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Details of Filing

Document Lodged:	Submissions
File Number:	NSD426/2021
File Title:	JOANNE ELIZABETH DYER v SUE CHRYSANTHOU & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 10/06/2021 9:44:55 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

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DYER V CHRYSANTHOU AND ANOTHER – NSD 426 OF 2021

SECOND RESPONDENT'S CLOSING SUBMISSIONS: PROPOSITIONS OF FACT AND LAW

REDACTED SUBMISSIONS

A. INTRODUCTION

1. The basic facts as well as the relevant legal principles and authorities were set out in the Second Respondent's opening submissions and are not repeated here. Capitalised terms bear the same meaning as in those opening submissions.
2. By these closing submissions, Second Respondent sets out the material findings of fact and legal conclusions he contends for in these proceedings. This document is structured as follows:
 - a. *First*, the Second Respondent sets out three matters which he understands are common ground as between the parties.
 - b. *Secondly*, these submissions address the factual dispute on the evidence concerning what was discussed at the 20 November 2020 conference.
 - c. *Thirdly*, these submissions outline the conclusions the Second Respondent urges upon the Court in respect of the first basis upon which Ms Dyer seeks relief – protection of confidential information,
 - d. *Fourthly*, these submissions address the second, independent basis upon which Ms Dyer seeks relief – the Court's inherent jurisdiction to protect its own processes and ensure the administration of justice.

B. MATTERS OF COMMON GROUND

3. There are three matters of common ground as between the parties.
4. *First*, it is not disputed by the Second Respondent that there was a lawyer client relationship between Ms Chrysanthou and Ms Dyer in relation to the advice she was asked to give about the potential defamation claim and the Concerns Notice.

5. *Secondly*, it is not disputed by the Second Respondent that to the extent information was imparted by Mr Hooke in the 20 November 2020 conference that that information might attract an obligation of confidence, despite Mr Hooke not being a client of Ms Chrysanthou.¹
6. *Thirdly*, when this case commenced there was no allegation that Ms Chrysanthou had in fact misused, in the course of her brief in the Porter Proceedings, confidential information allegedly imparted to her during the course of her retainer with Ms Dyer. That remains the position.

C. FACTUAL FINDINGS CONTENDED FOR

7. The only substantive factual dispute is what was discussed at the 20 November 2020 conference.
8. As far as Ms Chrysanthou recalls, Mr Richardson asked her to review the Australian Article shortly before 20 November 2020, likely 19 November 2020. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²
9. A conference was arranged for 20 November 2020. Ms Chrysanthou did not initially recall that Mr Bradley and Mr Hooke were going to attend; however, an email that was produced on subpoena by Mr Richardson refreshed her memory that Mr Bradley was in attendance.³ She did not realise Mr Hooke was going to attend, although she acknowledges that Mr Richardson's email referred to Mr Hooke attending the conference and that there must have been a telephone call between her and Mr Richardson previously where he explained that Mr Hooke and he were very good friends.⁴
10. As to the conference itself, Ms Chrysanthou's evidence was that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ *Re Timbercorp* at [76] (Anderson J).

² Chrysanthou [14] (CB 199-200); T176.8-42,

³ Chrysanthou #2 at page 4.

⁴ T179.34-180.37

⁵ Chrysanthou [27] (CB 202).

[REDACTED]

11. In the context of that discussion – particularly in the context of Ms Chrysanthou’s discussion of [REDACTED]

12. Ms Chrysanthou also recalled that [REDACTED]

13. During cross-examination it was suggested to Ms Chrysanthou that the following other topics might have been discussed:

[REDACTED]

⁶ Chrysanthou [28] (CB 203).
⁷ Chrysanthou [31] (CB 204).
⁸ T182.20-183.23; 193.7-8; see also Chrysanthou [29].
⁹ T.193.10-11
¹⁰ Chrysanthou [29] (CB 203).
¹¹ Bradley [20] (CB 53), Confidential Annexure MDB-5 pages 48 to 59 (CB 96-107).
¹² Chrysanthou [30] (CB 203).
¹³ Chrysanthou [33] (CB 204).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. In their reply affidavit evidence, the Applicant's witnesses did not dispute Ms Chrysanthou's account of the advice she gave Ms Dyer in relation to the Australian Article. Nevertheless, Mr Hooke went into significant more detail than what was contained in his first affidavit about the conference. [REDACTED]

[REDACTED]

¹⁴ T188.35-189.43.
¹⁵ T190.21-24.
¹⁶ T190.41-47.
¹⁷ T192.4-32.
¹⁸ T193.20-26,

15. It is submitted that the account of Ms Chrysanthou of what was said at the 20 November 2020 conference ought to be preferred over that of Mr Hooke for the following reasons.

