

## NOTICE OF FILING

### Details of Filing

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File Title: BRUCE LEHRMANN v NEWS LIFE MEDIA PTY LTD & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



## Defence

No. NSD 104/2023

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Bruce Lehrmann**

Applicant

**News Life Media Pty Ltd**

First Respondent

**Samantha Maiden**

Second Respondent

In response to the Applicant's Statement of Claim filed on 7 February 2023, the Respondents plead as follows:

### PARTIES

1. They admit paragraph 1.
2. They admit paragraph 2.

### FIRST MATTER COMPLAINED OF

3. To paragraph 3 -
  - a. they admit that, on or about 15 February 2021, they uploaded or caused to be uploaded to the News website (as defined in paragraph 1(b) of the statement of claim) the first matter complained of (as defined in paragraph 3 of the statement of claim), from where the first matter complained of has been downloaded and read by third parties in Australia and including in the Australian Capital Territory;

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- b. they admit that, by reason of the foregoing matters, they published the first matter complained of;
- c. they admit sub-paragraphs 3(b), 3(c) and 3(d);
- d. they will rely at trial on the particulars of publication provided hereunder pursuant to *Defamation Practice Note DEF-1*; and
- e. otherwise they deny paragraph 3.

**Particulars**

- i. The Respondents provide the following particulars of publication pursuant to *Defamation Practice Note DEF-1*.
  - ii. In the period 15 February 2021 to 30 June 2021, there were approximately 460,700 page views of the first matter complained of in Australia, of which approximately 415,591 were unique page views.
  - iii. In the period 1 July 2021 to 6 February 2023, there were approximately 4,697 page views of the first matter complained of in Australia, of which approximately 4,040 were unique page views.
4. To paragraph 4 –
- a. they deny that the first matter complained of was of and concerning the Applicant because:
    - i. the Applicant was not named in the first matter complained of;
    - ii. the Applicant's photograph, image or likeness were not included in the first matter complained of;
    - iii. the Applicant was not described in the first matter complained of by his job description as a staff member in the office of the Hon. Linda Reynolds MP;
    - iv. the Applicant was not otherwise described in the first matter complained of in a manner that identified him to third parties, including to persons acquainted with the Applicant; and

- v. the first matter complained of did not invite readers to speculate as to the Applicant's identity nor to conduct their own research in an effort to discover the Applicant's identity;
- b. if (which is denied) the first matter complained of was of and concerning the Applicant, they admit that the first matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant in the meanings pleaded at sub-paragraphs 4(a), 4(c), 4(d) and 4(e) of the statement of claim; and
- c. otherwise they deny paragraph 4.

## **SECOND MATTER COMPLAINED OF**

5. To paragraph 5 -

- a. they admit that, on or about 15 February 2021, they uploaded or caused to be uploaded to the News website the second matter complained of (as defined in paragraph 5 of the statement of claim), from where the second matter complained of has been downloaded and read by third parties in Australia and including in the Australian Capital Territory;
- b. they admit that, by reason of the foregoing matters, they published the second matter complained of;
- c. they admit sub-paragraphs 5(b), 5(c) and 5(d);
- d. they will rely at trial on the particulars of publication provided hereunder pursuant to *Defamation Practice Note DEF-1*; and
- e. otherwise they deny paragraph 5.

### **Particulars**

- i. The Respondents provide the following particulars of publication pursuant to *Defamation Practice Note DEF-1*.
- ii. In the period 15 February 2021 to 30 June 2021, there were approximately 56,862 page views of the second matter complained of in Australia, of which approximately 52,311 were unique page views.

- iii. In the period 1 July 2021 to 6 February 2023, there were approximately 2,348 page views of the second matter complained of in Australia, of which approximately 2,129 were unique page views.

6. To paragraph 6 –

- a. they deny that the second matter complained of was of and concerning the Applicant because:
  - i. the Applicant was not named in the second matter complained of;
  - ii. the Applicant’s photograph, image or likeness were not included in the second matter complained of;
  - iii. the Applicant was not described in the second matter complained of by his job description as a staff member in the office of the Hon. Linda Reynolds MP;
  - iv. the Applicant was not otherwise described in the second matter complained of in a manner that identified him to third parties, including to persons acquainted with the Applicant; and
  - v. the second matter complained of did not invite readers to speculate as to the Applicant’s identity nor to conduct their own research in an effort to discover the Applicant’s identity;
- b. if (which is denied) the second matter complained of was of and concerning the Applicant, they admit that the second matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant in the meanings pleaded at sub-paragraphs 6(a), 6(c) and 6(d) of the statement of claim; and
- c. otherwise they deny paragraph 6.

## **DAMAGES**

7. They deny paragraph 7.

8. To paragraph 8 –

- a. to sub-paragraph 8(a), they deny that they were recklessly indifferent to the truth or falsity of the imputations carried by the first matter complained of and the second matter complained of (together, the **Matters Complained Of**) and say further that no particulars have been provided disclosing any basis for the allegation;
- b. in further answer to sub-paragraph 8(a), they did not contact the Applicant for a response to the allegations contained in the Matters Complained Of prior to their publication, and say further that there was nothing improper, unjustifiable or lacking in *bona fides* in their conduct in circumstances where:
  - i. the Matters Complained Of did not name the Applicant; include his photograph, image or likeness; describe him by reference to his job description as a staff member in the office of the Hon. Linda Reynolds MP; otherwise describe him in a manner that identified him to third parties, including to persons acquainted with the Applicant; nor invite readers to speculate as to the Applicant's identity nor to conduct their own research in an effort to discover the Applicant's identity;
  - ii. they knew that prior to publication of the Matters Complained Of, the Applicant had declined to respond to the allegation that he had raped Brittany Higgins when contacted by Network Ten Pty Ltd which proposed to publish similar matter to the Matters Complained Of; and
  - iii. when he was interviewed by police in April 2021, the Applicant told police that he had no intention to respond to media enquiries about the alleged rape of Higgins, from which it is to be inferred that the Applicant would not have responded to any approach for comment by the Respondents prior to the publication of the Matters Complained Of;
- c. to sub-paragraphs 8(b), 8(d) and 8(e), they admit that the Matters Complained Of have remained available for download from the News website since on or about 15 February 2021, including during and after the ACT criminal proceedings against the Applicant and after receipt of the letter from the Applicant's solicitors dated 16 December 2022;
- d. in further answer to sub-paragraphs 8(b), 8(d) and 8(e), they:

- i. deny that any of the conduct alleged was improper, unjustifiable or lacking in *bona fides* so as to entitle the Applicant to an award of aggravated damages;
  - ii. deny that by not taking down the Matters Complained Of from the News website they were attempting to prejudice the jury in the criminal prosecution of the Applicant and they say further that no particulars have been provided disclosing any basis for that allegation;
  - iii. say further that the ACT Supreme Court refused an application made by the Applicant in the criminal prosecution for orders requiring the take down of historical online news articles, including the Matters Complained Of;
  - iv. say further that the maintenance of the Matters Complained Of on the News website is a matter of legitimate historical record;
- e. to sub-paragraph 8(c):
- i. they deny that the Applicant's description of Ms Higgins' evidence is accurate;
  - ii. they say further that the purport of Ms Higgins' complete evidence was that the Second Respondent (Samantha Maiden) genuinely cared about Ms Higgins and about the significant issues concerning the treatment of women in Australian politics and, specifically, within the Commonwealth Parliament, to which Ms Higgins was seeking to draw attention by publicising her own allegations of sexual assault;
  - iii. they say that, prior to publication of the Matters Complained Of, Ms Maiden did not speak to Ms Wilkinson about the preparation and contemplated publication of the Matters Complained Of or about any questions of 'exclusivity' of publication, let alone fight with her about exclusivity or to win any award;
  - iv. in the premises, there is no basis to infer the matter alleged in sub-paragraph 8(c) and the allegation is expressly denied; and

- v. Ms Maiden further says that she investigated and prepared the Matters Complained Of for the sole purpose of reporting on a matter that was self-evidently in the public interest.
- f. they deny sub-paragraph 8(f) and say that the allegations therein are vague, embarrassing and liable to be struck out in the absence of further and better particulars;
- g. to sub-paragraph 8(g), they:
  - i. deny that they presented the Matters Complained Of in an over-sensationalised manner;
  - ii. deny that they had an intent to injure the Applicant;
  - iii. say further that, to the contrary, the Respondents took steps in the preparation of the Matters Complained Of which were directly inconsistent with an intention to injure the Applicant, specifically, by omitting from the Matters Complained Of the Applicant's name, photograph, image or likeness; any description of the Applicant that might identify him to third parties, including to persons acquainted with the Applicant; by drafting the Matters Complained Of in such a way that they did not invite readers to speculate as to the Applicant's identity nor to conduct their own research in an effort to discover the Applicant's identity; and
- h. otherwise they deny paragraph 8.

