs Deeming, including comments to the effect of ‘the Liberal Party will not win government in Victoria whilst it has extremists like Moira Deeming in its ranks’: CB:25, 286[6]. She also saw negative comments about Mrs Deeming on a Liberal Party Facebook page called ‘Web Warriors’ (which is a Facebook page in which members can share their views and opinions about matters relating to the Liberal Party), including comments suggesting Mrs Deeming ‘had associated with Nazis’: CB:25, 286[7]. She had not seen any such comments about Mrs Deeming, on any forum, before 19 March 2023: CB:25, 286[8].
1026. Ms Walton gave evidence that, shortly after the Publications, she saw hateful posts about Mrs Deeming on social media including on Facebook and X: CB:26, 292[11]. She saw comments calling her a ‘bigot’ or a ‘Nazi’ or a ‘Nazi sympathiser’.
1027. Ms Wong has seen numerous posts on social media, primarily on X, that were disparaging of Mrs Deeming since the Publications, including tweets that called her a Nazi or accused her of associating with Nazis: CB:29, 321[20]. She has published several tweets about Mrs Deeming since the Publications which received a large number of negative comments in reply: CB:29, 321[21]. For example:

- (a) in response to Ms Wong’s tweet on 4 May 2023 (at CC:555), comments in reply to the tweet included:
- (i) a tweet stating: ‘You can’t stand with Nazis and not expect to get treated like one’: CC:556, 2689; and
- (ii) at CC:556, 2690, the following tweet:



- (b) in response to Ms Wong’s tweet on 12 May 2023 (at CC:599), comments in reply to the tweet included:
- (i) a tweet stating: ‘People who share views with neo-Nazis really aren’t suited to working in politics in a free country like Australia’: CC:600, 2860; and
 - (ii) a tweet stating: ‘Maybe they found Moira Deeming a bit too Nazi-adjacent?’: CC:600, 2861.

Emails and messages sent to Mrs Deeming

1028. There is a selection¹⁷ of abusive and hateful emails sent to Mrs Deeming following the Publications at CB:704.

1029. Mrs Deeming also received hateful private messages following the Publications including those at CB:704.

1030. Examples of some of these emails and messages are provided at **Annexure D** to these submissions.

1031. In them, she is called, amongst other things, a ‘nazi, a ‘female racist bigoted nazi’, ‘ugly’, a ‘puss filled bag’, a ‘creep’, a ‘hate filled intolerant monster’, ‘toxic’, ‘Nazi scum’, ‘a CUNT of a thing’, a ‘fat Nazi’, ‘bitch’, ‘fat retarded Christian pedo bitch’, ‘fat nazi bitch’, ‘fuckface’, ‘a fatfuck diseased masculine bitch’, ‘mentally ill’, a ‘fat skanky retarded bitch’, and a ‘Parasite’.

¹⁷ These are only examples of some of the emails Mrs Deeming received. Part 3 of Mrs Deeming’s First List of Documents dated 28 June 2024 states: “*Following the publication of the Media Release, the ABC Interview, the Press Conference, and the Expulsion Motion and Dossier (together, the Publications), the Applicant received a significant amount of abusive and hateful emails from members of the public. This was extremely upsetting for the Applicant, and she and/or her staffers (who had access to her email) deleted many of these emails.*” Given Mrs Deeming and/or her staffers deleted many ‘abusive and hateful’ emails, the Court would be satisfied that she received many other emails beyond those in evidence at CB:704.

1032. Other emails/messages include the following:

- (a) CC:703, p3359: *“You and your filthy offspring do not represent the Australian dream. No wonder your husband does what he does. Neo Nazis, fascists and white supremacists deserve to end up like Mussolini and your Führer, starting with your offspring so they won't pollute the next generation. You are hardly white yourself. Do your husband and the world a favour and have no more litters. Four is enough. Unloved and inadequate woman failing miserably trying to be a mother. You are a disgrace to this beautiful country and must be excised like the puss filled bag you are.”*
- (b) CC:703, p3361: *“Shame on you for attending a nazi rally...I will complain about you until you are rightfully removed from office. Absolutely disgusting”.*
- (c) CC:703, p3362: *“What a concerning situation! There you are talking to Neo Nazis and other white supremacists and you can't see a problem. You need to leave politics. Such Trumpian behaviour has no place in this country. Better still invent a time machine and head back to the 1950s. Even then I think there would still be consternation. You'll be remembered for all the wrong reasons, you Fox News lovin' moron.”*
- (d) CC:703, p3366: *“Anti-Semitism & any form of racism is not okay. Your association with far-right racist organisations stains our parliament.”*
- (e) CC:703, p3369: *“Oh no cry for the poor nazi, so hard done by! Eat shit and fuck off cunt!”*
- (f) CC:703, p3370: *“Nazi scum, FUCK OFF you're a CUNT of a thing!!!”*
- (g) CC:659, p3156:



- (h) CC:664, p3172: “*I hope your deformed and mentally ill kids get gang raped in front of you*”.
- (i) Ex.A283: “*Your children are correct, you are a nazi*”.

Social media posts

1033. Further, there was a significant volume of abusive and hateful social media posts about Mrs Deeming following the Publications.
1034. Annexure 9 to Mr Campey’s first report of 29 May 2024 (at CB(2):2.9) contains thousands of negative posts about Mrs Deeming posted after the publication of the Media Release, in the months of March and April 2023 only.
1035. Separately from that, Mrs Deeming has tendered a selection of 340 tweets in the period from 19 March 2023 (after the publication of the Media Release) to 20 September 2024. Those tweets are at Ex.A225 (CC:705); Ex.A226 (CC:706); Ex.A284 (Document 60 in MFI A82); and Ex.285 (Document 61 in MFI A82). This selection of tweets (*only a subset of the much larger total set of hateful and negative tweets about Mrs Deeming since the publication of the Media Release including those in Annexure 9 of Mr Campey’s first report*) are set out in the table which is at **Annexure E** to these submissions.
1036. The Annexure E tweets demonstrate that Mrs Deeming was subjected to a flood of vile and offensive abuse starting almost immediately after the publication of the Media Release (the first of the Annexure E tweets was published at 8.52pm on 19 March 2023 (CC:705, p3410), only 10 minutes after the Media Release was emailed by Mr Pesutto’s office to journalists and others at 8.41pm).

1037. The tweets from Annexure E in the period 19-21 March 2023 include tweets in which Mrs Deeming is abused and attacked as, amongst other things, someone who “*supports Nazis*”, someone who was “*consorting with Nazis*”, someone who was “*participating in a rally with neo-Nazis*”, a “*pro Nazi enemy of Australians*” (CC:705:3397), someone with “*nazi mates*” (CC:705:3559), a “*nazi acolyte [sic]*” (Ex.A285 p50), “*nazi-adjacent far-right filth*” (CC:705:3554), a “*nazi lover*” (Ex.A285 p56), a “*waste of tax payers money and 0²*” (Ex.A285 p60), a “*woman [who] aligns with Nazis*” (CC:705:3548), a “*fascist who happily celebrated the Nazi parade with fascist boys*” and a “*racist fascist*” (CC:705:3543; CC:706:3599), as “*Somebody too horrible for even the Liberal Party*” (Ex.A285 p63), a “*Nazi apologist*” who was told to “*Fuck off*” (CC:705:3540), “*irredeemable*” (Ex.A285 p68), a “*nazi sympathiser*” (CC:705:3533; CC:705:3524; CC:705:3513), a “*neo-Nazi*” (CC:705:3532), someone who “*knowingly consorted with & supported Nazis*” (CC:705:3527), a “*Neo Nazi sympathiser and a raging bigot*” (CC:705:3526), a “*NAZI Sympathiser and as such ANTI-SEMITIC*” and a “*disgusting woman filled with Fascist hatred and bigotry!!*” (Ex.A285 p100), a “*Nazi*” and that this “*seems obvious*” (CC:705:3566).

1038. Other posts from 19-21 March 2023 suggested that:

- (a) Mr Pesutto “*grew a set and is giving the Nazi her marching orders*” (Ex.A285 p20);
- (b) Mrs Deeming “*does not speak for women other than nazi women like herself*” (CC:705:3564);
- (c) “*if we Australians don’t draw a line in the sand on Nazis, where does it stop?*” (Ex.A285, p46)
- (d) The Victorian Liberal Party had “*an opportunity to disendorse [sic] their Nazi-linked MP. Or they can protect her and endorse her link to racial white supremacist extremism*” (Ex.A285 p48);
- (e) “*If you lie down with Nazis, you get up with fleas genital herpes and anal warts and facial lesions and indigestion*” (CC:705:3531),
- (f) “*Don’t be a Moira! Don’t be a Hater! Don’t Goosestep out with Nazis!*” (Ex.A285, p79),

- (g) it is “*important to remember the names of LNP members who support Moira Deeming. Support Nazis*” (Ex.A285, p91); and
- (h) support for Mrs Deeming equated to support Neo-Nazis (CC:705:3519).