16. *First*, the detail and sensitive nature of the information to which Mr Hooke attributes himself and Ms Dyer disclosing in this conference (whether it went for no more than an hour or up to an hour and a half) sits incongruously with other aspects of the evidence. This was a conference which was described contemporaneously by Mr Bradley to all of the other attendees as “high level entertainment”¹⁹ (which Ms Chrysanthou thought referred to her being entertaining²⁰). This was a conference where Ms Chrysanthou’s memory is that Mr Hooke barely spoke at all and she had no recollection of any topic he discussed.²¹ This was a conference which, whether it went for an hour or an hour and a half²², was described by Ms Chrysanthou as not very memorable.²³ Mr Hooke’s initial concern in these proceedings that his mere presence at the conference was confidential sits in contrast to his apparent willingness to disclose to a barrister he had never met before matters of significant sensitivity.

█ *Secondly*, the Applicant’s case is that at the conference they discussed, *inter alia* (a) █
█
█
█
█
█
█
█
█
█

18. It is simply untenable that matters of this nature could have been discussed at a conference that Mr Bradley characterised as high-level entertainment.

19. *Thirdly*, nowhere in Hooke #2 did Mr Hooke dispute that █
█

¹⁹ CB 105
²⁰ T184.44-45.
²¹ Chrysanthou [33].
²² T178.15-24. Ms Chrysanthou gave a clear explanation as to why it went for no more than an hour, because she had another conference at 11.30 and spoke to her junior in another matter between the two conferences.
²³ T178.5-6.
²⁴ Hooke, [13]

21. *Thirdly*, Ms Chrysanthou’s explanation for why the wide-ranging (and sensitive) matters outlined in Hooke #2 (at least those that were explored with her in her cross-examination as set out in paragraph 14 above) were unlikely to arise in the context of the discussion about the draft Concerns Notice makes good sense. For example, as Ms Chrysanthou explained, [REDACTED]
[REDACTED]
[REDACTED] Rather, as Ms Chrysanthou explained:

[REDACTED]

³¹

[REDACTED] *Fourthly*, it is unlikely that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

³⁵

23. That evidence is consistent [REDACTED]
[REDACTED]
[REDACTED]

³¹ T192.18-32.
³² Hooke #2 [8] (CB 476).
³³ Exhibit 6.
³⁴ T131.43-45.
³⁵ T189.24-29.

[REDACTED]

24. *Fifthly*, the Court can also infer (as was foreshadowed in opening submissions) that the evidence of Mr Richardson would not have assisted the Applicant's case.³⁷ Mr Richardson's evidence was relevant to what was discussed at the 20 November 2020 conference. Mr Richardson's communications that are in evidence suggest he "in the Applicant's camp" to put it colloquially. He is someone the Applicant could have subpoenaed but chose not to after the Court was told that he would be subpoenaed to give evidence.³⁸
25. *Sixthly*, while the Applicant chose to rely on a much more detailed affidavit of Mr Hooke (in reply) which does sets out the specificity of the information said to have been disclosed, the Applicant refrained from adopting that same approach with the other witnesses – Ms Dyer and Mr Bradley. The affidavits they supplied adopted the "topic" approach to the relevant information and even after Mr Hooke provided his detailed account in his affidavit of 21 May 2021 to provide the detail of these matters, Mr Bradley and Ms Dyer did not provide affidavit evidence corroborating his account by giving the detail of their recollections. In those circumstances, the Court should draw a *Ferrcom* inference that any evidence that they could have given "would have exposed facts unfavourable" to the Applicant."³⁹
26. *Seventhly*, even though the topics identified in Ms Dyer and Mr Bradley's evidence are expressed at a high level, inconsistencies can be identified between those topics and Mr Hooke's evidence. For example, Mr Hooke [REDACTED]
[REDACTED]
[REDACTED] That ought be contrasted with Ms Dyer's evidence, where she says [REDACTED]
[REDACTED]

³⁶ CB 108.

³⁷ *Jones v Dunkel* (1958) 101 CLR 298.

³⁸ T28.25-34.

³⁹ *Commercial Union Assurance Company of Australia v Ferrcom Pty Ltd* (1991) 22 NSWLR 389 at 418 (Handley JA).

⁴⁰ Hooke # 2 at [9]

[REDACTED]
[REDACTED]
[REDACTED]

27. There are other examples of inconsistencies. Ms Dyer says that [REDACTED]
[REDACTED]⁴¹ Mr Hooke does not say that and Mr Bradley does not identify it as a topic that was discussed.
28. In those circumstances, where there are some fundamental inconsistencies in the account of the Applicant's three witnesses, Mr Hooke's evidence is disputed and two of the three witness have chosen not to give their account of what was actually said, the *Ferrcom* inferences are not insignificant.