## LIMITATION DEFENCES

### **Publications occurring prior to 1 July 2021**

- 9. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, then –
  - a. pursuant to s 14B of the *Limitation Act 1969* (NSW) (**Limitation Act**), an action on a cause of action for defamation is not maintainable if brought more than one year after the date of the publication of the matter complained of;



- b. in the premises, the limitation period pursuant to s 14B of the Limitation Act for publications of the Matters Complained Of which occurred prior to 1 July 2021 expired at the earliest on 15 February 2022 and at the latest on 30 June 2022;
- c. this proceeding was not commenced until 7 February 2023;
- d. accordingly, the Applicant's claims in this proceeding in respect of publications of the Matters Complained Of occurring prior to 1 July 2021 are statute barred and the Respondents have a complete defence to those claims.

**Publications occurring on and after 1 July 2021**

- 10. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, then -
  - a. pursuant to s 14B of the Limitation Act, an action on a cause of action for defamation is not maintainable if brought more than one year after the date of the publication of the matter complained of;
  - b. pursuant to s 14C of the Limitation Act:
    - i. where a publisher publishes matter to the public that is alleged to be defamatory and subsequently publishes matter that is substantially the same, any cause of action for defamation against the first publisher in respect of the subsequent publication is taken to have accrued on 'the date of the first publication' for the purpose of calculating when the one-year limitation period in s 14B begins; and
    - ii. 'the date of the first publication', in relation to the publication of matter in electronic form, means the day on which the matter was first uploaded for access;
  - c. pursuant to cl 11 of Schedule 5 of the Limitation Act, s 14C of the Limitation Act applies to the publication of defamatory matter on or after 1 July 2021, and extends to any first publication of the defamatory matter occurring prior to 1 July 2021, but only in respect of subsequent publications occurring on or after 1 July 2021;

- d. the Matters Complained Of were:
  - i. comprised of matter in electronic form; and
  - ii. first uploaded for access on 15 February 2021, which was the 'date of the first publication' of the Matters Complained Of within the meaning of s 14C of the Limitation Act;
- e. each download of the Matters Complained Of subsequent to the date of their first publication is the publication of matter that is 'substantially the same' as the first publication of the Matters Complained Of within the meaning of s 14C of the Limitation Act;
- f. in the premises, the limitation period for all publications of the Matters Complained Of which occurred on or after 1 July 2021 is taken to have commenced on 15 February 2021 (being the date of the first publication of the Matters Complained Of), and expired one year later on 15 February 2022;
- g. this proceeding was not commenced until 7 February 2023;
- h. accordingly, the Applicant's claims in this proceeding in respect of publications of the Matters Complained Of occurring on or after 1 July 2021 are statute barred and the Respondents have a complete defence to those claims.

## ADDITIONAL DEFENCES

### Justification

- 11. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, then in those meanings the Matters Complained Of were substantially true and, accordingly, the Respondents have a defence to the publication of the Matters Complained Of at common law and pursuant to s 25 of the *Defamation Act 2005* (NSW) (**Act**) and its cognate provisions in each other state and territory of Australia.

### Particulars

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 1** to this defence. Further particulars may be

provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

### **Statutory qualified privilege**

12. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, then:
- a. the Respondents published the Matters Complained Of in the course of giving to the recipients of the Matters Complained Of information about a subject in which the recipients had an interest or had an apparent interest (in the sense that the Respondents believed on reasonable grounds that the recipients had such an interest);
  - b. the Respondents' conduct in publishing the Matters Complained Of was reasonable in the circumstances; and
  - c. accordingly, the Respondents have a defence to the publication of the Matters Complained Of pursuant to s 30 of the Act and its cognate provisions in each other state and territory of Australia.

### **Particulars**

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 2** to this defence. Further particulars may be provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

### **Qualified privilege for political communication**

13. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, then –

- a. the Matters Complained Of consisted of communications which disseminated information, opinion or argument concerning government or political matters;
- b. the Respondents' conduct in publishing the Matters Complained Of was reasonable in the circumstances; and
- c. accordingly, the Respondents published the Matters Complained Of on an occasion of qualified privilege at common law.

### **Particulars**

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 2** to this defence. Further particulars may be provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

## **DEFENCES FOR PUBLICATIONS OCCURRING ON OR AFTER 1 JULY 2021**

### **Proceeding incompetent at law**

14. Further or alternatively, pursuant to s 12B of the Act, which commenced operation on 1 July 2021 and applies with respect to publications occurring on and after that date, an aggrieved person cannot commence defamation proceedings unless the person has given the proposed respondent a concerns notice within the meaning of the Act.
15. On or about 16 December 2022, the Applicant's solicitors sent a letter to the Respondents (**Applicant's Letter of Demand**).
16. The Applicant's Letter of Demand –
  - a. was not described as a concerns notice within the meaning of the Act; and
  - b. was not a concerns notice within the meaning of s 12A of the Act in that it did not inform the Respondents of the harm which the Applicant considered to be serious harm to his reputation caused or likely to be caused by the limited publication on and after 1 July 2021 of the Matters Complained Of.

17. Prior to the commencement of this proceeding, the Applicant did not serve any other communication on the Respondents purporting to be a concerns notice or meeting the definition of a concerns notice within the meaning of s 12A of the Act.
18. In the premises of paragraphs 14 to 17 above, the Applicant was not permitted to commence proceedings for publications of the Matters Complained Of occurring on or after 1 July 2021 and, insofar as the Applicant's claims in this proceeding relate to publications of the Matters Complained Of occurring on or after 1 July 2021, the proceeding is incompetent and the Respondents are entitled to judgment on those claims.
19. Further, the Applicant has not alleged in the proceeding that publications of the Matters Complained Of occurring on or after 1 July 2021, have caused him, or are likely to cause him, serious harm to his reputation within the meaning of s 10A of the Act, and accordingly, no cause of action is disclosed in relation to those publications and the Respondents are entitled to judgment on those claims.

#### **Contextual truth**

20. Further or alternatively, if (which is denied) the first matter complained of was of and concerning the Applicant, and if it was defamatory of the Applicant in the meaning pleaded at sub-paragraph 4(b) of the statement of claim or a meaning not different in substance, then –
  - a. the first matter complained of also carried the imputations pleaded at sub-paragraphs 4(a), 4(c), 4(d) and 4(e) of the statement of claim (**First Contextual Imputations**);
  - b. the First Contextual Imputations are substantially true;
  - c. because of the substantial truth of the First Contextual Imputations, the defamatory imputation pleaded at sub-paragraph 4(b) of the statement of claim does not further harm the Applicant's reputation; and
  - d. accordingly, the Respondents have a defence to all publications of the first matter complained of occurring on or after 1 July 2021 pursuant to s 26 of the Act and its cognate provisions in each other state and territory of Australia.

### Particulars

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 1** to this defence. Further particulars may be provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

21. Further or alternatively, if (which is denied) the second matter complained of was of and concerning the Applicant, and if it was defamatory of the Applicant in the meaning pleaded at sub-paragraph 6(b) of the statement of claim or a meaning not different in substance, then –
- a. the second matter complained of also carried the imputations pleaded at sub-paragraphs 6(a), 6(c), and 6(d) of the statement of claim (**Second Contextual Imputations**);
  - b. the Second Contextual Imputations are substantially true;
  - c. because of the substantial truth of the Second Contextual Imputations, the defamatory imputation pleaded at sub-paragraph 6(b) of the statement of claim does not further harm the Applicant's reputation; and
  - d. accordingly, the Respondents have a defence to all publications of the second matter complained of occurring on or after 1 July 2021 pursuant to s 26 of the Act and its cognate provisions in each other state and territory of Australia.