1039. Many users mockingly accused Mrs Deeming of being a Nazi or a Nazi sympathiser - for example:

- (a) One user stated, “[Mrs Deeming] *was a high school English teacher? I suspect Mein Kampf in German may have been translated into English for students*” (CC:705:3404).
- (b) One user labelled his tweet as “*To: Moira Deeming MP*” with a link to an audio book of Mein Kampf, and a caption that reads “*Some ‘light listening’ sweetheart! Seig Heils!*” (Ex. A285 p25).



- (c) One user indicated that she was waiting for a “*hate fest for Moira Deeming literally marching with Nazis*” (Ex.A285, p47).
- (d) One user asked “*Do we really hand out awards to pollies blocking nazi sympathetic members*” (CC:705:3550).

- (e) One user suggested that various Twitter users who were “*suddenly coming to the defence of Moira Deeming ... hadn’t heard of her last week ... yet they chose to support her and Nazis*” (Ex.A285, p55).
- (f) One user remarked that Mrs Deeming, in suggesting that “*the Nazis gatecrashed*” the LWS Rally, was invoking “*The beerhall putsch defence*” (Ex.A285p58).
- (g) One user likened Mrs Deeming to Eva Braun (CC:705:3555):



- (h) One user mockingly suggested that the substance of what Mrs Deeming had said since the LWS Rally was: “*So unfair, I’m friends with neo-nazis and now everyone is so mean to me guys, so unfair*” what an idiotic flog, waste of tax payers money and 02” (Ex. A285 p60).
- (i) One user, referring to Mrs Deeming, stated: “*It’s a NAZI and has NO PLACE IN OUR PARLIAMENT!! Remove her immediately*” (Ex. A285 p67).
- (j) One user suggested that “*Moira Deeming loves nazis*” (Ex. A285 p74).

1040. Mrs Deeming continued to be the subject of abusive, hateful and offensive tweets after 21 March 2023 and right up to and including the date of the trial. These include tweets attacking her as a “*dumb cunt...hanging around Nazis*” (CC:706:3603), “*nasty bitch*”

(Ex.A285, p121), “*nazi girl*” (CC:705:3448), a “*demon*” (CC:705:3462), a “*parasite and Nazi supporter*” (CC:705:3485), “*vile*” (CC:705:3511), a “*selfish fat bitch*” (CC:705:3418), a “*freak*” (CC:705:3447), a “*FAT DIRTY nazi*” (CC:705:3416), “*Eva Braun*” (CC:706:3609), an “*evil Nazi*” (CC:705:3442), a “*disgraced politician*” and the “*Eva Braun of the western suburbs*” (CC:705:3440; CC:706:3601), a “*Nazi sympathiser and TURD*” (CC:705:3461), someone who is as “*wicked as those Neo-nazis*” (CC:705:3508), a “*Nazi*” and that “*everything [she] stand[s] for is wrong*” (Ex.A285 p110), “*nazi-adjacent*” (Ex.A285, p111; CC:705:3507), a “*liar*” (Ex.A285, p117), someone who “*stands with Nazis*” (Ex. A285, p118), a “*Nazi associate*” (Ex.A285, p119; CC:705:3504), a “*nazi sympathiser*” (Ex.A285, p120; CC:705:3503; Ex. A285, p126; Ex.A285, p133; CC:705:3484), someone who “*works with Nazis*” (Ex.A285, p124), a “*vile TERF*” who “*stood with neo-Nazis*” (Ex.A285, p125), a “*toxic flat earth nazi*” (Ex. A285, p130), a “*TERF supporting Nazi associator*” (CC:705:3495), “*a bigot, a Nazi and a trans-phobe*” (CC:705:3488; CC:706:3597), “*standing with Neo Nazis*” (CC:706:3594), “*an ugly person*” (CC:705:3483), a “*nazi loving TERF*” (CC:705:3449), as someone who was “*standing up and rubbing shoulder with the Fasch*” (CC:706:3590), as someone who participates in “*bigotry and Nazi sympathising*” (CC:706:3589), a “*Nazi sympathiser*”, a “*transphobe and neo-nazi supporter*” (CC:705:3446), “*a dumb cunt*” (CC:706:3603), “*nasty right wing bitch*” (CC:705:3443), as someone who is “*standing up with neo Nazis*” (CC:706:3586), as someone who “*stands with bigots and Nazis*” (CC:706:3585), a “*toxic nazi sympathiser*” (CC:706:3576), “*Nazi lover and transphobe Moira Deeming*” (CC:705:3439), “*Nazi lover*” (CC:706:3573), “*Moira Deeming, the Nazi?*” (CC:706:3572), “*just like Hitler*” (CC:706:3612), “*in bed with Nazis*” (CC:706:3610), as an MP who is “*on the same side as literal Nazis*” (CC:705:3435), that Mrs Deeming is “*waiting in the wings to take the [Liberal] party full Nazi*” (CC:705:3431), as someone who has “*Nazi supporters*” (CC:705:3427), as someone with “*nazi heritage*” (CC:705:3424), a “*lying nazi*” (CC: 705:3421), and someone who was “*inviting Nazis to her rally and sharing the same views as them*” (CC:705:3412).

1041. Other tweets included sentiment such as:

- (a) “*in Australia, c*nts like Moira Deeming are elected to parliament*” (CC:705:3499);
- (b) “*Nazis sure do love Moira Deeming*” (CC:705:3454); and

(c) “Child services should remove the children. No child should be in a household that perpetuates nazi sympathies” (CC:706:3579).

1042. There could be no serious doubt that these tweets, or at least a very significant portion of them, were a result of the Publications.

1043. Indeed, many of them were, on their face, posted as a direct reaction or response to the Publications – in that they include screen-shots of the Publications or quote from or refer to and repeat the words used by Mr Pesutto in the Publications. By way of example:

(a) the following tweets relating to the Media Release:

Ex.A285 p4

Jackie .
@Dempsey57Jackie

We don't have a discussion with anyone who is anti trans supporter or anyone who apparently supports Nazis.

Sumeyya Ilanbey @sumeyyailanbey · Mar 19, 2023
BREAKING: Opposition leader @JohnPesutto says he will move to expel Moira Deeming from the Liberal parliamentary party room this week.

Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.

The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.

This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

At our meeting I informed Ms Deeming that I will

9:06 PM · Mar 19, 2023 · 43 Views

CC:705:3401

The Sage @SarkySage · Mar 19, 2023
BREAKING: Victorian Liberals move to expel Moira Deeming over neo-Nazi rally links.

For anyone that says the Nazis had nothing to do with the protest - John Pesutto clearly states the rally had speakers and organisers who have been publicly associated with Neo-Nazi activists 🗨️

“This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

“At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable.”

54 185 590 34K

Pete's Tweets @AussiePeteC Follow

For every action there is consequences. Good riddance to this MP.

9:54 PM · Mar 19, 2023 · 198 Views

Ex. A285 p5; CC:705:3409

Ex. A285 p7; CC:705:3408

Alternate Media Watchers
@AltMediaWatch

Moira Deeming has been expelled for consorting with Nazis!

Annika Smethurst @annikasmethurst · Mar 19, 2023
Breaking: upper house Liberal MP Moira Deeming who attended anti-transgender event at state parliament has been expelled this evening #springst

9:06 PM · Mar 19, 2023 · 5,651 Views

11 13 154 1

Andrew Gardiner
@AJGardineresq

Vic Liberal leader John Pesutto expels anti-trans extremist Moira Deeming. (👥 per @annikasmethurst, @BrentHodgson) for actively participating in a rally with neo-Nazis.

Over to you, @LiberalNSW.
@deves_katherine was there too.
#nswpol #springst

Opposition

Yesterday afternoon Victorians witnessed an abomination on the steps of the Victorian Parliament when neo-Nazi protesters engaged in an affront to the values we should all hold dear as Victorians.

The violence, prejudice and hate that these protesters conveyed by their odious actions will never be acceptable in our State. I condemn them and commit to opposing such hate wherever it may exist.

This afternoon I met with Moira Deeming MP who attended yesterday's rally. I discussed her involvement in organising, promoting and participating in a rally with speakers and other organisers who themselves have been publicly associated with far right-wing extremist groups including neo-Nazi activists.

At our meeting I informed Ms Deeming that I will move a motion at the next party room meeting to expel her as a member of the parliamentary Liberal Party as her position is untenable.

This is not an issue about free speech but a member of the parliamentary party associating with people whose

eral Party I joined and which I am now hon must strive to represent all Victorians.

less of religious faith, race, sexual preferer, Victorians everywhere should know that th Party is inclusive and can be a voice for the

ter what our background we all share the a f an essential humanity.

y of opportunity, the benefits to each and al ising culture, the security that comes from t the strength which stems from families and nities that can live together in search of ass while sharing in Victoria's prosperity, m to all people who reside in our land.

9:12 PM · Mar 19, 2023 · 16.9K Views

7 22 71 1

(b) the following tweets relating to the ABC Interview:

Ex. A285 p41

Helen Ryan
@ry43731916

John Pesutto has confirmed on @abcmelbourne that Moira Deeming will be expelled from parliamentary Liberal party NOT because she was fraternising with nazis last weekend but because of her longstanding association with nazi sympathisers.