D. FIRST BASIS: PROTECTION OF CONFIDENTIAL INFORMATION

29. Turning then to the first basis on which Ms Dyer seeks to restrain Ms Chrysanthou – protection of confidential information.
30. The relevant principles are set out in the Second Respondent's opening submissions at paragraphs 42 to 67. It is convenient to approach the inquiry by reference to the sequence of questions set out by Anderson J in *Re Timbercorp* at [64] and replicated in paragraph 43 of the Second Respondent's opening. There is no dispute between the parties as to the law in this regard.
31. As to the first question – what is the relevant information – whether the Applicant has satisfied her onus of identify the relevant information with sufficient particularity is linked to the issue addressed in section C of these submissions above. That is because it is the Second Respondent's submission that, absent the Court's acceptance of the evidence Mr Hooke gave in his second affidavit, the Applicant must fall back on the evidence of Ms Dyer and Mr Bradley whose affidavits have not identified with sufficient particularity or precision the relevant information alleged to have been departed to Ms Chrysanthou. The Applicant's acceptance of that is readily apparent when one has regard to the significant reliance on Hooke #2 in the formulation of Information Categories A to N in the Applicant's opening submissions. The "topics" approach adopted by those witnesses is insufficient for all of the reasons in paragraphs 88 to 93 of the Second Respondent's opening submissions.

⁴¹ Dyer at [25(h)].

32. As to the balance of the questions in *Re Timbercorp*, annexed to these submissions and marked **Confidential Annexure A** is a table which groups the alleged categories of confidential information in the same manner that the Applicant has in her opening submissions and identifies:
- a. In the first two columns the category and description of confidential information allegedly disclosed to Ms Chrysanthou (the table assuming against the Second Respondent's submission above to the effect that reliance should not be placed on Hooke #2 as to the content of the confidential information disclosed);
 - b. In the third column the publicly available material in evidence which discloses that information or information relating to that topic (to the extent it is expressed in generalities). The large bulk of the materials comprises the publications which comprise Exhibit 11. And to the extent those publications attribute statements to Ms Dyer (which statements are extracted in **Annexure B** to these submissions), there is an agreement between those parties that all the statements recorded in Annexure B were made by her.⁴² Particularly for Information Categories A, B, C, H, J, K, I, M and N, there is a significant amount of publicly available material – including that emanating from Ms Dyer herself – which shows that while that information may have been confidential at the time of the 20 November 2020 conference (including by reason that it was imparted in the context of a lawyer-client relationship), since that time it has entered the public domain to a significant degree and has therefore lost its confidential character. In circumstances where on many occasions Ms Dyer (and to a certain extent Mr Hooke) have chosen for their own purposes to place that information in the public domain, the information cannot be regarded as confidential.⁴³
 - c. In the fourth column, the paragraphs of the pleadings and the proposed interrogatories that relate (or are said by the Applicant to relate) to the particular Information Categories.
 - d. In the fifth column, the Second Respondent's submissions as to the fifth and sixth questions in *Re Timbercorp* – namely whether there is a real risk that the information will be relevant to the Porter Proceedings and whether there is no risk of misuse of the information (the latter inquiry the Second Respondent having the onus).
33. It must also be remembered that the Applicant also bears the onus of establishing that Ms Chrysanthou is acting “against” Ms Dyer in the requisite sense. The case the Second Respondent

⁴² T218.25-36.

⁴³ See the authorities referred to in the Second Respondent's opening submissions at paragraphs 58 and 60.

is meeting is that Ms Dyer will be (or is likely to be) a witness in the Porter Proceedings. The Court would not draw that conclusion in the circumstances of the present case, for all of the reasons set out in the Second Respondent's opening submissions in paragraphs 110 to 116 (as well as elaborated upon in the fifth column of Confidential Annexure A). There would have been a simple way to prove it, by adducing some evidence from the ABC to the effect that they expect her to be a witness in the case.

34. Even if the Applicant satisfies her onus in respect of this inquiry, the table at Confidential Annexure A establishes that of the various categories of information relied upon by the Applicant, that information is either in the public domain, not relevant to the Porter Proceedings, or that there is no risk of any misuse of it by Ms Chrysanthou.
35. In those circumstances, the Court would dismiss the first basis upon which Ms Dyer invokes the Court's jurisdiction to restrain Ms Chrysanthou.