### Particulars

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 1** to this defence. Further particulars may be provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

#### **Publication of matters concerning an issue of public interest**

22. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the

meanings pleaded in the statement of claim or meanings not different in substance, then –

- a. the Matters Complained Of concerned issues of public interest;
- b. the Respondents reasonably believed that the publication of the Matters Complained Of was in the public interest; and
- c. accordingly, the Respondents have a defence pursuant to s 29A of the Act and its cognate provisions in each other state and territory of Australia.

### **Particulars**

The Respondents refer to and rely on the totality of the matters particularised in **Schedule 2** to this defence. Further particulars may be provided prior to trial and after completion of all interlocutory steps in the proceeding, including discovery, interrogatories and the return of subpoenas.

### **MITIGATION OF DAMAGE**

23. Further or alternatively, if the Matters Complained Of were of and concerning the Applicant (which is denied), and if they were defamatory of the Applicant in the meanings pleaded in the statement of claim or meanings not different in substance, and if the Respondents do not have a complete defence to the Applicant's claims, the Respondents will rely on the following matters in mitigation of damages both at common law and pursuant to s 38 of the Act and its cognate provisions in each other state and territory of Australia –
  - a. the Applicant's significant delay in making any complaint about the Matters Complained Of and in commencing this proceeding;
  - b. the truth, substantial truth or partial truth of any one or more of the imputations pleaded in the statement of claim;
  - c. the truth, substantial truth or partial truth of any one or more of the contextual imputations pleaded herein;

- d. such evidence as is properly admitted as part of the Applicant's claim or in support of any defence pleaded herein, to the extent that such evidence is relevant to the assessment of damages;
- e. any evidence of directly relevant background facts to the publication of the Matters Complained Of;
- f. the fact that the Applicant has brought proceedings in the Federal Court of Australia against Network Ten Pty Ltd and Lisa Wilkinson, being proceeding number NSD 103/2023, in which the Applicant seeks damages for defamation in relation to the publication of matter having the same meaning or effect as the Matters Complained Of (**Network Ten Proceeding**);
- g. any damages which the Applicant may recover in the Network Ten Proceeding, or any other amount which he may receive or agree to receive as compensation for defamation in relation to the publications which are the subject of the Network Ten Proceeding

**Date:** 7 March 2023



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**Signed by Grant McAvaney**  
Lawyer for the Respondents

This pleading was prepared by Renée Enbom KC, Sandip Mukerjea of counsel and Grant McAvaney, solicitor for the Respondents.



**Certificate of lawyer**

I, Grant McAvaney, certify to the Court that, in relation to the Defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

**Date:** 7 March 2023



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**Signed by Grant McAvaney**  
Lawyer for the Respondents

SCHEDULE 1 TO THE DEFENCE

Particulars to paragraphs 11 and 20 of the defence

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**Part A – Relationship between the Applicant and Brittany Higgins**

1. For at least 12 months prior to 23 March 2019, the Applicant (**Lehrmann**) was and had been employed as a policy advisor in the parliamentary office of the Hon. Linda Reynolds MP (**Reynolds**) in Canberra, first when Reynolds was the Assistant Minister for Home Affairs and, later, when she was the Minister for Defence Industry.
2. Prior to his employment with Reynolds, Lehrmann had been employed in the office of Bridget McKenzie MP.
3. In September 2018, Brittany Higgins (**Higgins**), moved from the Gold Coast to Canberra to commence employment as an administration officer and junior media advisor in the parliamentary office of the Hon. Steve Ciobo MP (**Ciobo**), who at the time was the Minister for Defence Industry.
4. In early March 2019, Ciobo announced that he would not contest the next federal election and stood down as the Minister for Defence Industry. Reynolds was subsequently announced to replace Ciobo as Minister for Defence Industry.
5. A consequence of Ciobo's resignation was that all staff employed in his office, including Higgins, had to re-apply for their jobs.
6. In early March 2019, Higgins contacted Nicky Hamer (**Hamer**), who was the senior media advisor to Reynolds, in the hope of securing a job in Reynolds' office. Hamer arranged to meet Higgins on 2 March 2019 at the Kingston Hotel in Canberra.
7. Higgins understood her meeting with Hamer was a form of job interview, the purpose of which was to meet members of Reynolds' team and get to know them, before Hamer made any recommendation to Reynolds as to whether Reynolds should offer Higgins a job.
8. In fact, unbeknownst to Higgins, the meeting with Hamer was not a job interview at all but, rather, was arranged at Lehrmann's behest because Lehrmann thought Higgins was physically attractive and he asked Hamer to invite Higgins out for a drink.

9. Higgins met with Hamer and another male member of Reynolds' team at the Kingston Hotel on or about 2 March 2019. Lehrmann was also there.
10. Higgins was subsequently offered, and accepted, a job as an administration officer and junior media advisor in Reynolds' parliamentary office, which she commenced in early-mid March 2019.
11. At the time she commenced working in Reynolds' parliamentary office, Higgins was the most junior staff member in the office and Lehrmann was the most senior (other than the Chief of Staff). Lehrmann occupied his own corner or section in Reynolds' Ministerial suite in Parliament House (**Ministerial Suite**). He had, as at March 2019, worked for Reynolds for at least one year.
12. When Higgins commenced working in Reynolds' office, Lehrmann routinely bossed Higgins around, including by regularly allocating her work and giving her directions, often in areas outside her job description. There was a substantial and obvious imbalance of power and experience between Lehrmann and Higgins.
13. On a date in the first three weeks of March 2019 (and most likely either on 6, 13 or 20 March 2019), Lehrmann and Higgins each attended a social dinner for staff members in Reynolds' office. At the end of the function, Lehrmann and Higgins were standing outside waiting for taxis or Ubers. Lehrmann attempted to kiss Higgins. Higgins politely declined Lehrmann's advance and Lehrmann got into a taxi or Uber and left.

**Part B – Events at 'The Dock' on 22 March 2019**

14. On Friday, 22 March 2019, Lehrmann and Higgins each attended a social function at 'The Dock' bar in Canberra.
15. The function was a regular or semi-regular social drinks function organised by persons in Canberra who worked in the defence industry, including defence industry contractors, departmental officials and political staffers.
16. Higgins, who at the time had been employed in Reynolds' office for only weeks, was invited to the drinks function. She wanted to make a good impression on her colleagues and to add value to her team by introducing some of her colleagues to

others at the function and so she invited colleagues in Reynolds' office to join her at the drinks function. This included inviting Lehrmann.

17. Higgins arrived at The Dock for the function at approximately 7:19pm on 22 March 2019. Lehrmann arrived some time later, at approximately 8:39pm. In total, there were approximately 25 people at the function.
18. Higgins had her first alcoholic drink at approximately 7:24pm. Between 7:24pm and approximately 11:50pm, Higgins had 11 alcoholic drinks, including a last drink which she 'skolled' at approximately 11:50pm before leaving the venue. Lehrmann purchased and handed Higgins at least 2 alcoholic drinks. Higgins did not have any non-alcoholic drinks at The Dock and did not eat any food.
19. Over the course of the function at The Dock, Higgins became visibly intoxicated and struggled to maintain her balance. Lehrmann interacted with Higgins intermittently during the function, including by buying and handing her drinks, and was aware that she had become drunk. Lehrmann was not intoxicated.

#### **Part C - Events at '88MPH' on 23 March 2019**

20. The function at The Dock ended just before midnight and the attendees began to disperse.
21. Higgins, Lehrmann and two friends (Lauren Gain (**Gain**) and Austin Wenke (**Wenke**)) decided to continue socialising. At Lehrmann's suggestion, they decided to go to a nightclub called '88MPH'. The four of them travelled there by taxi or Uber.
22. At 88MPH, Higgins, Lehrmann, Gain and Wenke continued to socialise, dance and drink alcohol, including doing 'shots'.
23. Over the course of the night at 88MPH:
  - a. Higgins and Lehrmann spent time together;
  - b. Higgins became extremely intoxicated;
  - c. Lehrmann was not intoxicated; and
  - d. Lehrmann began to touch Higgins familiarly.