9:10 AM · Mar 20, 2023 · 48 Views

1 1 1 1

Ex. A285 p46

Peter FitzSimons
@Peter_Fitz

Yup. If we Australians don't draw a line in the sand on Nazis, where does it stop?
Charlottesville?

Stephen Mayne @MayneReport · Mar 20, 2023

Impressive performance by John Pesutto on ABC TV just now explaining and defending his decisive move to expel Moira Deeming from the Victorian Liberal party room after attending yesterday's anti-trans Nazi ambush on the steps of State Parliament



11:32 AM · Mar 20, 2023 · 26.3K Views

33 29 218 1

(c) the following tweets relating to the Press Conference:

CC:705:3559

Ex.A285 p75

John Ruddick MLC @JohnRuddick2 · Mar 20, 2023

Here's Victorian Opposition leader John Pesutto saying Moira Deeming will be sacked from the Liberal Party because 'she has an association with ... people who promote Nazi views.'

It's a slur that is equally outrageous and false. He looks stressed.

@MoiraDeemingMP



483 replies, 230 retweets, 965 likes, 145K views

Lousy cricketer @RadioPhysician

You'd be stressed too after watching the footage and realising that Moira Deeming and her nazi mates have condemned you to at least another two terms in opposition.

10:51 AM · Mar 20, 2023 · 366 views

2 replies, 1 retweet, 16 likes

Strewth @StrewthQueen

Pesutto's reasons for expelling Deeming include her actions before, during & after the rally:

1. Worked w Posie Parker, who shares platforms & viewpoints w NAZIs
2. Stayed at the rally when NAZIs arrived
3. Celebrated the rally on social media after, despite NAZI attendance

Daisy @DaisyIsStarDust · Mar 20, 2023

Well done to Victorian Opposition Leader John Pesutto for standing down Moira Deeming from the Liberal Party. #auspol #springst #Nazi



9:26 PM · Mar 20, 2023 · 5,942 Views

7 replies, 24 retweets, 137 likes, 3 bookmarks

Vocemails

1044. Further, following and as a result of the Publications, Mrs Deeming received hateful voicemails on her office phone, including the following:

Date	Message	Evidence Reference
19/3/23, 9.58pm	<i>Yes, hello, this is Adolf Hitler. I am very proud of your work yesterday in helping to keep the Labor Party in power indefinitely. You're doing a great job. Keep it up. Goodbye.</i>	Ex A162 (voicemail) Ex A269 (transcript)
20/3/23, 9.23am	<i>Good morning, is this Moira Deeming? This is the Australian Nazi Party. Could you contact me please? Thank you very much.</i>	Ex A164 (voicemail)

		Ex A271 (transcript)
21/3/23, 4.37am	<i>Moira has no place in Victoria, so you're welcome to leave whenever you want. Go move up to Queensland, you can move in with Pauline Hanson or something. Fricking clown. Nazi sympathiser. Fricking far right goons. It's fucking atrocious mate, and not one of you fuckheads – oh sorry for swearing. Not one of you lovely people have condemned the far right, because you are the far right. Bunch of clowns. I'm sorry to be rude but it's unacceptable and I don't see any of you people making a stand against Nazi's and flagships because you've fricking caught them and they're attracted to you and they're attracted to your ideas and your ideologies because you're a bunch of goon clowns. So yeah, thank you. Have a nice day.</i>	Ex A179 (voicemail) Ex A274 (transcript)
21/3/23, 7.21am	<i>Yeah, Moira, great contribution today. You keep slugging love. In the meantime, the rest of us will just get the popcorn, sit back and just watch. You're making a great contribution to the mainstream of politics, which the Liberal Party will be irrelevant in years to come. Thank you and keep up your good work.</i>	Ex A180 (voicemail) Ex A275 (transcript)
24/3/23, 4.28am	<i>Everybody saw you march with Nazis you fucking traitor piece of shit. There's nothing worse than that. The TV complained about people calling you out for marching with neo-Nazis. Anybody still working in your office is fucking neo-Nazi scum too. They're on your side, think about that. They've never been on anybody's side but yours.</i>	Ex A194 (voicemail) Ex A276 (transcript)
2/4/23, 11.28am	<i>Yeah, I just want to say congratulations Ms Deeming for contributing to the wonderful win by Mary Doyle at Aston. Couldn't have done it without you Moira. I hope you're in parliament for a long, long time because the Libs will never be in government in this State when they pick muppets like you. Thanks again, have a great day.</i>	Ex A208 (voicemail) Ex A277 (transcript)
8/5/23, 6.50am	<i>Yeah, hi, I was looking for a Nazi to appear at my event. I've heard Moira might be available and not have very much to do in the near future? Do you think she'd be a suitable Nazi? I'm not sure if she's</i>	Ex A215 (voicemail) Ex A278 (transcript)

	<i>Nazi enough, I mean she's definitely Nazi but is she Nazi, Nazi? I mean that's really the question here isn't it? Anyway, I don't know maybe it would just be better if she would like, go fucking kill herself or something. I don't know. Yeah, anyway. Fuck Nazis.</i>	
16/5/23, 10.43am	<i>Hi, thanks for subscribing to the 'Joke a Day' service. Here is today's joke. When a silver plane flies over, its American. When it's a green plane, its British. When there are no aircraft, that's the Luftwaffe. That was your Nazi joke of the day. To unsubscribe, simply resign from Parliament</i>	Ex A218 (voicemail) Ex A279 (transcript)
Unknown (but in the period between 19/3/23 and 16/5/23)	<i>It's my view that Moira Deeming is not fit to be a parliamentarian. She organised that rally with known Nazi sympathisers and members of the Nazi Party. So, not only is she a Nazi sympathiser, but she's also a homophobe. She's outrageous and doesn't deserve to be in parliament at all. Good riddance to her.</i>	Ex A83 (voicemail) Ex A254 (transcript)

Damage to Reputation - Conclusion

1045. The Court should find that the damage to Mrs Deeming's reputation has been severe, is ongoing, and is likely to be irreversible (even if she is vindicated by way of a judgment in her favour).

Hurt Feelings

1046. The evidence, from Mrs Deeming and others, is clearly to the effect that Mrs Deeming has suffered a very substantial amount of subjective hurt as a result of the publications. None of the evidence of Mrs Deeming or any of her other witnesses on this topic was the subject of any cross-examination.

Mrs Deeming's reaction to the Media Release

1047. Mrs Deeming's evidence of her reaction to the publication of the Media Release is at CB:1, p18-23[89]-[110].

1048. She had a 'visceral initial reaction to read it' and 'felt physically ill and thought[*she*] was going to vomit': CB:18[92].

1049. She had never expected following the 19 March Meeting (because she had never been warned) that Mr Pesutto would publicise his accusations about her rather than dealing with them internally: CB:1, 19[93]. It was therefore ‘a total shock’ for Mrs Deeming see the Media Release online. She was upset because she thought Mr Pesutto was trying to publicly damage and humiliate her, ‘because he knew from speaking with me that he didn’t have a proper case to expel me, so he was deliberately forcing the issue to be played out in public rather than[in] private. She felt he was trying to taint her as toxic to the rest of the MP team in the lead up to any vote on her expulsion. This was distressing for her because she thought this would make the other MPs fearful of supporting her. She thought Mr Pesutto was trying to undermine her publicly ahead of any debate or discussion about the proposed expulsion and whether it was justified.

1050. She also thought, ‘with utter disappointment and dismay’, that Mr Pesutto had decided to smear her with Nazism to hide the true reason for the proposed expulsion (her views on sex-based rights): CB:1, 19[94]. She was furious that he knew that the Nazis were not involved with the LWS Rally. She felt a real shock at the maliciousness of the Media Release. She could not avoid the fact that this could not have been an accident or good faith mistake by Mr Pesutto; this terrified her because she thought he was trying to destroy her.

1051. Sometime after she saw the Media Release online, she saw Mr Pesutto’s email to members of the Victorian Parliamentary Liberal Party (CC:329): CB:1, 19[95]. This made her feel worse because she felt he was trying to undermine and tarnish her in front of her colleagues. She was upset he had not presented her side of the story or called for any proper investigation of what happened at the LWS Rally. She gave evidence (CC:1, 19[96]):

I remember feeling in a daze. My arms and legs were so heavy. I was in total shock. I could not believe this was happening. I was so depressed that after all my hard work, and the hard work of so many people who had supported me to get me into Parliament, I now felt like I had failed them all. I felt ashamed and depressed and did not know what to do. It was degrading and humiliating.

1052. She also felt ‘in the dark’ and unable to defend herself because she had not seen the ‘evidence’ against her and did not know what Mr Pesutto was proposing to rely on to seek to justify the proposed expulsion, and therefore could not refute it when people asked her about it: CC:1, p19-20[97].

1053. She was upset that Mr Pesutto was accusing her of organising, promoting and attending a neo-Nazi rally at which neo-Nazis had performed Nazi salutes on the steps of Parliament House: CC:1, p20-21[99]. She thought he was clearly implying that ‘where there is smoke there is fire’, and was saying she was a neo-Nazi or some kind of Nazi sympathiser.

1054. She was also struck by the irony that Mr Pesutto was subverting the objectives of the LWS Rally (to ‘let women speak’): CC:1, 21[100].