E. SECOND BASIS: INHERENT JURISDICTION

36. As detailed in the Second Respondent's opening submissions at paragraphs 68 to 76, the Court also has an inherent jurisdiction to restrain a legal practitioner from acting in a particular case, as an incident of its supervisory jurisdiction over its officers and to control its processes in aid of the administration of justice.⁴⁴ It is accepted that this is an independent grounds for restraining a practitioner separate and apart from where there is a risk of misuse of confidential information. This basis "deals not just with private fiduciary relationships and *inter-partes* fiduciary obligations, but rather the administration of justice, the public interest and the appearance of propriety of officers of the court. The third basis is not only justified, but its justification explains its additional scope."⁴⁵
37. The test to be applied in this inherent jurisdiction is whether a fair minded reasonably informed member of the public would conclude that the proper administration of justice required that a legal practitioner should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice, including the appearance of justice.⁴⁶

⁴⁴ *Kallinicos v Hunt* at [76] (Brereton J).

⁴⁵ *Dealer Support Services* at [96] (Beach J).

⁴⁶ *Kallinicos* at [76] (Brereton J).

38. That inherent jurisdiction is exceptional and is to be exercised with caution.⁴⁷ In determining whether the jurisdiction ought to be exercised, the Court must take into account the public interest in a litigant not being deprived of the counsel of his or her choice without due cause, the timing of the application, in that the cost, inconvenience or impracticality of requiring the barrister to cease to act may provide a reason for refusing to grant the relief.⁴⁸
39. The fair minded reasonably informed member of the public would not conclude that Ms Chrysanthou should be restrained from acting for him in the Porter Proceedings for the following reasons. Mr Porter's *prima facie* right to be represented by his counsel of choice in the Porter Proceedings should not be understated. The seriousness of the allegations made in the Porter Proceedings, and the defences raised by the respondents in those proceedings, is unquestionable. The Porter Proceedings also on their face raise potentially complex questions of defamation law and are factually dense on the face of the pleadings, particularly the defence. Mr Porter is in those circumstances entitled to an experienced counsel who is a specialist defamation barrister.⁴⁹
40. A fair minded reasonably informed member of the public would also expect that absent exceptional circumstances the Court would not deprive Mr Porter of a counsel who has worked significantly on the case since she was briefed since being instructed,⁵⁰ particularly when it is being expedited by the Court. The expeditious conduct of defamation proceedings (including from the parties) is particularly important where the Porter proceedings are directed at public vindication. The longer that vindication is delayed, the greater the risk that the purpose of the proceedings may be undermined.⁵¹
41. To the extent it is suggested that the reasonably informed fair-minded bystander would take into account the fact that Mr Richardson (who also attended the conference) considered that he would not act in the Porter Proceedings, that submission should not carry much weight. Various views on the matter were expressed, and legal opinions were provided, to both Ms Dyer (though her

⁴⁷ *Kallinicos* at [76] (Brereton J).

⁴⁸ *Kallinicos* at [76] (Brereton J).

⁴⁹ Chrysanthou [3]-[7].

⁵⁰ In that regard, to the extent it is suggested that Ms Chrysanthou told Mr Bradley that she was not working on the Porter Proceedings, the Court would conclude that those words were not said, Ms Chrysanthou denying that she ever told Mr Bradley she was stopping work on the Porter Proceedings.

⁵¹ *Rush v Nationwide News Pty Ltd (No 6)* [2018] FCA 1851 at [115] (Wigney J), citing *Channel Seven Adelaide Pty Ltd v Manock* (2010) 273 LSJS 70 at [60] (Bleby J (with whom White J agreed)).

solicitors), Ms Chrysanthou's solicitors and Ms Chrysanthou herself (who took advice from some senior members of the bar).

42. Ultimately, none of their views carry any weight as to whether there is a risk of misuse of confidential information because there is no evidence of precisely what they were told about what occurred in the conference and their opinions were given at a time when the defence was not yet on so they could not have known what the issues in the case would be or whether Ms Dyer would be a witness. The relevance of Ms Chrysanthou's conversations with senior members of the bar about whether she could act that it shows that she followed an appropriate process of seeking advice as to her obligations under the bar rules and considering that advice about what she could recall was said at the conference.
43. As to Mr Richardson's concerns about Ms Chrysanthou acting in the case, the Court will recall what Mr Richardson said to Mr Chrysanthou about why it would be bad for her to act in the case and how it would impact upon her.⁵²
44. Mr Chrysanthou has taken the position in the proceedings that she will do whatever the Court says she should do and she is not making submissions on the relief sought. That does not mean she cannot have a personal view as to whether it is appropriate that she should be restrained. She acknowledged she had provided some assistance to the second respondent in the preparation of his position.⁵³ However, she was not asked any further questions about what in fact she had done in that regard. In those circumstances, the Court cannot infer that any such assistance was in any way improper, or that a fair minded observer would be concerned about it. In fact, it is not reasonable to expect that a case like this could be conducted without input from the senior counsel with the carriage of the defamation proceedings particularly where an understanding of what is and is not going to be an issue in the defamation proceedings or which facts are going to be in contest is critical to the question of the risk of misuse of information.
45. Finally, and relatedly, the submission made in Ms Dyer's opening submissions at paragraph 90 – which is to the effect that the Court would more readily exercise its jurisdiction in the present case because the “parties are prolific public figures” – should not be accepted. To the contrary, the Porter defamation proceedings are high profile because of the nature of the allegations and his position in the government. The attention the alleged defamatory matters has received has what has made this case high profile. The higher the profile of the case, the more damage to Mr

⁵² T.200.8-12

⁵³ T.216.17-18

Porter's reputation. The greater the damage to his reputation the greater the need for him to have his choice of barrister practising in this specialised field.