24. As the night progressed, Higgins became so drunk that she fell over and had to be helped up by Lehrmann. Lehrmann was not intoxicated. He was aware that Higgins was heavily intoxicated.
25. Shortly after she fell, at approximately 1:30am, Higgins realised how drunk she was and decided that she needed to go home. Lehrmann suggested that Higgins and he share a taxi or Uber as they both lived in the same direction. Lehrmann then called an Uber. He told Higgins that he first needed to go to Parliament House to pick something up from work.

#### **Part D – Entry into Parliament House on 23 March 2019**

26. Lehrmann and Higgins arrived at the Ministerial Entrance at Parliament House at approximately 1:40am on 23 March 2019. Neither of them had their security passes in order to access and enter the building and so Lehrmann called security via an intercom.
27. When they arrived at Parliament House, Higgins was the most drunk she had ever been in her life. Lehrmann was not intoxicated.
28. Lehrmann, knowing how drunk Higgins was, told her to remain quiet. He pushed the intercom button and spoke to a member of security. He identified himself by name, described himself as working for Reynolds and said that they had been requested to pick up some documents.
29. A security guard met Lehrmann and Higgins at the entrance to the building and escorted them to a security checkpoint inside the building, where they were required by two further security guards to show their identification, sign-in for a temporary security pass and clear a security screening. Higgins was observed to be intoxicated.
30. Higgins was so drunk that during the security screening:
  - a. she was unable to sign her own name;
  - b. she was required to remove her shoes and then had great difficulty putting them back on; and

c. she subsequently gave up trying to put her shoes back on and proceeded to walk bare foot.

31. Lehrmann, knowing how drunk Higgins was, signed her in himself.

32. A security guard escorted Lehrmann and Higgins to the Ministerial Suite, where they arrived at approximately 1:48am. The security guard then left.

33. Higgins entered Reynolds' office and sat on a ledge overlooking the Prime Minister's courtyard. She sat there by herself for a short period. She began to feel sick and extremely tired. At some point shortly afterwards, she passed out.

#### **Part E - The Rape**

34. Sometime later, Higgins was woken by a sharp pain in her thigh. She woke to find herself lying on her back on the sofa in Reynolds' office. She was wedged into the corner of the sofa. Lehrmann was on top of her. He had his knee crushed against Higgins' thigh, holding her legs open. He had her pinned into the corner of the sofa. He was sweaty and crouched over Higgins. His penis was inside Higgins' vagina and he was having forceful sexual intercourse with Higgins, audibly slapping himself against her.

35. Higgins had not consented to having sexual intercourse with Lehrmann and was incapable of so consenting because:

a. she was too intoxicated to voluntarily and freely give her consent; and

b. she had been passed out, either asleep or unconscious.

36. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to having sexual intercourse with Lehrmann.

37. Lehrmann knew that Higgins had not consented to sexual intercourse with him because he was aware, prior to penetrating Higgins' vagina with his penis, that:

a. Higgins was too intoxicated to voluntarily and freely give her consent;

b. Higgins was passed out, either asleep or unconscious; and

- c. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to having sexual intercourse with him.
38. Alternatively, because of his knowledge of the matters set out in the preceding paragraph, Lehrmann was reckless or indifferent as to whether or not Higgins had consented to having sexual intercourse with him.
39. In the premises, Lehrmann raped Higgins, within the ordinary meaning of that term and committed the offence in s 54 of the *Crimes Act 1900* (ACT) (**Crimes Act**).
40. After waking up and realising that Lehrmann was having sexual intercourse with her, Higgins said 'no' at least half a dozen times and told Lehrmann to stop. Lehrmann did not stop and continued to have sexual intercourse with Higgins without her consent. Higgins could not get Lehrmann off her and began crying. Lehrmann continued to have sexual intercourse with Higgins without her consent and while she was crying.
41. Higgins had not consented to Lehrmann continuing to have sexual intercourse with her because:
- a. Higgins said 'no';
  - b. Higgins told Lehrmann to stop;
  - c. Higgins cried while Lehrmann was having sexual intercourse with her; and
  - d. Higgins was too intoxicated to voluntarily and freely give her consent.
42. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to Lehrmann continuing to have sexual intercourse with her and, to the contrary, her words and actions particularised in the preceding paragraph plainly communicated to Lehrmann that she did not consent.
43. Further, Lehrmann knew that Higgins did not consent to him continuing to have sexual intercourse with her because he was aware that:
- a. Higgins had said 'no';
  - b. Higgins had told him to stop;

- c. Higgins was crying;
  - d. Higgins had been passed out, either asleep or unconscious, immediately before the words and actions particularised in sub-paragraphs (a) to (c) above;
  - e. Higgins was too intoxicated to voluntarily and freely give her consent; and
  - f. Higgins had not communicated to Lehrmann, either in words or by actions, any consent to Lehrmann continuing to have sexual intercourse with her.
44. Alternatively, because of his knowledge of the matters set out in the preceding paragraph, Lehrmann was reckless or indifferent as to whether or not Higgins had consented to him continuing to have sexual intercourse with her.
45. In the premises, Lehrmann continued to rape Higgins within the ordinary meaning of that term and committed the offence in s 54 of the Crimes Act.
46. Some time prior to 2:30am, Lehrmann finished having sexual intercourse with Higgins, looked at her and left her on the sofa in Reynolds' office, either completely or substantially naked, or with her dress scrunched up around her waist. He then left the Ministerial Suite and Parliament House.

**Part F – Matters consistent with the rape of Brittany Higgins**

47. The respondents rely upon the combination of the following further matters as being consistent with Higgins having been raped by Lehrmann.
48. The relationship between Lehrmann and Higgins involved a substantial imbalance of power and experience as particularised in Part A of this Schedule.
49. Lehrmann was sexually attracted to Higgins, as demonstrated by the matters particularised in Part A and paragraph 23.d of this Schedule, namely:
- a. he contrived to meet Higgins at the Kingston Hotel on 2 March 2019 because he thought she was physically attractive;
  - b. he attempted to kiss Higgins after a staff dinner in March 2019; and
  - c. he touched Higgins familiarly at 88MPH in the early hours of 23 March 2019.



50. In the days following her rape, between 23 March and 8 April 2019, Higgins made contemporaneous complaints to at least the following 9 persons, in which she consistently described being raped or sexually assaulted by Lehrmann in a manner consistent with the allegations in Part E of this Schedule:
- a. Fiona Brown (**Brown**), Reynolds' Chief of Staff, in a series of meetings and conversations;
  - b. Ben Dillaway (**Dillaway**), Higgins' former partner, in a series of phone calls, text messages and conversations;
  - c. Chris Payne (**Payne**), the Department of Defence Departmental Liaison Officer to Reynolds' parliamentary office, in a conversation;
  - d. Reynolds, in a meeting;
  - e. Captain Nikita Irvine, the Aide-de-Comp to Reynolds, in a conversation;
  - f. two members of the Australian Federal Police, Agent Rebecca Cleaves and Agent Katie Thelning, in a meeting at Parliament House; and
  - g. two members of ACT Police's Sexual Assault and Child Abuse Team, Detective Senior Constable Sarah Harman and Constable Kristy Anderson, in a meeting at Belconnen Police Station in Canberra.
51. Higgins spent the entire weekend of 23 and 24 March 2019 crying uncontrollably and bed-bound in her bedroom and there was no reason for her to do so other than the fact that she had been raped by Lehrmann.
52. On or about 26 March 2019, Higgins emotionally broke down at work while telling Brown about the rape and was told she could work from home.
53. On 28 March 2019, Higgins experienced an emotional breakdown when speaking to Dillaway about the rape.
54. On 1 April 2019, when attending a meeting with Reynolds and Brown in Reynolds' office where the alleged rape had occurred, Higgins felt panicked. There was no

reason for Higgins to feel panicked about meeting with Reynolds and Brown in Reynolds' office other than the fact that she had been raped by Lehrmann in that office.