The LWS Rally had been undermined by hateful men, and I felt that Mr Pesutto was using this in order to seek to punish and silence me. I was struck by the shocking reality that some men would go to unfathomable lengths to stop women from speaking.

1055. At some stage soon after she first saw the Media Release, Mrs Deeming also became aware that it had been published to Mr Pesutto’s website and the website of the Victorian Liberal Party: CC:1, 21[101].

It sickened me that the official Liberal Party branding had been used to endorse the Media Release. This humiliated me but also made me fearful that the authority and weight of the Liberal Party was being used to crush me. I was acutely aware of the imbalance of power between me on the one hand and the Leadership Team (projecting themselves as acting with the authority of the whole party, taking a united position against me) on the other. I was scared that nobody would believe me when the claims were being made by the four leaders of one of the two major political parties in Victoria. It was terrifying to me that this had been published as an official public Liberal Party document.

1056. She felt ‘utterly betrayed’ by the Liberal Party, into which she had placed her faith and trust over many years: CB:1, 21[101].

1057. She was also ‘devastated’ at the thought that ‘the destructive force of this smear’ would not only destroy her career and family name but may also incite hatred and violence towards her and her family: CB:1, 21[103]. She thought that if she could not get this erased from the public record, their lives would never be the same. She was worried she might never work again.

1058. She was ‘shocked at how cruel this first step was from Mr Pesutto’: CB:1, 21[104]. But she also ‘felt a real sense of fear and foreboding that this might only be the first step and things might get worse’.

1059. When she saw that the Media Release was reported on by the mainstream media , she was appalled and distressed by some of the media reports, which she thought were suggesting she was facing expulsion for being complicit or involved in a neo-Nazi rally: CB:1, 22[106]. She felt a sense of foreboding and sadness that the Media Release was having its intended impact. She was afraid and humiliated, and worried that ordinary people, including those who had voted for her at the election, would hate her: CB:1, 22[107]-[108]. She felt in total despair.

The speed with which Mr Pesutto had announced to the world that he and the Leadership Team intended to expel me for allegedly being involved with Nazis, and the publicity it generated as breaking news on a Sunday evening, was extremely distressing and humiliating for myself and my family. I was troubled that people would already be reacting to media reporting of the neo-Nazis saluting on the steps of Parliament, and now Mr Pesutto was linking me to those men in the same media cycle, resulting in the two things being conflated in people's minds and the scandal of it all snowballing. It was my worst nightmare to be falsely accused of something so heinous, when I had no chance of defending myself, and knowing that my reputation and career would be ruined forever. Most painful of all was how it would unavoidably taint my children's future too. I couldn't keep up with the articles and news stories and social media personalities that began quoting from Mr Pesutto's Media Release and speaking about me as though I were connected with Nazism . It felt like a tidal wave of negative sentiment was drowning me.

1060. Negative social media commentary about her ‘exploded’, with offensive and shocking accusations including that she was a Nazi or Nazi sympathiser or that she associated with Nazis or had organised the neo-Nazis to attend the LWS Rally: CB:1, 22[109]. She ‘received a huge number of emails and messages’ from people she did not know. Many of these were hateful and hurtful’. She was ‘extremely shocked and upset’. ‘I felt there was no way that one woman could ever possibly contest the onslaught of abuse, lies, and slurs that rained down on me’. She gave the following evidence (CB:1, 23[110]):

A profound sense of complete and utter isolation swept over me, and has never eased. I cannot adequately describe it. I felt unable to relate to others, or to express or describe my feelings. I began to lose my sense of connection with everyone in my life, even my husband and children and my closest friends. The experience of extreme stress and anxiety, of isolation and powerlessness that swept over me, has never eased.

1061. Andrew Deeming gave evidence that, after Mrs Deeming saw the Media Release in the

evening of 19 March 2023, she was ‘consumed’ by it for the remainder of that evening and they ‘discussed it practically nonstop’: CB:4, 121[54]. She was shocked and surprised by its publication. Part of this was because they had previously discussed, after the 19 March Meeting, that they had expected there would be a fair process by which Mr Pesutto would raise, internally within the Victorian Parliamentary Liberal Party, whether Mrs Deeming should be expelled and the reasons for the proposed expulsion. Mrs Deeming said she had thought this would be handled internally and that, when the evidence and facts were inspected, it would not get to that stage. Mr Deeming recalls her repeatedly saying words to the effect ‘I can’t believe he did this’. She expressed to him the sentiment (that evening and many times subsequently) that she felt betrayed and disappointed that Mr Pesutto had already issued a public statement about the proposed expulsion. She looked stunned. She was teary and quiet. He could tell she was deeply saddened. Then she started panicking about how everyone would think she and their family were Nazis. She appeared extremely anxious and distressed that night. She was repeating to herself over and over again that she was worried people would think she was a Nazi. She had experienced anxiety and panic previously, but not for years according to Mrs Deeming, and he had never ever seen her suffer anxiety and panic to this extent.

1062. Mr Deeming gave evidence that when he read the Media Release, he was outraged and thought Mr Pesutto was saying that Mrs Deeming had attended the same rally as the Nazis: CB:4, 121[55]. He thought Mr Pesutto was suggesting, at a bare minimum, that Mrs Deeming had associations with Nazis and far-right persons and at worst that she was a Nazi or that she shared Nazi and far-right beliefs. It seemed to him that Mr Pesutto was portraying the LWS Rally as a far right-wing Nazi rally and the organisers of the LWS Rally as Nazis or as having Nazi associations. Mrs Deeming thought the same. She kept saying that people were going to think she was a Nazi. He could see and hear how distressed she was. She was worried that the media, and the public, would understand Mr Pesutto’s words to mean that she was a Nazi sympathiser and that was why she needed to be expelled from the Victorian Parliamentary Liberal Party.

1063. Ms Heath called Mrs Deeming on either 19 or 20 March 2023: CB:9, 168[11]. Ms Heath recalls Mrs Deeming being angry, confused and upset, that she thought she had done nothing wrong, and that she could not understand why Mr Pesutto and the Leadership Team were attacking her and bundling her up with and linking her to Nazis.

Mrs Deeming's reaction to the 3AW Interview, the ABC Interview, and the Press Conference

1064. Mrs Deeming gave evidence that the 24-48 hours after the publication of the Media Release were 'incredibly stressful' and she does not now have a recollection of which of Mr Pesutto's many interviews with and statements to the press she heard or saw at the time and which she only discovered later: CB:1, 23[113]. She thinks she did not listen to the 3AW Interview live but became aware of it shortly afterwards and listened to it.

1065. She was outraged and upset: CB:1, 24[114]. She could not believe Mr Pesutto was 'doubling down' after the Media Release and doing an interview on the radio to spread what she considered to be 'disinformation and lies' about her. Every time he did an interview, it felt to her that he was 'poisoning people' against her. She was 'confused and devastated'. She could not understand why he kept pushing the story. She thought that every time he spoke he said new things. She thought he did not care about the truth.

1066. She gave the following unchallenged evidence (CB:1, 24[115]):

In general, it felt to me like Mr Pesutto was trying to spread his lies about me as fast and as far and as wide as possible. It seemed to me he was doing a blitz to try to destroy me and to ensure his proposed expulsion would be successful no matter whether it had a proper basis or not.

1067. She knew Mr Mitchell was then the highest rated radio host in Melbourne and one of the most prominent and listened to radio hosts and political commentators in Australia: CB:1, 24[116]. It upset her that Mr Pesutto must have known that this interview would, following the Media Release, greatly excite listeners of 3AW as the first to hear him speak on the proposed expulsion and the reasons for it. She felt Mr Pesutto was deliberately trying to turn the public against her.

1068. She was upset that Mr Pesutto kept mentioning Liberal Party values or Victorian values: CB:1, 24[117]. This really struck her and she was offended and upset that he was suggesting her values were abhorrent to him and the Liberal Party and Victoria. She was 'distressed that he was trying to whip up a frenzied mob to hound[her] out of society'.

1069. She was upset that Mr Pesutto was being highly misleading and selective in what he was saying: CB:1, 24[118].

For example, he said that the neo-Nazis had turned up to the rally and were there to support

the rally, when he knew this was untrue; he was attacking me for associating with people like Ms Keen who he said had known links to Nazis, even though he knew I didn't accept she had any such links and in any event didn't know about them; in general he was leaving out everything I had told him during the 19 March Meeting.

1070. She was also upset that Mr Pesutto said he knew she was not a Nazi: CB:1, 24[119]. She thought he ‘was being incredibly slippery’ – that he knew she was not a Nazi, but that this was the implication of what he was saying. She felt so angry because she felt this was just ‘another malicious act by Mr Pesutto’, who she thought as a lawyer and politician must have known that the effect of his words would be that people would think she ‘was a Nazi of some degree’.

Mrs Deeming’s evidence (ABC Interview)

1071. She also heard the ABC Interview at some stage on 20 March 2023: CB:1, 25[120].

1072. She was ‘shattered’ because it was becoming clear to her that Mr Pesutto was doing as many media opportunities as he could: CB:1, 25[121]. She gave evidence:

He still hadn't sent me the expulsion motion, or showed me any of the 'evidence' said to support it, but in the meantime he was turning the whole world against me. I thought he was not only turning journalists against me but also Members of the Victorian Parliamentary Liberal Party who would ultimately be voting on the expulsion motion.