46. Further, the public interest in the Porter Proceedings means that the Court in these proceedings would be especially conscious of the extraordinary jurisdiction invoked by Ms Dyer and the need to protect against the invocation of conflicts of interest where none properly exist.⁵⁴ As is well recognised, “[a]n independent bar is fundamental to the administration of justice. An aspect of that independent is a litigant’s right of access to skilled practitioners of their choice”.⁵⁵ The cab rank rule is no more important than in a case where the facts are obviously distressing. Moreover, the test is whether a “reasonably informed” member of the public would conclude Ms Chrysanthou ought to step aside, in the interests of the protection of the administration of justice. Whether as a matter of fact there are more “reasonably informed” bystanders (by reason of the publicity surrounding the Porter Proceedings) should not affect the Court’s assessment one way or the other.

F. CONCLUSION

47. The proceedings should be dismissed. The Second Respondent may seek to be heard on costs.

27 May 2021



CH Withers

Counsel for the Second Respondent



E Bathurst

⁵⁴ *Zamattia v Zamattia* [2019] NSWSC 1769 at [29] (Leeming JA).

⁵⁵ *Slaveski v State of Victoria* [2009] VSC 540

ANNEXURE B TO SECOND RESPONDENT'S CLOSING SUBMISSIONS**Public Comments made by the Applicant**

Date	Publication	Comment	Reference
9 November 2020	Four Corners - <i>Inside the Canberra Bubble</i>	<p>“All political parties need to think about the type of people that they have in positions of power and authority. And Australians need to think about the type of people that they want representing them.”</p> <p>“We met CP in 1986, um, for the first time. He was very charming. He was very confident. Um, we were all quite confident back then. He had that assuredness that’s perhaps born of privilege. But he was, you know, brash, blond and breezy. Christian was quite slick, in some ways. And he had an air of entitlement around him that I think was born of the privilege from which he came.”</p>	RG Ex 2 p 26, 36 (CB 248, 258)
15 November 2020 9.19am	Tweet from Twitter handle @instanterudite	“Why will no-one will (sic) discuss the clear inconsistencies in Porter’s statement and that of many witnesses to his alleged behaviour in the Public Bar and the careful way he has parsed his words when denying relationships with staff?” #insiders”	RG Ex 2 p 50 (CB 272)
17 February 2021 11.32pm	Tweet from Twitter handle @instanterudite	“Not sure why we expect this Government to do anything substantive about sexual assault when it ignores allegations that one of its members is guilty of the same thing. #BrittanyHiggins	RG Ex 2 p 51 (CB 273)

		#whatyouwalkpast #weremember @Milliganreports @samanthamaiden @annabelcrabb	
1 March 2021 3.24pm	ABC News – <i>Friends of woman who accused Cabinet Minister of rape call for inquiry into allegation</i>	<p>“Another friend, Jo Dyer...knew the woman since she was 15.”</p> <p>“She had such charisma and we all imagined her life would be one of skyrocketing success, of achievement.”</p> <p>“[in our circle] there were many stars shining in the firmament, but [she] really shone the brightest, or certainly one of the brightest.”</p> <p>“She was a star, really.”</p> <p>“It’s heartbreaking, it really is.”</p> <p>“(It) really seemed completely consuming and completely debilitating to her.”</p> <p>“She was consumed with a trauma which she told me deeply and consistently, was a result of an assault that had [allegedly] occurred, early in 1988, and her life at that point was really devoted to exploring how she could get some kind of...peace from that.”</p>	RG Ex 2 p 53 – 56 (CB 274-278)
1 March 2021 7.26pm	The Sydney Morning Herald – <i>Friends remember ‘extraordinary’ woman who claimed rape by cabinet minister</i>	<p>“She was extraordinary.”</p> <p>“We had a number of conversations because we were all very mindful of the difficulties of seeking justice through the criminal justice system”</p> <p>“It was very difficult for her to be seeing him in the press all the time.”</p>	RG Ex 2 p 58-59 (CB 280-281)