55. In the days and weeks following the rape, Higgins was periodically hysterical and in a depressive state, regularly crying, uncharacteristically unsociable, cold and distant and tended to remain in her bedroom when at home. There was no reason for Higgins to behave in that manner other than the fact that she had been raped by Lehrmann.
56. In the days and weeks following the rape, Higgins lost a significant amount of weight and began to experience intermittent panic attacks. There was no reason for Higgins to lose such a significant amount of weight and experience panic attacks other than the fact that she had been raped by Lehrmann.
57. In the 12 months following the rape, Higgins received ongoing medical treatment and counselling for her mental health from the Canberra Rape Crisis Centre and a private counsellor. There was no reason for Higgins to receive such treatment and counselling other than the fact that she had been raped by Lehrmann.

**Part G – Lehrmann's lies, inconsistencies and consciousness of guilt**

58. The respondents rely upon the combination of the following further matters as being consistent with Higgins having been raped by Lehrmann.
59. When leaving 88MPH with Higgins, Lehrmann lied to Higgins when he told her that he needed to go to Parliament House to pick something up from work.
60. When he arrived at Parliament House at approximately 1:40am on 23 March 2019, Lehrmann also lied to security when he told them via the intercom that he had been requested by Reynolds, or by someone in her office, to pick up some documents.
61. In fact, Lehrmann did not need to pick up anything from work. He had not been asked by anyone to pick up any documents, knew that he had not been so asked and did not in fact pick up any documents or anything else from Parliament House. Lehrmann's explanation for going to Parliament House was also inconsistent with explanations he gave on subsequent occasions after 23 March 2019, as referred to below.

62. When he was in the Ministerial Suite, between approximately 2:16am and 2:18am, Lehrmann received six telephone calls to his mobile phone from his then girlfriend. Lehrmann did not answer any of the telephone calls.
63. At approximately 2:31am, Lehrmann used his mobile phone to call for an Uber. He would have seen the six missed calls from his girlfriend. Lehrmann did not return his girlfriend's telephone calls. There was no plausible reason for Lehrmann to neither answer nor return his girlfriend's telephone calls while in the Ministerial Suite. Lehrmann's conduct in not doing so is consistent with either or both of:
- a. him having been in the process of raping Higgins when the telephone calls were received; and
  - b. a consciousness of guilt for having raped Higgins.
64. After he raped Higgins, Lehrmann used his mobile phone to call an Uber and hastily left the Ministerial Suite at approximately 2:31am. Lehrmann did not check on Higgins before leaving. He then quickly left Parliament House at approximately 2:33am, before his Uber had arrived. Lehrmann hurried out of Parliament House, throwing his security pass towards security as he left. The haste with which Lehrmann left the Ministerial Suite and Parliament House without first checking on Higgins is consistent with a consciousness of guilt for having raped Higgins.
65. Since 23 March 2019, Lehrmann has given a number of statements or accounts about the events of 23 March 2019, which statements and accounts have contained inconsistencies and, in some cases, lies. Lehrmann's multiple inconsistent and/or knowingly false accounts are consistent with a consciousness of guilt for having raped Higgins. They are as follows.
66. On or about 26 March 2019, in a meeting with Brown, Lehrmann told Brown that he had gone back to the Ministerial Suite to drink whisky and that he had two glasses of whisky before leaving. Lehrmann repeated that explanation in a telephone call with Brown and Reg Chamberlain on 5 April 2019.
67. In a record of interview with ACT Police on 19 April 2021, Lehrmann denied returning to the Ministerial Suite to drink whisky, said that he did not keep any alcohol in the

Ministerial Suite and nor did anyone else, and gave a number of other reasons for returning to the Ministerial Suite.

68. In fact, Lehrmann did keep an extensive collection of alcohol at his desk in the Ministerial Suite. Accordingly:
- a. Lehrmann lied to police when he told them that he did not keep alcohol in the Ministerial Suite;
  - b. Lehrmann either lied to Brown and Reg Chamberlain when he told them that he visited the Ministerial Suite to drink whisky or he lied to police when he denied going to the Ministerial Suite to drink whisky.
69. On or about 5 April 2019, Lehrmann sent an email to Brown in which he denied:
- a. telling security at Parliament House that he needed access to the Ministerial Suite for the purposes of official business; and
  - b. that he had implied to security that he was acting under Reynolds' authority.
70. In fact, as Lehrmann was well aware, he had told security that he needed access to the Ministerial Suite for official business and he had implied that he was acting under Reynolds' authority. Lehrmann told security that he worked for Reynolds and that he had been requested (implicitly, by Reynolds) to collect some documents. In the circumstances, Lehrmann lied in his email to Brown.
71. During his record of interview, Lehrmann told ACT police on five separate occasions that he returned to Parliament House in the early hours of 23 March 2019 because his usual practice was to leave his keys at his desk after work and collect them later in the evening when going home. However:
- a. Lehrmann did not take his security pass with him to The Dock and 88MPH. Had it been Lehrmann's usual practice to leave his keys at his desk, he could be expected to take his security pass with him, in order to easily obtain access to the Ministerial Suite to retrieve his keys. It is inherently implausible that Lehrmann would have left his security pass behind if it was his usual practice to leave his keys at his desk and return later in the night to retrieve them;

- b. in his email to Fiona Brown on 5 April 2019, Lehrmann admitted that it is a security breach to access the Ministerial Suite after hours. It is inherently implausible that Lehrmann would adopt a practice of leaving his keys at his desk and retrieving them later in the night after hours, in circumstances where Lehrmann believed that to do so would constitute a security breach;
  - c. Lehrmann was in the Ministerial Suite for approximately 40 minutes in the early hours of 23 March 2019, far longer than necessary. It is inherently implausible that Lehrmann was there for 40 minutes to simply retrieve his keys; and
  - d. Lehrmann's account was inconsistent with what he had told security via the intercom on 23 March 2019 and what he told Fiona Brown and Reg Chamberlain, were his reasons for accessing the Ministerial Suite.
72. In the premises, it is to be inferred that Lehrmann lied to ACT police when he told them that he accessed the Ministerial Suite on 23 March 2019 to collect his keys.
73. During his record of interview, Lehrmann told ACT Police on approximately six separate occasions that he returned to the Ministerial Suite in the early hours of 23 March 2019 because, during the course of the evening, he had been reminded that he needed to update Reynolds' 'Question Time Folders', and so he returned to his desk to re-order, annotate and update the Question Time Folders. However:
- a. Parliament was not sitting in the week commencing on 25 March 2019 and so there was no urgency whatsoever for Lehrmann to re-order, update and annotate the Question Time Folders, much less at 2.00am in the morning on 23 March 2019 after having been out socialising for approximately six or seven hours and consuming alcohol;
  - b. it was the ordinary practice within the Coalition government at the time that Question Time Folders were only used during sitting weeks;
  - c. Lehrmann would have had ample time to re-order, update and annotate the Question Time Folders when he returned to work on 25 March 2019 and throughout the following week;

- d. Lehrmann had no incentive to return to his desk at approximately 2:00am on a Saturday morning in circumstances where he was due to finish in his position as a policy advisor to Reynolds on or about 29 March 2019;
  - e. Lehrmann did not tell Higgins when leaving 88MPH that he was going to Parliament House to work or to re-order, update and annotate the Question Time Folders; and
  - f. Lehrmann gave Fiona Brown and Reg Chamberlain a different explanation for going to Parliament House.
74. In the premises, it is to be inferred that Lehrmann lied to ACT police when he told them that he accessed the Ministerial Suite on 23 March 2019 to re-order, update and annotate the Question Time Folders.
75. In his record of interview, Lehrmann told ACT police on approximately seven separate occasions that, when he returned to Parliament House with Higgins in the early hours of 23 March 2019, Higgins was not noticeably or heavily intoxicated. In fact, having regard to the matters particularised in Parts B, C and D of this Schedule, Higgins was heavily and visibly intoxicated when she returned to Parliament House, had been observed by at least one security guard to be intoxicated, and Lehrmann, who was not intoxicated, knew Higgins was heavily and visibly intoxicated. Accordingly, Lehrmann lied to ACT police when he told them that Higgins was not visibly or heavily intoxicated when she accompanied him to Parliament House in the early hours of 23 March 2019.
76. During his record of interview, Lehrmann told ACT police that he had not observed Higgins fall down over the course of the night on 22 and 23 March 2019. In fact, as particularised in Part D of this Schedule, Higgins had fallen down at 88MPH, Lehrmann had observed her falling down and Lehrmann had assisted her to get up. Accordingly, Lehrmann lied to ACT police when he told them that he had not observed Higgins fall down over the course of the night on 22 and 23 March 2019.
77. During his record of interview, Lehrmann twice told ACT police that Higgins signed herself into Parliament House at the security checkpoint. In fact, having regard to the matters particularised in Part D of this Schedule, Higgins was too intoxicated to sign

herself into Parliament House, Lehrmann knew that and he in fact had signed Higgins into Parliament House. Accordingly, Lehrmann lied to ACT police when he told them that Higgins had signed herself into Parliament House.