1073. She was upset that throughout the ABC Interview Mr Pesutto kept focussing on the Nazi salute on the steps of Parliament even though he knew this had nothing to do with her or the LWS Rally: CB:1, 25[122].

1074. She was scared about how people would react to what he was saying in the ABC Interview because he was being deliberately vague with his language: CB:1, 25[123].

For example, he said the Liberal Party does not "stand with" neo-Nazis and white supremacists, and I was terrified that people could only interpret this to be implying that I did stand with them and that's why I had to be expelled. He also said the Liberal Party would not tolerate neo-Nazis or white supremacists "or anybody who sympathises with them"; again, I was upset people would take this to mean that I sympathised with them, and that's why I had to be expelled. I thought this was why people started using those sorts of words against me online - saying I stand with Nazis, or sympathise with them, or support them - because they were regurgitating Mr Pesutto's own words.

1075. She thought the ABC Interview ‘was incredibly unfair’. She I thought ‘it was a reversal of due process’ – because he was giving these interviews before he had even given her the expulsion motion and because he ‘was letting it play out in public before the party room had even resolved it’.

1076. She could not understand why he would hate her so much to be doing this: CB:1, 25[125]. ‘I thought he was intent on ruining me and my career at all costs - no matter if I was innocent or what it would do to my innocent children’.

1077. She was distressed to think that people might think what Mr Pesutto was saying was true: CB:1, 25[126]. It was ‘excruciatingly embarrassing and humiliating’.

Mrs Deeming’s evidence (Press Conference)

1078. Mrs Deeming also saw articles which quoted from the Press conference, and later heard the audio of what Mr Pesutto had said: CB:1, 25[127]. She gave the following unchallenged evidence (CB:1, 26[128]):

Watching the four leaders stand together, united as one, with Mr Pesutto as their spokesperson - was devastating . Here was the whole Opposition Leadership Team , the whole Parliamentary Liberal Party Leadership Team - all standing together to spread falsehoods about me. It was the most upsetting footage I have ever watched in my whole life.

1079. I felt like the situation was out of control and that Mr Pesutto would never stop attacking her: CB:1, 26[129]-[130]).

I felt depressed and furious. I felt powerless and vulnerable. I felt alone and isolated and without any way to defend myself. Again I felt the imbalance of power; they had arranged a press conference from which they could further spread the lies about me.

1080. She was particularly disgusted and furious that Mr Pesutto referred in the Press Conference to having undertaken ‘further investigation’: CB:1, 26[131]. She thought he was making it seem as though they had properly investigated what had happened. But she knew he had not and that he was ignoring everything she had told him. She thought he was falsely suggesting that the Nazis had participated in the same rally she was at and that she had shared a platform with them. I thought that his entire purpose in the Press Conference was to make people think she was a Nazi or Nazi sympathiser.

1081. She could not believe that Mr Pesutto said that if the expulsion motion did not pass he would 'bounce back ': CB:1, 26[132]. She felt shattered. She thought she would never be able to bounce back from this. She thought he was treating her and her life and her children 'as cheap, expendable pieces in a political game'.

Mr Deeming's evidence (of Mrs Deeming's reaction to the 3AW Interview, ABC Interview, and Press Conference)

1082. Mr Deeming observed that Mrs Deeming was upset on 20 March 2023 when Mr Pesutto made a series of public statements about her and the proposed expulsion: CB:4, 122[57]-[58]. He described:

I observed that she became increasingly anxious, distressed and depressed. She told me she did not know when it would stop. She was unable to get out of bed. She looked scared and tense like an animal caught in a trap. She kept crying on and off.

Mrs Deeming's reaction to the Expulsion Motion and Dossier

1083. Mrs Deeming's evidence was that when she received the Expulsion Motion and Dossier – by email at approximately 5.42pm (see paragraph **Error! Reference source not found.** above) – this was the first time she had seen the 'evidence against': CB:1, 27[139].

1084. At first she was relieved, in part because she had finally seen the evidence and in part because she thought 'it was patently untrue and that now surely justice would be able to be done': CB:1, 27[139]. But she was also 'deeply hurt' that Mr Pesutto was sending out this material to support his position when (in her view), clearly, it did not. She was worried that, 'because of all the things[Mr Pesutto] had said since the Media Release, it wouldn't really matter what was in the Expulsion Motion – that people would just assume it was legitimate evidence and that it supported what he had already publicly said'. She was outraged that Mr Pesutto was continuing to attack her and pursue the expulsion even though she could now see they never had any evidence.

1085. She gave the following evidence:

Overall, by this time, I was feeling extremely distressed by the Leadership Team's disingenuous interrogation of me at the 19 March Meeting and the false accusations being made against me by Mr Pesutto over and over again on 20 March 2023. I regarded all this as a media campaign orchestrated and pursued by Mr Pesutto to destroy me. And now he

had published the Expulsion Motion and Dossier. All these things made me feel like I was being hunted by him and the Leadership Team. (CB:1, 28[140])

1086. She was also shocked and upset that Mr Pesutto had proceeded with the Expulsion Motion and Dossier despite knowing that she had said the accusations were false: CB:1, 2[141].

1087. When the media started reporting on the Expulsion Motion and Dossier, Mrs Deeming assumed that Mr Pesutto had leaked it: CB:1, p28[142]-[143]. Again, as with the publication of the Media Release, she thought he had publicised the EMD in an attempt to influence MPs to vote for the proposed expulsion (CB:1, 28[143]):

I thought he had publicised it in order to publicly humiliate and undermine me. I was distraught by the relentless of the media reporting. I knew a fresh onslaught would start now that the Expulsion Motion and Dossier had been made public.

Mr Deeming's evidence (as to Mrs Deeming's reaction to the Expulsion Motion and Dossier)

1088. Mr Deeming gave evidence that when they read the Expulsion Motion and Dossier they discussed whether or not Mr Pesutto and the Leadership Team knew the claims they were making were untrue: CB:4, 123[60]-[61]. The possibility that they knew the claims were untrue but were willing to proceed with them anyway disturbed Mrs Deeming. They discussed that this would mean Mr Pesutto and his team 'were willing to bully and humiliate an innocent woman in order to get their way and serve their political purposes': CB:4, 123[61]. Mrs Deeming thought this was the case – she thought Mr Pesutto 'didn't care about the truth, and didn't care about the impact his lies were having on her'. She was concerned that people would seek to hurt her due to her now alleged association with Nazis; she had never expressed concerns about politically targeted violence before.

1089. Mr Deeming also gave evidence that, on 21 March 2023, Mrs Deeming was shocked and traumatized when she read articles reporting on the Expulsion Motion and Dossier: CB:4, 123[62]. She feared that people would believe the claims because it was Mr Pesutto as Leader making them. She was upset the Dossier had been leaked and 'felt like this was a large scale coordinated attack on her'. She had some hope that when people saw the Dossier 'they would see how poor the evidence against her was' but she was also worried 'that people would ask why the Leader of the Liberal Party would have seen these things, about a Member of his own Party, if they were untrue'.

Combined impact

1090. She also gave the following evidence about the combined impact of the Publications (CB:1, p31-33[158]-[159],[161]-[164],[160]):

In the days following the Publications, I felt shell shocked. I have in the past always tried not to cry in front of anyone, not even Andrew or our children, but now I cried frequently. I couldn't help it. I often stayed in my room for long periods. I would stay in bed and I had no energy. I started losing track of time almost immediately. I felt frozen. People that know me know that if I start to forget things, I'm not coping and I'm not in a good headspace. I was now confused; I couldn't remember what I had just done or what I had to do next. I would find myself standing in a room, not knowing what I was meant to be doing.

I felt degraded and humiliated. The whole process was very dehumanising. I felt that nobody was seeing me as a mother with four children for whom I was responsible. I felt that Mr Pesutto and the Leadership Team did not see me as a human but rather as some sort of political unit. I was very disturbed by this. I wondered what sort of monsters they were, who didn't care about me but only about the political career of the leader of the party. They seemed not to care about justice, or the truth.

...

I became fearful of going out in public. I stopped wanting to go out with our children, because I was scared they might get hurt or spat on or otherwise caught in the middle of this terrible situation.

I stopped eating. I would forget to drink and eat, and sometimes Andrew would have to remind me to do so. I lost weight.

I felt utterly isolated and lost.

I felt I had lost control of my life, and of my fate and the fate of our children.

...

The injustice of it all grated on me day and night, and it still does. I could not comprehend that this could happen - right out in the open in front of the whole world. I was so hurt that the Leadership Team had betrayed every principle we were supposed to protect - women, children, family, free association, free speech, due process, civil rights, even just common decency. I wondered how they could ever be trusted by ordinary people to fight for their rights

when they so callously and unfairly persisted in persecuting an innocent woman and tearing strips off her in front of the whole world.