		<p>The woman had not spoken to any journalists but going to the media was “definitely something on the agenda as a possibility.”</p> <p>“How that could have worked with defamation laws, who knows”</p> <p>“She was someone who suffered from severe mental health illness.”</p> <p>“Amongst all that there was a clear resolve, to tell her story, that she had reached after clear-eyed rationalism.”</p>	
2 March 2021	ABC 7.30 – <i>Minister under cloud of rape allegations to identify himself</i>	<p>“She was an incredibly talented, impressive individual. We met when she was quite young. She was selected for the state debating team much younger than people normally are and that was because of the acute intelligence that she possessed, the extraordinary eloquence. She was so articulate.”</p> <p>“She was under no illusions about the difficulties that she would confront if she sought to make a formal complaint against anyone of a crime of such seriousness so far in the distant past. She had made a clear decision; she was able to articulate the reasons why she had taken that decision which were to do with the fact that bearing the trauma had not worked for her. Her life had been troubled as a result of that trauma and she saw no other way of getting past it than to ventilate it.”</p> <p>“The account that she gave was shocking. The acts that she described were shocking. They were far outside the experience of any of us at that time as we were in our final years at school.</p> <p>The detail that she recounted, the lucidity with which she recounted it, and the clear impact that it had had on her, all of</p>	RG Ex 2 p 62-63 (CB 284-285)

		<p>these things persuaded me immediately that she was telling the truth.”</p> <p>“We are here to speak for her because she can’t speak for herself. You know, it’s a wonderful thing to have young women with the strength and the eloquence of Brittany Higgins who is coming forward and saying ‘I have been wronged and I am seeking justice.’</p> <p>They were the very words that my friend wanted herself to be able to say in a public forum, sadly she can’t.</p> <p>There does need to be an independent inquiry to test, to interrogate and we believe ultimately to established the voracity of the claims that she made. We are happy to stand here and argue that case for her.</p> <p>What standard is ok for the Prime Minister to accept whether it’s our friend or it is Brittany or if it’s another young woman whose life may not have soared in the way that we all assumed our friends would soar, no-one should accept this standard any more and I think that the anger that so many people feel indicates that they will not.”</p>	
3 March 2021 6.00am	ABC News – <i>Why the response to the historical rape allegation against a Minister is so different</i>	<p>“She was under no illusions about the difficulties that she would confront if she sought to make a formal complaint against anyone of a crime...so far in the distant past.”</p> <p>“She had made a clear decision; she was able to articulate the reasons why she had taken that decision which were to do with the fact that bearing the trauma had not worked for her. Her life had been troubled as a result of that trauma and she saw no other way of getting past it than to ventilate it.”</p>	RG Ex 2 p 66 (CB 288)

		<p>“Ms Dyer said the woman connected with her old friends in 2019, told them about the alleged assault all those years ago, and said she was going to make a complaint to police.”</p> <p>“I believed her from the very beginning.”</p> <p>“The detail that she recounted, the lucidity with which she recounted it, and the clear impact that it had had on her, all of these things persuaded me immediately that she was telling the truth.”</p>	
5 March 2021 5.00am	The Sydney Morning Herald – ‘ <i>We are not out to destroy anyone</i> ’: <i>Woman’s friends back inquiry into Porter rape allegation</i>	<p>“Jo Dyer, who was a debater with the woman in the late 1980s, knew a cohort of seven national school champion debates from that time, which included Mr Porter and the deceased woman. She said the five others in that group all believed the woman when she told them her story decades later.”</p> <p>“...Ms Dyer said while Mr Porter vehemently denied the claims and argued against a trial by media, no other appropriate forum had yet been established to investigate. That process would ‘provide a forum for all of the claims, memories, recollections to be examined in a confidential and impartial way.’”</p> <p>“One point Ms Dyer said she and others would challenge was the depth of Mr Porter’s interactions with the woman, which he said happened ‘for the briefest periods at debating competitions when were teenagers about 33 years ago.’ She said that description undercut the strength of bonds formed in short periods of time amid the intense competition of debating. Members of the team competed in the late 1980s in Sydney, where the woman alleged the rape occurred.”</p>	RG Ex 2 p 68 (CB 290)