78. During his record of interview, Lehrmann twice denied having any intimate contact with Higgins beyond flirtation during the evening of 22 March 2019 and the early hours of 23 March 2019. In fact, as particularised in Part C of this Schedule, Lehrmann touched Higgins familiarly at 88MPH. Accordingly, Lehrmann lied to ACT police when he told them that he had not had any intimate contact with Higgins beyond flirtation during the evening of 22 March 2019 and the early hours of 23 March 2019.
79. During his record of interview, Lehrmann twice denied receiving any telephone calls while he was in the Ministerial Suite in the early hours of 23 March 2019. In fact, having regard to the matters particularised in paragraphs 62 and 63 of this Schedule, Lehrmann missed six telephone calls from his then girlfriend and must have known that he had received those calls. Accordingly, Lehrmann lied to ACT police when he told them that he had not received any telephone calls while he was in the Ministerial Suite in the early hours of 23 March 2019.

**Part H – Truth of imputations 4(a), 4(c), 4(d), 4(e), 6(a), 6(c), 6(d), First Contextual Imputations and Second Contextual Imputations**

*4(a)/6(a): “The Applicant raped Brittany Higgins in Defence Minister Linda Reynolds’ office in 2019.”*

*4(c)/6(c): “The Applicant continued to rape Brittany Higgins after she woke up mid-rape, told him to stop, and was crying.” / “The Applicant continued to rape Brittany Higgins after she woke up and was crying.”*

*4(d): “The Applicant, whilst raping Brittany Higgins, crushed himself against her leg so forcefully that he bruised her.”*

*4(e)/6(d): “After the Applicant finished raping Brittany Higgins, he left her on a couch in a state of undress with her dress up around her waist.” / “After the Applicant finished raping Brittany Higgins, he left her on a couch half dressed.”*

80. The respondents rely on Parts A to G of this Schedule, in the premises of which it is established that Lehrmann:
- a. raped Higgins in Defence Industry Minister Linda Reynolds’ office on 23 March 2019;

- b. continued to rape Higgins after she woke up mid-rape, told him to stop and was crying;
  - c. whilst raping Higgins, crushed himself against her leg with force and forcefully penetrated her vagina with his penis, in the sense that he was slapping himself against her; and
  - d. after raping Higgins, left her on the sofa in Reynolds' office in a state of undress or partial undress, either naked or with her dress scrunched up around her waist.
81. In the premises, imputations 4(a), 4(c), 4(d), 4(e), 6(a), 6(c) and 6(d) in the statement of claim, and the First Contextual Imputations and Second Contextual Imputations, are substantially true.

**Part I – Truth of imputations 4(b) and 6(b)**

*4(b)/6(b): "The Applicant signed Brittany Higgins, who was drunk and did not have her security pass, into Parliament so he could rape her."*

82. The respondents rely on Parts A to H of this Schedule, in the premises of which it is established that:
- a. Lehrmann was sexually attracted to Higgins;
  - b. Lehrmann touched Higgins familiarly at 88MPH;
  - c. when Higgins was leaving 88MPH, Lehrmann arranged an Uber for them to travel in together, telling Higgins that they lived in the same direction, but he then took her to Parliament House;
  - d. Lehrmann had a girlfriend at the time who was trying to contact him by telephone when he was at Parliament House;
  - e. Higgins did not have her security pass when she and Lehrmann arrived at Parliament House in the early hours of 23 March 2019;
  - f. Higgins was so heavily intoxicated that she could not sign herself into Parliament House;
  - g. when he arrived at Parliament House, Lehrmann was not intoxicated;



- h. when he arrived at Parliament House, Lehrmann knew that Higgins was heavily and visibly intoxicated to the point of being incapable of voluntarily and freely consenting to sexual intercourse, including because:
    - i. he had been with her throughout the evening when she was continually drinking alcohol;
    - ii. he had seen her stumble at The Dock;
    - iii. he had seen her fall down at 88MPH and had helped her up;
    - iv. he told her to be quiet when he was speaking to security through the intercom;
    - v. he had seen her struggle to put her shoes on at Parliament House;
    - vi. he had observed her unable to sign her own name at the security check point at Parliament House;
  - i. Lehrmann signed Higgins into Parliament House; and
  - j. Lehrmann raped Higgins on a sofa in Reynolds' office.
83. The respondents rely on Part G of this Schedule, in the premises of which it is established that:
- a. on and since 23 March 2019, Lehrmann has given four different accounts of his reason for returning to Parliament House in the early hours of 23 March 2019, namely:
    - i. to collect something and to collect documents for Reynolds;
    - ii. to retrieve his keys;
    - iii. to drink whisky; and
    - iv. to update, annotate and re-order the Question Time Folders; and
  - b. each of the above accounts is inconsistent with one another, is inherently implausible and involved Lehrmann telling lies.

84. There is no other plausible or rational explanation for Lehrmann's attendance with Higgins at Parliament House in the early hours of 23 March 2019, other than that Lehrmann went there with the intention to have sexual intercourse with Higgins knowing or suspecting that she was too drunk to voluntarily and freely consent to such sexual intercourse.
  
85. In the premises, imputations 4(b) and 6(b) in the statement of claim are substantially true.

SCHEDULE 2 TO DEFENCE

Particulars to paragraphs 12, 13 and 22 of the defence

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**Part A – Subject matter of the Matters Complained Of**

1. The subject of the Matters Complained Of comprised the following:
  - a. a serious and shocking allegation that a young political staffer, Brittany Higgins (**Higgins**), employed by the Federal Government at Parliament House was raped in a Ministerial office within Parliament House;
  - b. allegations that the Federal Government had grossly mishandled the rape allegation upon becoming aware of it, including by:
    - i. allegedly treating Higgins' rape allegation as a political inconvenience or political crisis to be managed in the lead-up to an impending Federal election, rather than dealing with it seriously and appropriately as a genuine and serious allegation of grave criminal conduct that required investigation;
    - ii. Reynolds allegedly convening a meeting with Higgins to discuss the alleged rape in the very office in which the rape was alleged to have occurred and the Federal Government later accepting that this was not an appropriate thing for Reynolds to have done;
    - iii. Reynolds allegedly directing Higgins to warn Reynolds and the Federal Government ahead of time before reporting her allegation to the police;;
    - iv. senior staff within Reynolds' office allegedly exerting pressure on Higgins, during a period when Higgins was in distress because of the alleged rape, to decide whether she wished to remain employed in Reynolds's office and, if so, whether she wished to travel to Western Australia for the election campaign or work remotely for Reynolds from her home on the Gold Coast, in which case she would likely not be able to return to a coveted role in Canberra after the Federal election;

- v. Senator Michaelia Cash (**Cash**) (the then Minister for Employment for whom Higgins later worked), allegedly obfuscating as to when she first became aware of the allegation that Higgins had been raped;
- vi. allegedly treating Higgins in such a way that she was reluctant to first report the alleged rape, and then pursue her allegations, through the police and was placed in a such a position where she felt she had to choose between pursuing her allegation of rape through the police or maintaining her employment with the Federal Government; and
- c. allegations that, as a result of the Federal Government's mishandling of Higgins' rape allegations, Higgins experienced two years of mental anguish and trauma and ultimately was driven to quit her job and walk away from politics;
- d. the treatment of women, generally in Australian politics and within Parliament House;
- e. the treatment of sexual assault complainants in Parliament House and within the Federal Government;
- f. alleged breaches of the Statement of Standards for Ministerial Staff;
- g. trauma suffered by an alleged victim of sexual assault;
- h. issues of sexual consent when intoxicated; and
- i. the investigation by authorities of allegations of sexual assault.