1091. Mrs Deeming has also given the following unchallenged evidence about the ongoing emotional impact of the Publications on her (CB:1, p56-57[276]-[278]):

I have continued to suffer emotionally and physically as a result of the ordeal starting with and caused by Mr Pesutto 's Publications. I have had to see doctors about various physical issues. For example, I have had terrible headaches (I had to have an MRI to check for any issues); I have been subconsciously clenching my jaw (for which I have had to have treatment including physiotherapy for my neck and shoulders and then dry needling in my jaw and face muscles); I have been subconsciously clenching my fists (more than once I woke with nail marks in my palms) and my toes (so that I have frequently had agonising foot spasms at the end of the day and at night); I have had disturbed sleep and am often tired; I have had irregular periods (mostly they disappeared but once I had two periods in one month which I was told by my doctors is a known catastrophic stress reaction in women).

The ongoing impact on me has been nightmarish . Over time I withdrew into myself, into a state of absolute loneliness and misery. I even stopped going to Church because I hated the idea of potentially crying in public and I was upset with God and was getting emotional during sermons and because I was so exhausted from having to explain myself to everyone, everywhere I went.

On the outside, I have always tried to ensure that nobody would see how broken I really am, because I find it excruciating not to have emotional privacy and am a private person. I have never been able to feel that my physical privacy is secure because of my past experiences, so emotional privacy has always been paramount to me and my very last line of defence. This whole saga - Mr Pesutto's public attacks on me, followed by attacks on me by others, and the utter humiliation of having to tell people I'm not a Nazi - were all so public that they have been traumatic to me to an extent that I cannot properly explain in writing.

1092. Mr Deeming gave the following unchallenged evidence about the impact of the Publications during the period from the publication of the Media Release on 19 March 2023 until the 27 March Meeting:

- (a) (CB:4, 126[78]): Mrs Deeming ‘withdrew into herself’. She was ‘intensely anxious’. She stopped eating and he had to remind her to eat. ‘She lost track of time and was visibly shaken and exhausted at the idea of going out in public’. She started having nightmares ‘about being attacked by people who thought she was a Nazi’. She said

‘she felt powerless against all these powerful people’. He saw her receive threats online and by email – ‘people threatened to spit on her; they mocked her; they called her a terrible mother; they threatened[her] children’. She expressed fear of being recognised and attacked.

(b) (CB:4, p126-127[79]):

The media reporting about Moira during this initial period was relentless. It seemed like every few hours there was a new article or a new news report on TV or some new post on social media. It was hard for Moira to keep up with it all. Her anxiety was extreme. She was in severe shock and went very quiet. She was receiving telephone calls but she was finding it hard to speak to anyone, even if they were ringing to say they were on her side. She appeared to me at this time frozen in her trauma. She told me she felt isolated and terrified of physical attacks and reputational ruin. Looking at her phone, I saw many unanswered calls and texts. I would try to encourage her to at least get back to some of her supporters but it was too much for her. She appeared to me to be totally overwhelmed.

(c) (CB:4, 127[80]):

Our family life grounded to a halt. Our home schooling stopped. Moira and I were extremely stressed. Our youngest two kids did not understand what was going on – Mum and Dad were stressed and were trying to shield them from it but they could tell something was wrong. Moira basically disappeared even though she was at home. She could hardly speak. She was just alone in her room all the time. We had to try explaining to our older kids what had happened. They understood the facts but could not get their head around the motives. Moira was busy trying to clear her name for our kids, but that meant she did not have the time or emotional energy for them. My time and energy was split between keeping the household running (as Moira no longer had the time or energy to help) and trying to help Moira where I could.

(d) (CB:4, 127[81]):

We had the press constantly outside our house during this period. They would approach us with their cameras if we went to the car, even if we had our kids with us. They frequently knocked on the front door. On two or three occasions they tried to talk to our young children through the front door and asked them to open the door. We discovered one day that our side gate was opened when it was previously locked. To this day we do not know if it was press or a member of the public that tried to get in. I observed that this was extremely stressful for Moira. She called the police and they started patrolling our area. We ended up

having to get a series of security cameras installed to help partially ease Moira's mind. Moira expressed to me that she felt under house arrest and we did not leave the house and run the gauntlet of the press. Our kids missed out on their sports and other activities during this period.

Other witnesses

1093. Mr Deeming's evidence of Mrs Deeming's hurt feelings following each of the Publications is summarised above. In addition, he gave the following unchallenged evidence:

- (a) As a result of the Publications, Mrs Deeming has been reluctant to associate with some of the people she did previously 'because she perceives that their attitudes towards her have changed and they no longer like and respect her as they did previously', and that he has observed her 'to become more introverted, isolated and reclusive' since the Publications: CB:4, 120[42].
- (b) Mrs Deeming now fears going out in public; often he will suggest they go out and she will be reluctant to leave the house; she has told him she is fearful whenever she is approached by a stranger who says they know who she is: CB:4, 129[92]. She feels humiliated that she is afraid to go out in public and has told him 'she felt ashamed and depressed and didn't want people to know about it': CB:4, 129[95].
- (c) She has felt she 'is being pursued and stalked by Mr Pesutto and the men in the Leadership Team' and worries 'about being bullied and excluded and gossiped about and mocked by everyone at Parliament except those few who had supported her': CB:4, 129[92].
- (d) She has been uninvited from events and was devastated at being shunned: CB:4, 129[93].
- (e) She is worried about being treated badly by members of the public because of Mr Pesutto's accusations against her: CB:4, 129[94].
- (f) As 2023 progressed, Mrs Deeming 'became more and more anxious': CB:4, 130[97]. He gave the following evidence about her fear of returning to Parliament:

On the day before Parliament sessions, she would be stressed and would withdraw from me and the kids. She struggled to get out of bed. She was so anxious about how

she was going to be treated during the Parliament week. After Parliament sessions, she would then be withdrawn for a day or two. Again she would stay in bed, unable to relate to me or the kids. As the year continued, instead of being withdrawn and stressed for a day before Parliament, it became two days before, then three and even up to four days before. Her recovery after Parliament sessions also went from one or two days to three or four days. It got to the point where she would only have three or so days without being stressed and withdrawn. After the summer break of 2023/2024, she told me she was dreading having to go back to face the bullying and sneers in Parliament.

(g) CB:4, 131[101]:

Moira is different now as a result of the Publications. I recall thinking a number of times about how much she has changed. She is now very rarely jovial when that was one of the main traits she was known for previously. She is withdrawn and afraid to go out in public which has meant we cannot go out much as a family. She has become scared of campaigning and meeting new people when that is what she most loved about politics. Also, Moira previously had an amazing ability to read and remember details. But I have observed that she now struggles to remember things or think clearly at all anymore. She is always tired and in some kind of daze - like shell shock. She goes from one thing to another and does her best but she is not herself at all. She used to always want to see her close friends. But now she is so withdrawn that she never contacts them and forgets to contact them back and so they are all worried about her and they contact me to see if she is okay. She keeps putting on a brave face in public but in private she just went quiet and couldn't speak to anyone, including me, the kids and her closest friends.

1094. Mr Deeming is worried the Publications have damaged Mrs Deeming and she will not recover: CB:4, 131[103].

1095. Mr Duke gave evidence that, although Mrs Deeming ‘publicly puts on a brave face’, when he talks to her he ‘can tell from her demeanour and tone that deep down she is very hurt’: CB:6, 142[15]. He regularly checks in to see how she is, and her responses ‘have been very flat’ and ‘not the bubbly responses[he] had grown accustomed to hearing from her prior to the Publications’. In February 2024, Mr Duke asked Mrs Deeming how she was, and she responded with words to the effect of ‘it’s been terrible, I almost didn’t make it through the day, please pray for me’: CB:6, 142[16]. This disturbed Mr Duke and he was worried about Mrs Deeming’s mental state and wellbeing. In about February or March 2024, Mrs Deeming told Mr Duke the accusations against her, which started with the Publications,

‘were taking a heavy toll on her and that she had never experienced this level of stress before’: CB:6, 142[17]-[18]. He gave the following evidence:

I am extremely concerned about Moira’s mental health. Although she is brave and courageous, we all have our vulnerabilities; attacks on her family and her character have deeply wounded her. The Publications have taken an incredible toll on her. She is not as joyous and happy as she used to be. She appears more anxious and that has given me concerns for her mental health.