		<p>“Those debating words are hotheouses... [Mr Porter and the woman] were in a national team together. They were preparing to debate together.”</p>	
6 March 2021 3.47pm	News.com.au – <i>Key doubts over Porter accuser’s story</i>	<p>“This is wrong. Our friend sought professional help for her trauma years before 2019.”</p> <p>“Her memories have never had to be ‘recovered’ as she lived with them constantly. An inquiry would establish this beyond a shred of doubt.”</p>	RG Ex 2 p 73 (CB 295)
7 March 2021	Tweet from Twitter handle @instanterudite	<p>“Sadly, our friend knew spurious ‘false memories’ claims would be deployed against her. We discussed it, right down to the media outlets likely to promote them. @crikey_news was not on our list, and their role is disappointing, but the rest are playing out as predicted. #insiders”</p>	RG Ex 2 p 79 (CB 301)
8 March 2021 8.31pm	ABC News – <i>She was one of the best debaters of her generation until her life unravelled. This is the story behind Christian Porter’s accuser</i>	<p>“Fellow debater Jo Dyer said her friend had told her that Mr Porter walked her back to the college accommodation after a formal dinner.”</p> <p>“[She] told me that they had been out dancing, drinking, partying until late – very late. They were walking back to the university campus. Christian offered to walk [her] back to her college”</p>	RG Ex 2 p 106 (CB 328)
10 March 2021	Tweet from Twitter handle @instanterudite	<p>“‘...a mere denial does not end the matter.’ Sharona Coutts on the flawed logic of those who hide behind the “rule of law”, reminding us there’s no right to hold high office.”</p>	RG Ex 2 p 112 (CB 334)

14 March 2021	Tweet from Twitter handle @instanterudite Re-tweet of @DawsonEJ	“When a woman complains about a man’s behaviour it is not just her word against his. It is her word against 2000 years of institutional sexism, 200-plus years of a male-dominated Australian justice system, and 100 years of mass media controlled by men.”	RG Ex 2 p 113 (CB 335)
18 March 2021 7.16pm	Tweet from Twitter handle @instanterudite Re-tweet of @oldlillipilli (Joanna Mendelssohn)	“Great news! #JustinGleeson # Porter #auspol” Attached to the tweet was the Sydney Morning Herald article <i>Former solicitor-general to defend ABC in fight with Christian Porter</i>	RG Ex 2 p 114 (CB 336)
21 March 2021 9.22am	Tweet from Twitter handle @instanterudite	“The number of areas of his portfolio from which Christian Porter has to recuse himself demonstrates how ludicrous it is he is clinging on to this role. #Insiders”	RG Ex 2 p 115 (CB 337)
21 March 2021 9.43am	Tweet from Twitter handle @instanterudite	“Yes, appalling for Porter to be paid fulltime for part time work...but the point is more fundamental. Credible allegations that he perpetrated a serious crim remain completely untested beyond the PM asking him if they were true. Unacceptable. #Insiders”	RG Ex 2 p 117 (CB 339)
21 March 2021 8.43pm	Tweet from Twitter handle @instanterudite	“Aye” The tweet included a snapshot of a Tweet from @Bababooie42 (Kyle Jacob ‘Bunny-Boy’ de Boer) “All in favour of Christian Porter being placed on unpaid leave until he has finished his defamation suit and an independent inquiry is done into the allegations upon him, say ‘Aye””	RG Ex 2 p 116 (CB 338)
23 March 2021 11.03am	Tweet from Twitter handle @instanterudite	“Distress ostentatiously displayed by Morrison, even as he warns media to “be careful” in their “glass houses”. Good to see he’s	RG Ex 2 p 118 (CB 340)

		across the minutia of complaints within News Corp if not the detail of a rape allegation against his Attorney General #auspol”	
23 March 2021 11.05am	Tweet from Twitter handle @instanterudite (replying to the Tweet from 11.03am at RG Ex 2 p 118)	“Still. If it results in him seeking – and releasing and following – advice from the Solicitor General re Porter, and supporting quotas for women in the Liberal Party...good outcome”	RG Ex 2 p 119 (CB 341)
23 March 2021 5.50pm	Tweet from Twitter handle @instanterudite	“In the last week, Porter as (a) forum shopped a defamation case against the ABC, (b) been caught lying about the S-G’s medevac legislation advice, (c) appointed Mirabella to the Fair Work Commission & (d) still got rape allegations hanging over him. How good is our A-G? #auspol”	RG Ex 2 p 120
24 March 2021	Tweet from Twitter handle @instanterudite Sharing a Tweet from @crikey-news	“Michael Bradley at @marquelawyers getting to the hear of things. #auspol” The Crikey Tweet read “The trial of the century’ will give the attorney-general a chance to seek revenge for perceived wrongs. It will not do the same for Kate. By Michael Bradley @marquelawyers #christianporter #RuleofLaw”	RG Ex 2 p 121 (CB 343)
25 March 2021	Series of 4 tweets from Twitter handle @instanterudite	“To be crystal clear: moving Christian Porter into another portfolio does not address the issue of his fitness to hold high office while allegations he committed a serious crim remain uninvestigated. #auspol #christianporter 1/4” “A high cost, high wattage defamation case brought solely to defend an imperiled reputation is not a substitute for an independent inquiry constituted exclusively to probe the veracity of credible allegations that remain completely untested. 2/4”	RG Ex 2 p 122 (CB 344)