**Part B - Public interest**

- 2. For the following reasons:
  - a. the subject matter of the Matters Complained Of (as particularised in Part A of this Schedule) were matters of public interest;
  - b. the Respondents reasonably believed the subject matter of the Matters Complained Of were matters of public interest;
  - c. it was in the public interest to publish the Matters Complained Of;

- d. the Respondents reasonably believed that the publication of the Matters Complained Of was in the public interest; and
  - e. each recipient of the Matters Complained Of had an interest (or apparent interest) in the subject matter of the Matters Complained Of and in receiving information about that subject matter.
3. The subject matter of the Matters Complained Of was intrinsically and inherently a matter of legitimate public interest in that it concerned allegations that a political staffer had been raped in Parliament House by a fellow-staffer and that the Federal Government had grossly mishandled the allegations.
  4. The Matters Complained Of concerned government and political matters concerning the functioning of the Commonwealth Parliament, which were of relevance to all electors in Australia. Accordingly, the Matters Complained Of consisted of information, opinion or argument concerning government or political matters.
  5. The Matters Complained Of concerned the conduct, performance and activities of public officials (including elected officials), including the performance of public functions. These included:
    - a. the Applicant, who was employed as a policy advisor to Reynolds, and who it was alleged had entered Reynolds' Ministerial suite at Parliament House after hours and raped Higgins;
    - b. Higgins, who was employed as an administration officer and junior media advisor to Reynolds, and who it was alleged:
      - i. had entered Reynolds' Ministerial suite at Parliament House after hours in an intoxicated state, triggering a security breach; and
      - ii. was raped by the Applicant on a sofa in Reynolds' personal office;
    - c. Reynolds, a Minister in the Federal Government, whom it was alleged had mishandled Higgins' rape complaint; and
    - d. the Prime Minister's Office, whom it was alleged had mishandled Higgins' rape complaint.

6. From at least in or about 2017, there has been a global social and political movement which seeks to bring about a cultural reckoning by drawing attention to the habitual mistreatment, sexual abuse and sexual harassment of women and vulnerable persons in society, and particularly by persons in position of fame, wealth, power or authority or in circumstances involving political, business, socio-economic or other power imbalances. The movement is colloquially known as the *#MeToo* movement.
7. The *#MeToo* movement has attracted substantial publicity and public interest across the globe including because of an ever-expanding list of high-profile persons who have been exposed by the movement for sexually exploitative and/or sexually criminal conduct, including numerous members of the United Kingdom Parliament as part of a political scandal known as the Westminster allegations.
8. The *#MeToo* reckoning in Australia occurred between 2017 and 2021. During this period, there was a stark increase in the scrutiny applied to the conduct of politicians and public figures which resulted in a series of high-profile news stories involving allegations of sexual misconduct by politicians in Canberra as part of what is known colloquially as the 'Canberra bubble'.
9. The news stories included:
  - a. the reporting of allegations of sexual harassment by Robert Doyle, a Leader of the Liberal Party in Victoria and Lord Mayor of Melbourne;
  - b. the reporting of allegations that Federal Attorney-General, Christian Porter, had raped a woman and that the woman had since committed suicide. These allegations were reported a matter of weeks after the publication of the *Matters Complained Of*;
  - c. a defamation claim brought by Christian Porter against the Australian Broadcasting Corporation and Louise Milligan in relation to the reporting of those rape allegations;
  - d. the reporting of allegations that Dyson Heydon, a former Justice of the High Court of Australia, had sexually harassed a number of his associates; and

- e. the reporting of allegations that former Federal Government Minister, Alan Tudge, had engaged in an extra-marital affair with a former political staffer and, in the course of that affair, had emotionally and physically mistreated the former staffer.
10. In January 2021, a few weeks prior to the publication of the Matters Complained Of, the #MeToo movement in Australia reached its zenith when Grace Tame, a survivor of child sexual abuse and a fierce advocate for the rights of survivors of sexual abuse, was named Australian of the Year.
11. In the premises of paragraphs 6 to 10 of this Schedule, at or about the time of publication of the Matters Complained Of, there was a significant and legitimate public interest in the reporting of allegations of rape, sexual assault or sexual abuse in Australian society and, in particular, sexual misconduct in Australian politics or within the so-called 'Canberra bubble.'
12. The subject matter of the Matters Complained Of squarely coincided with this significant and legitimate public interest, insofar as the Matters Complained Of concerned allegations about a rape committed by a political staffer at Parliament House against a junior political staffer, and the alleged mishandling of that rape complaint by the Federal Government.
13. The first matter complained of was first uploaded to the News website at or about 8:00am on 15 February 2021. Following and in consequence of the publication of the first matter complained of, on 15 February 2021, the Prime Minister and Reynolds answered questions in the Commonwealth Parliament about the subject matter of the Matters Complained Of. The questions asked and answers given by the Prime Minister and Reynolds demonstrated that the subject matter of the Matters Complained Of were matters of public interest and that the publication of the Matters Complained Of was in the public interest.
14. The second matter complained of was first uploaded to the News website at or about 10:04pm on 15 February 2021. In light of the questions asked and answers given by the Prime Minister and Reynolds in the Commonwealth Parliament earlier that day, the subject matter of the second matter complained of were matters of public interest and the publication of the second matter complained of was in the public interest.

15. Following and in consequence of the publication of the Matters Complained Of:
- a. on 16 February 2021, the Prime Minister held a press conference during which he apologised to Higgins, answered further questions about the subject matter of the Matters Complained Of, and announced his intention to convene an investigation into workplace culture in Parliament House;
  - b. on 16 February 2021, Reynolds answered questions in the Commonwealth Parliament about the subject matter of the Matters Complained Of;
  - c. on 22 February 2021, both Reynolds and Senator Simon Birmingham, the Minister representing the Prime Minister in the Senate, answered questions in the Commonwealth Parliament about the subject matter of the Matters Complained Of;
  - d. on 24 February 2021, Birmingham tabled a written answer in the Commonwealth Parliament to a question he had taken on notice on 22 February 2021 about the subject matter of the Matters Complained Of;
  - e. on 5 March 2021, the Federal Government commissioned the Independent Review into Commonwealth Parliamentary Workplaces by the Sex Discrimination Commissioner, Kate Jenkins, of the workplace culture at Parliament House, which had the aim of ensuring that all Commonwealth Parliamentary workplaces are safe and respectful and that our national Parliament reflects best practice in the prevention and handling of bullying, sexual harassment, and sexual assault (**Jenkins Review**);
  - f. on 15 March 2021, a significant demonstration was held outside Parliament House in Canberra to protest the perceived mistreatment of Higgins and the lack of action by the Federal Government in response to Higgins' rape allegations. Higgins spoke at the demonstration, which was referred to as the 'March 4 Justice';
  - g. on 30 November 2021, the report of the Jenkins Review (**Jenkins Report**) was released. The Jenkins Report found that a disturbing number of women had experienced sexual harassment working at Parliament House;



- h. on 8 February 2022, the Prime Minister addressed the Commonwealth Parliament, acknowledged the unacceptable history of workplace bullying, sexual harassment and sexual assault in Commonwealth parliamentary workplaces and publicly apologised – both personally and on behalf of the Federal Government – to Higgins who was present in the chamber, for “the terrible things that took place here”;
  - i. on 9 February 2022, Higgins and Grace Tame delivered a joint, nationally-televised address to the National Press Club about their experiences of sexual assault/abuse; and
  - j. Higgins and her experiences in making a complaint about a rape allegedly occurring in Parliament House have become totemic symbols for the #MeToo movement in Australia.
16. The matters particularised in the preceding paragraph demonstrate that the subject matter of the Matters Complained Of were matters of public interest and that the publication of the Matters Complained Of was in the public interest.