1096. Ms Gorman gave evidence that the Publications had a significant emotional impact on Mrs Deeming: CB:8, 162[20]. She became ‘less communicative’ and ‘much quieter than usual’. It was ‘as if she has retreated within herself’. She stopped coming into the office unless she absolutely had to. She has been ‘visibly stressed’ since the Publications: CB:8, 162[21]. Since the Publications, Mrs Deeming has frequently looked at her with glazed eyes, as though she was distracted or preoccupied by her thoughts: CB:8, 162[22]. She has observed that, physically, Mrs Deeming ‘has not looked like her normal self’ and she ‘often looks frazzled’: CB:8, 162[23]. She ‘has lost her spark and is a shell of her normal self’: CB:8, 162[24]. Mrs Deeming told her that since the Publications she has felt concerned that her children would be put ‘in the line of fire’, she has felt threatened, she has been scared her children would be labelled as Nazis for simply being her children, and she ‘has become increasingly stressed about the privacy and safety of her family’: CB:8, 163[27]. She gave evidence that Mrs Deeming’s ‘personality has changed so much as a result of the Publications’: CB:8, 163[28].
1097. Ms Heath gave evidence that the Publications ‘have had a terrible impact on Moira’: CB:9, 181[66]. She gave evidence that she often asks Mrs Deeming how she is, and she will often answer ‘that she is highly strung or stressed’, and that at times she has expressed ‘that she has thought she and her family were in physical danger, and she feels unsafe’: CB:9, 181[67]. She has told Ms Heath that the Publications, and the reporting on them, ‘have taken a toll on her family and her marriage’: CB:9, 181[68].
1098. Mr Hodgett had conversations with Mrs Deeming in the period between the issuing of the Expulsion Motion and Dossier and the 27 March Meeting. Although she appeared quite calm and measured, he could see she ‘was obviously deeply upset by what John had said about her and what was happening’: CB:12, 196[15].

1099. Ms Hughes gave evidence that Mrs Deeming told her that almost immediately after the Publications she started receiving hateful messages and threats online, which made her fear for the safety of her children and made her reluctant to take her children to their usual activities out of fear people would say something to them or to her in front of them: CB:14, 207[9]. She was terrified people would call her a Nazi and her children would think she held Nazi beliefs: CB:14, 207[9]. She is scared that people will think the allegations that she is a Nazi or has associated with Nazis are true: CB:14, 207[13].
1100. Ms Hughes gave evidence that Mrs Deeming told her she had never experienced this level of stress: CB:14, 207[14]. She could see that Mrs Deeming was ‘struggling to function’ and ‘seemed overwhelmed and stressed’: CB:14, 207[14]. It became too much for her and ‘she completely shut down’: CB:14, 207[14].
1101. Ms Hughes observed the physical impact of the Publications on Mrs Deeming – that she has been unable to think as clearly or work as efficiently, that she has become distracted and forgetful, that she was physically sick from the stress (and would ‘get so stressed that she would not eat’), that she has appeared exhausted, that she has been restless and unable to sleep properly, and that she ‘cannot switch off and stop thinking about Mr Pesutto’s allegations and the impact they are having’: CB:14, 208[17]. She gives evidence that Mrs Deeming now has trouble making decisions and has become indecisive, and that her ‘clarity of mind is now not what it previously was’: CB:14, 208[18].
1102. Ms Hughes gives the following harrowing evidence about the profound emotional impact of the Publications on Mrs Deeming (CB:14, 208[19]):

I have seen Moira go through various difficult periods in the past, but Mr Pesutto's accusations have had a starkly different and greater impact on her. The accusations and media surrounding them were triggering for her in light of her earlier traumatic experiences. As her friend, Moira has shared with me the emotional struggles she has faced on account of these traumatic experiences. Although I did not know her when these traumatic experiences occurred, I was able to be there and provide support during her recovery. Moira was able to come to terms with and recover from her previous traumas at her own pace and, most importantly, in private. She could not do so following the Publications because of how public they were and due to the overwhelming and ongoing media attention that followed them. Due to this publicity, Moira has not been able to make a private and personal recovery but rather it has become an all-encompassing focus of her life, hindering her ability to emotionally recover from Mr Pesutto's allegations.

1103. Mr McCracken gave evidence he can tell the experience has impacted Mrs Deeming: CB:15, 215[28]. She has lost weight. She has told him she is stressed and anxious. She has said she feels Parliament is hostile towards her. He gets the impression she is trying to put on a brave face ‘but it’s taking a toll’.
1104. Mr Mundine gave evidence that Mrs Deeming has said ‘she has been devastated by the Publications and particularly by the allegation that she is a Nazi’: CB:17, 228[26]. ‘It was as if the carpet was pulled out from her overnight’. People were saying dreadful things about her. The personal attacks wore her down. She would get teary when discussing the Publications. He could see she ‘was in a lot of pain and under a whole lot of mental pressure’. She told him ‘she felt as if she, and her family, were under constant siege’. He gave evidence that she was particularly distraught when her young children were saying ‘my mum’s a Nazi’: CB:17, 228[27].
1105. Mr Riordan has observed that Mr Pesutto’s statements about Mrs Deeming have had ‘a huge emotional impact on her’: CB:20, 252[36]. Since March 2023, she has relayed to Mr Riordan ‘the accumulation of anger, frustration and helplessness that she has felt’. She has told him ‘her husband and kids have suffered terribly’, that ‘she has felt physically unsafe’, that ‘she has felt unable to publicly defend herself’, and that ‘she feels the world has turned against her’. On a few occasions he has visited her in her office and ‘she has broken down and started crying’.
1106. Mr Ruddick gave evidence that when he met Mrs Deeming at a lunch in May 2023, she was very upset about the accusations which Mr Pesutto had made about her, and that she was distressed but also perplexed as to why Mr Pesutto had said what she considered to be false things about her: CB:22, 263[10]. When they spoke again in July 2023, at a Friedman Conference, Mrs Deeming gave a speech in which she got very emotional talking about the attacks which Mr Pesutto had made on her, and that she had to pause for about a minute and had tears and a trembling voice: CB:22, 264[11]. They spoke about half a dozen times around that time in July 2023, and on each occasion she would raise the allegations and was upset by them: CB:22, 264[12].
1107. Senator Henderson gave evidence that Mrs Deeming has frequently told her ‘how she has suffered extreme distress, anxiety, and trauma as a result of being falsely accused of having an association with or supporting neo-Nazis and Nazi sympathisers’ and that ‘this episode

of her life has had a terrible impact on her husband and their four children including fears for her and her family's safety': CB:11, 192[26].

1108. Mr Smith gave evidence that at around the time the Expulsion Motion and Dossier was published, he had a discussion with Mrs Deeming about the proposed expulsion: CB:23, 270[22]. She was 'angry and indignant'. She seemed to be trying to contain her emotions and was holding herself together well but he got the impression she was hurt and upset and was trying to hide her emotions from him and others. He could see she was under tremendous pressure and stress. He gave evidence that, over time, he observed Mrs Deeming's demeanour get worse and worse: CB:23, 273[49]. She was stressed and struggling. His observations were that she was struggling to focus on anything other than the claims which Mr Pesutto made about her which dominated her life and were overwhelming for her. Whenever he has spoken with her since 19 March 2023, she raises the allegations against her and would be very upset: CB:23, 273[50]. She has told Mr Smith about how upset she is, as a mother and wife, about the way her husband and kids have been affected by it and that 'it's had a huge impact on her family': CB:23, 273[51].
1109. Ms Thompson gave evidence that Mrs Deeming told her the Publications had been 'very upsetting' for her; that, shortly after the Publications, she had received 'numerous messages which were very nasty'; that she couldn't believe that people who read the Publications would think she is a Nazi or Nazi sympathiser; and that 'she has become increasingly scared that people will see her and her family and associate them with the allegations, and as a result perceive them as Nazis or Nazi sympathisers': CB:25, 287[9]-[10]. She gave evidence that she has observed that Mrs Deeming has been visibly upset when discussing the impact of the Publications, and that this has been ongoing since March 2023: CB:25, 287[12]. She gave evidence that Mrs Deeming had been 'very outgoing' (prior to the Publications) but that since the Publications she 'has become reclusive and quiet' and that she had 'become more cynical and less naturally trusting': CB:25, 287[13]. She gave evidence that Mrs Deeming was not sleeping – that she had bags under her eyes and it looked like she had not been sleeping, that there was negative change in her mood which 'has gotten worse over time', and that Mrs Deeming has told her 'she does not sleep, because she is stressed about the impact the Publications will have on her children': CB:25, 287[14].

1110. Ms Thompson also gave evidence that Mrs Deeming ‘is someone who takes things to heart’, that she ‘is deeply upset by her perception that Mr Pesutto has falsely labelled her as a Nazi’, and that her ‘stress and her concern for her safety and the safety of her children and their future will always stay with her’: CB:25, 287[15].
1111. Ms Walton gave evidence that Mrs Deeming ‘has been broken by the Publications’ and has said ‘she is finding it difficult to continue with her life’: CB:26, 293[14]. She gives evidence of a reaction to the Publications consistent with a deep depression. Mrs Deeming has told her ‘on numerous occasions she has found it difficult even to get out of bed, to get out of the house, to eat and to dress appropriately’. She has been ‘devastated and deeply affected by the Publications’: CB:26, 293[15]. She has been ‘far less communicative’, ‘she seems to be withdrawn and reclusive, almost as if she is shell shocked’, and she is ‘a lot more serious’ and ‘does not laugh as much as she used to’. She feels she has had to endure a great injustice: CB:26, 293[16]. She asked Ms Walton ‘How do I go on’.
1112. The Publications have affected Mrs Deeming’s whole family. Ms Walton gave evidence they were previously ‘a very joyful and warm family’ but now ‘sound dejected and flat’ and seem to be ‘preoccupied with the allegations against Moira and were focusing all their energy on clearing her name’: CB:26, 294[19].
1113. Ms Wong gave evidence that the Publications have been damaging emotionally to Mrs Deeming and have weighed heavily on her: CB:29, 320[17]. The allegations in the Publications ‘have been akin to a trauma event’ for Mrs Deeming ‘that has consumed her for over a year’. Mrs Deeming expressed to Ms Wong that it has been incredibly stressful. She has said on more than one occasion that ‘it’s all too much’. Mrs Deeming told Ms Wong that she needs to address the false accusations against her (that she has been associated with Nazis) for the benefit of her family, which is her main concern, and that she needs to vindicate herself as soon as possible for her own mental health and the wellbeing of her family: CB:29, 320[18]-[19].