		<p>“The claim that an independent inquiry is counter to the ‘rule of law’ has been comprehensively debunked by legal experts including current and former judges across jurisdictions as per, for example, Justice Francois Kunc of the NSW Supreme Court. 3/4”</p> <p>Partial screen shot of article <i>Ported enquiry would enhance rule of law: judge</i></p> <p>“Kate’s friends will continue to advocate for such an inquiry regardless of any reshuffle. 4/4”</p>	
26 March 2021	<i>The Guardian – Scott Morrison urged to demote Christian Porter to backbench in cabinet reshuffle</i>	<p>“Talk is very cheap and that is all we have heard. Talk is not enough, we need to see some serious action”</p> <p>“We will not allow this issue to be managed away. It is not an issue for us, it is a dear friend who suffered greatly, so from our perspective it can’t be an issue that can be managed away”</p> <p>“We will do everything that is in our power to ensure that this issue stays front and centre of our agenda and the political agenda...and there is no indication that the women of Australia think it can be managed away either”</p> <p>“Dyer said that she had been ‘hopeful’ that Morrison’s change of tone on Tuesday might result in a shift in approach on the Porter case, but said stripping him of the attorney general portfolio did not go far enough”</p> <p>“Obviously moving Christian Porter out of the attorney general role deals with a lot of the conflicts that he has because he has chosen to launch defamation proceedings...but the fundamental question remains whether someone who has untested credible</p>	<p>RG Ex 2 p 124 Note some text is cut off in this article in RG 2 and a further copy will be supplied to the Court (CB 346)</p>

		allegations of a serious crime hanging over their head is a fit and proper person to hold high office. We would argue no.”	
29 March 2021	Series of 3 tweets from Twitter handle @instanterudite	<p>“As feared, NOTHING in relation to the credible rape allegations made against Christian Porter by our friend Kate has been addressed by this reshuffle. Due to Kate’s tragic suicide, the only investigation of the allegations to date has been:-</p> <p>Morrison: Did you do it? Porter: No.”</p> <p>“It is unacceptable. Porter must stand aside from ALL Ministerial responsibilities while a properly constituted investigation into the allegations occurs. If cleared, he can return to Cabinet. The failure to seek an inquiry begs the question: of what is the Government so afraid?”</p> <p>“It is a stark demonstration of what Morrison REALLY believes about this pesky Woman Question that he keeps Laming in parliament and Porter in Cabinet. #auspol”</p>	RG Ex 2 p 126 (CB 348)
12 April 2021	Series of 5 tweets from Twitter handle @instanterudite	<p>“‘This is a matter for the NSW Police’, says @ScottMorrisonMP of the rape allegations against his Cabinet Minister Christian Porter. Yet thanks to @ShoebridgeMLC, we now know the opportunity to take Kate’s statement was stymied by senior police on three separate occasions. 1/5”</p> <p>“(1) Despite support of Detective Snr Constable Samantha Meredith, NSW Pol Child Abuse & Sex Crimes Squad investigations teams manager, DCI Mick Haddow, & Commander of the child abuse and sex crimes squad John Kerlatec, Dep Cmr David Hudson denied a request to travel to SA. 2/5”</p>	RG Ex 2 p 127 (CB 349)

		<p>“(2) Kate’s request to have her statement taken via Skype was declined by NSW Police. 3/5”</p> <p>“(3) An offer by the SA police to take Kate’s statement on behalf of the NSW Police was also declined – without consulting Kate. 4/5”</p> <p>“Why? And – given the above – how can the PM say the matter has been resolved by the NSW Police? It is more vital than ever that there is an independent inquiry into the allegations against Mr Porter, and the decisions taken by the NSW Police in relation thereto. #auspol 5/5”</p>	
6 May 2021	Series of 4 tweets from Twitter handle @instanterudite	<p>“Christian Porter’s defamations action was touted by his lawyers as a substitute for the Inquiry We Didn’t Get to Have when the PM refused to read the allegations against him and senior NSW Police rejected the opportunity to take Kate’s statement on three separate occasions. 1/4”</p> <p>“Despite a defamation case always being an inappropriate forum for such serious criminal allegations to be tested, in the absence of anything else, we thought ‘Oh well...bring it on.’2/4”</p> <p>“Now his lawyers are trying to prevent swathes of the defence evidence from being presented to their vaunted inquiry at all, which rather undermines their earlier argument that this would be a rigorous test of all evidence against their client. 3/4”</p> <p>“They are trying to prevent further batches of evidence from being made public, leading one to wonder what their client has to hide.</p>	RG Ex 2 p 128 (CB 350)

		Extraordinary but ultimately completely unsurprising tactics. #auspol #porter 4/4”	
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