Conclusion – hurt feelings

1114. It is clear that the emotional harm Mrs Deeming has suffered has been severe and may be permanent – for example, Mr Deeming gave evidence he is worried ‘she will not recover’ (CB:4, 131[103]); Mr Duke gave evidence that he ‘fear[s] it will be difficult, and perhaps impossible, for her to move on and put this behind her’ (CB:6, 143[20]); Ms Hughes gave

evidence that the Publications have ‘destroyed her personal and political purpose in life’ (CB:14, 209[20]); Ms Thompson gave evidence that she does not think that Mrs Deeming ‘will ever be the way she was before the Publications’ (CB:25, 287[15]); and Ms Walton gave evidence she fears the Publications ‘have broken[Mrs Deeming] and that she will never be the same’ (CB:26, 294[22]).

Aggravated Damages

1115. The conduct of Mr Pesutto against Mrs Deeming is set out, at length, in Part C of these submissions. The Court should find that his conduct towards Mrs Deeming has been lacking in good faith, improper and unjustifiable, and that this has increased the harm to Mrs Deeming, so as to warrant an award of aggravated damages.

1116. It is plain from the totality of the evidence that Mr Pesutto made a decision to remove Mrs Deeming from the Victorian Parliamentary Liberal Party prior to the 19 March Meeting. He did so because he disagreed with Mrs Deeming’s views about sex-based rights and safeguards and saw these views as a threat to his own vision of the Liberal Party. He used Mrs Deeming’s attendance at the LWS Rally as a pretext for seeking to expel her. Perhaps understanding that Mrs Deeming could not rationally be blamed for the unexpected and unforeseeable intrusion of the Nazis on the steps of Parliament at the same time as the LWS Rally, he chose to focus not on the Nazis themselves but on Ms Keen and Ms Jones as the organisers of the LWS Rally. Although he had heard little or nothing of these two women prior to the LWS Rally, nonetheless, apparently on the basis of the very limited research undertaken by Mr Pintos-Lopez on 19 March 2023, he sought to attack Mrs Deeming for her alleged ‘associations’ with these two women.

1117. He attended the 19 March Meeting thinking there were only two possible outcomes – Mrs Deeming would resign, or, if she refused to resign, she would be expelled. But the 19 March Meeting did not go according to plan – Mrs Deeming made appropriate concessions and offered to condemn the conduct of Ms Keen and Ms Jones. It was to her credit that she would not denounce them *as people*, particularly without having seen or understood the so-called ‘evidence’ against them. Rather, she was prepared to denounce the particular conduct to which the Leadership Team referred and particular views they apparently held or had expressed which she did not share. Mr Pesutto pretended to give thought to a potential third outcome – a statement from Mrs Deeming – but never presented Mrs Deeming with a form of words she might release or even give her an opportunity to prepare them for herself.

Instead, without giving Mrs Deeming any proper opportunity to see or understand the ‘evidence’ against Ms Keen and Ms Jones which was said somehow to justify her expulsion, he told her he proposed to take the drastic step of seeking to expel her from the Victorian Parliamentary Liberal Party. This decision was unjustifiable and unreasonable.

1118. Having made the decision, he then, without any warning to Mrs Deeming, publicised it by way of the Media Release. This was improper, and could only have been intended to destroy Mrs Deeming’s reputation and undermine her position ahead of a vote on the proposed expulsion.
1119. He then made a series of further improper statements about Mrs Deeming on 20 March 2023. In the 3AW Interview, Mr Pesutto explicitly labelled Ms Keen and Ms Jones as Nazi sympathisers. This was totally unjustifiable. He never withdraw those statements or apologised for making them. He also falsely alleged that Ms Keen had done videos with David Duke, Mark Collett and Richard Spencer. Although he has since sought to excuse this by saying he ‘misspoke’, he then repeated the claims in subsequent interviews and has never withdrawn them (despite knowing they were false) and has never apologised for making them.
1120. This was all before the Expulsion Motion and Dossier had been prepared. In other words, in a reversal of due process, Mr Pesutto had made a decision to expel Mrs Deeming, then repeatedly publicised that decision, before he had ever obtained and prepared the evidence said to support it.
1121. In the evening of 20 March 2023, he sent the Expulsion Motion and Dossier to MPs, and then released it to the press. This was also done to harm Mrs Deeming’s reputation and influence MPs prior to a vote on the Expulsion Motion.
1122. Mr Pesutto’s repeated use of the word ‘associated’ and ‘associations’ – in all the Publications - was deliberately vague and slippery. As he said in the 19 March Meeting, it was ‘a flexible word’ and in using it ‘you leave yourself open’. He knew people would understand this word in different ways, and that some would think from it that he was suggesting Mrs Deeming was a Nazi or Nazi sympathiser, or that she knowingly partnered with and supported Nazis and Nazi sympathisers. His choice of language was either deliberate, or incredibly reckless.

1123. He did not include, in any of the Publications, any reference to what Mrs Deeming had told him and the Leadership Team in the 19 March Meeting, or any of the other exculpatory material he had seen. This was because it contradicted his narrative and revealed his position to be untenable.
1124. It is plain that the intention of the Publications was to inflict maximum harm to Mrs Deeming's reputation, in order to maximise the prospects that the Expulsion Motion would pass.
1125. When it became clear during the 27 March Meeting that it would not pass, Mr Pesutto agreed to a compromise in order to save his own leadership, knowing that if the Expulsion Motion did not pass he would have to resign. The agreement required him to join with Mrs Deeming in issuing a joint statement making clear that Mrs Deeming was not a Nazi or Nazi sympathiser. But then he reneged on the agreement. He tricked Mrs Deeming into publishing a statement from her alone which she thought would be one half of the joint statement she had been promised. And he never said that Mrs Deeming was not a Nazi or Nazi sympathiser.
1126. In an attempt to conceal his dishonesty, he prepared his own self-serving version of the minutes of the 21 March Meeting and 27 March Meeting. In order to do so, he was prepared to bully and humiliate Dr Heath and rejected her detailed minutes in front of the whole Party Room. It was agreed in the 2 May Meeting that he and Mr Southwick would prepare an agreed alternative form of minutes together with Dr Heath and Mr Wells. Mr Pesutto reneged on that agreement too. At the 12 May Meeting, he presented his own version of the minutes. This was a transparent attempt to retrospectively justify his misconduct towards Mrs Deeming since the 27 March Meeting.
1127. When Mrs Deeming – quite rightly - complained about his conduct, and threatened as a last resort to exercise her legal rights – Mr Pesutto then conspired to seek for a second time to expel Mrs Deeming. He persuaded others to sign the Second Expulsion Motion, and then concealed his own involvement - misrepresenting to the Party Room and to the public that it was initiated by them and not by him. As always, he was motivated by political optics.
1128. Mr Pesutto's conduct – from 19 March 2023 until Mrs Deeming's expulsion on 12 May 2023 – was dishonest, malicious, and unethical.

1129. In addition, Mr Pesutto's conduct of the litigation has been far from ideal. He has pleaded defences which could not possibly succeed, causing a substantial waste of time and costs. He has also given confidential settlement information to Jeff Kennett and informed him of the names of witnesses. Mr Kennett used that information to threaten retribution against some of those witnesses in the press.
1130. Perhaps most egregiously, he did not disclose the existence of the recordings of the 19 March Meeting despite having known of them since late 2023 or early 2024. Mr Pesutto's position was apparently that he was not obliged to discover the recordings because they were not in his possession. This was an unhelpful and unduly technical position to take. Mr Pesutto would not accept, in cross-examination, that if he had asked Mr Southwick for the recordings, he would have given them to him: T576.41-46. He did not ask because he did not want them in his possession: T577.24. Mr Southwick gave evidence he would have provided them to Mr Pesutto if he had requested. Mr Pesutto dishonestly did not refer to the existence of the recordings in his affidavit, or discover them, until the week prior to the trial. This conduct was dishonest and improper, and resulted in many thousands of dollars of wasted legal expenses in the preparation of affidavits from six separate witnesses on a topic which should not have had to be the subject of evidence.
1131. Mr Pesutto also gave dishonest evidence during the hearing, as set out in Part D above. This was also improper.
1132. Most of these particulars were the subject of evidence by Mrs Deeming, but to the extent they were not, the Court should still infer that the matters particularised have aggravated her hurt: see *Hanson-Young v Leyonhjelm (No 4)* [2019] FCA 1981 at [248].

M. INJUNCTIONS AND COSTS

1133. The applicant wishes to be heard on these matters after all questions of liability and any damages are determined.

18 October 2024

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