### **Part C – Timing**

17. Having regard to:
- a. the fact that the alleged rape of Higgins had occurred nearly two years previously and had not adequately been addressed or investigated by either the Federal Government or law enforcement authorities; and
  - b. the public interest in the subject matter of the Matters Complained Of as particularised in Part B of this Schedule –

it was appropriate that the Respondents published the Matters Complained Of expeditiously.

### **Part D – Reasonableness**

18. The Respondents rely on the following matters, in combination with the matters particularised in Parts A, B and C of this Schedule, as demonstrating that their conduct in publishing the Matters Complained Of was reasonable in the circumstances.

*Enquiries and investigations*

19. The Matters Complained Of were investigated, researched and authored by the Second Respondent (**Maiden**) who is the political editor for [www.news.com.au](http://www.news.com.au) and is a political and investigative journalist of nearly 30-years' standing in the profession.
20. On 2 January 2021, Maiden met Higgins socially. The meeting was arranged in the context of media reporting of the 'Canberra Bubble' and the increased scrutiny of sexual misconduct within political circles in Canberra. During the meeting, Higgins and Maiden discussed Higgins' personal experiences of the workplace culture within Parliament House and the treatment of women, including Higgins, within that culture.
21. Between 2 January and 21 January 2021, Higgins provided information to Maiden to the effect that she had been sexually assaulted when employed in Parliament House.
22. The information provided by Higgins included a dossier which consisted of:
  - a. a list of persons to whom Higgins claimed to have made contemporaneous complaints about her alleged rape by the Applicant, or whom Higgins claimed had otherwise become aware of the alleged rape;
  - b. a timeline of events;
  - c. Higgins' accounts of her conversations with Fiona Brown (**Brown**) (Reynolds' Chief of Staff) and Chris Payne (**Payne**) (Department Liaison Officer within Reynolds' Office) in which Higgins claimed to have disclosed the alleged rape by the Applicant;
  - d. an email from the Australian Federal Police which was consistent with Higgins having made a contemporaneous complaint to the Australian Federal Police about her alleged rape by the Applicant and corroborated Higgins' claim to have made a contemporaneous complaint to the Australian Federal Police;
  - e. an email from ACT Police's Sexual Assault and Child Abuse Team to Higgins which was consistent with Higgins having made a contemporaneous complaint to the Australian Federal Police about her alleged rape by the Applicant and corroborated Higgins' claim to have made a contemporaneous complaint to ACT Police;

- f. an email from the Canberra Rape Crisis Centre to Higgins which was consistent with Higgins having sought counselling in connection with her alleged rape by the Applicant;
  - g. an email from Higgins to ACT Police on 13 April 2019 in which she communicated her decision not to pursue her rape complaint against the Applicant owing to her current “workplace demands”. The Respondents noted that the email was sent two days after the Prime Minister called a federal election on 11 April 2019. The email was consistent with what Higgins told Maiden were her reasons for not pursuing a complaint against the Applicant;
  - h. a Whatsapp message from Higgins to Daniel Try (**Try**) (Cash’s Chief of Staff) in which Higgins requested personal leave and claimed to have engaged the Employee Assistance Program;
  - i. text messages between Higgins and Brown arranging a meeting with Linda Reynolds. The text messages corroborated Higgins’ claim that she had met with Linda Reynolds about her alleged rape by the Applicant; and
  - j. text messages between Higgins and Ben Dillaway (**Dillaway**) in 2019 referring to Higgins’ alleged sexual assault by the Applicant. The text messages were consistent with Higgins having made a contemporaneous complaint to Dillaway about her alleged rape by the Applicant and corroborated Higgins’ claim that she had made a contemporaneous complaint to Dillaway.
23. On 21 January 2021, Maiden conducted an extensive, face-to-face interview with Higgins lasting several hours. During the course of the interview Maiden observed Higgins closely, scrutinised her answers and challenged her on some of her answers. Maiden reasonably formed the view that Higgins was a witness of credibility and that Higgins’ allegations were credible.
24. Following the interview, Higgins provided the following additional documents to Maiden:
- a. a number of photographs;

- b. an audio recording of a conversation which Higgins had with Try in January 2021;
  - c. a voice message from Cash to Higgins in October 2019 urging Higgins to “sleep tight” and stating that Try has “got everything under control, I promise you”;
  - d. a voice message from Try to Higgins in October 2019;
  - e. an Uber receipt for a trip on the morning of 23 March 2019;
  - f. documents recording Higgins’ employment with Cash; and
  - g. a transcript of Higgins’ complete interview with Network Ten Pty Ltd.
25. The abovementioned documents corroborated Higgins’ allegations and lent credibility to those allegations. The Respondents reviewed and considered all of these documents and reasonably formed the view that they corroborated Higgins’ allegations and lent credibility to those allegations.
26. The Respondents sought comment in response to Higgins’ allegations from the Prime Minister’s office, Reynolds’s office, Cash’s office and Fiona Brown (Reynolds’ former Chief of Staff).
27. The Respondents received a response from the Prime Minister’s office, which responded on behalf of the Prime Minister, the Federal Government, Ms Brown, Reynolds and Cash. The Respondents included the substance of the response in the first matter complained of and drafted the first matter complained of in such manner as to not undermine that response.
28. The Respondents also received from the Prime Minister’s office a copy of an email from Lauren Barons, an Assistant Secretary in the Ministerial and Parliamentary Services unit of the Department of Finance, to Brown at 6:05pm on 29 March 2019 in the following terms:

Dear Fiona

Following our discussions, I understand that you have taken the following actions in relation in discussions with the staff member in your office:

- Made her aware of the Employee Assistance Program (EAP) and other support services available. If you haven't already you may wish to ensure the staff member is aware of [1800Respect.org.au](http://1800Respect.org.au)
- Notified her that, should she choose to, she is able to pursue a complaint, including a complaint made to the police, and that to do so would be within her rights.
- You have made it very clear to her that if she requires assistance in making a complaint, you would be willing to support her.
- In addition, I understand you have discussed with her on several occasions that if she does choose to pursue a complaint, either now or at a later date, she would have the full and ongoing support of yourself and the Minister.
- You have provided the employee with the opportunity to come to you for further assistance, support or guidance at any time.
- You have encouraged the employee to access the EAP provider as soon as possible, and on days she was not in the office, you have checked in with her to make sure she is OK and has support at home.
- You have provided the employee with the leave required to attend medical and EAP appointments.

I consider that the steps you have taken are appropriate, taking into account guidance material available including from the Human Rights Commission (see links under Section E of the [Workplace Bullying and Harassment Policy](#)).

Ultimately any decision as to whether to lodge a police report or pursue any other form of complaint relating to this matter would be a personal choice of the person involved. I note the 1800Respect website recommends the person should have 'as much control as possible over what to do next' and that a person 'may decide not to report to police, or not to have a medical or examination.... This is their choice and must be respected'. For a referral to be made on her behalf or without her consent or against her wishes could be harmful to her.

We acknowledge that there is also an obligation to ensure a safe working environment. It may be the case that should further information come to light, or there is a concern about the employees ongoing safety in the office, an alternate approach may need to be considered.

I would encourage you to continue to show your support and provide her with the assistance she requires to make a decision on whether she does want to take this further.

As we discussed, while all MOP(S) staff have access to three counselling sessions under the EAP, this can be extended where required and I am happy to approve additional sessions that may be needed in this instance.

Please let me know if you would like to discuss this further or if there is any additional support we can provide to the office. I also remind you that you are able to access EAP as well.

29. The above email was consistent with Higgins having made a contemporaneous complaint to Brown on or before 29 March 2019 that she had been sexually assaulted,

and corroborated Higgins' claim that she had made a contemporaneous complaint to Brown.

30. The response from the Prime Minister's office corroborated the information which Higgins had provided to Maiden about the contemporaneous complaints made by Higgins to Brown and Reynolds and, by so doing, lent credibility to Higgins' allegations. The Respondents reasonably believed that the response from the Prime Minister's office lent credibility to Higgins' allegations.
31. The respondents received separate responses from Cash's Office. The Respondents included the substance of those responses in the first matter complained of.
32. The Respondents sought and obtained a comment from ACT Police and included the substance of that comment in the first matter complained of. ACT Police confirmed that they had received a complaint from Higgins in April 2019 (nearly two years before Higgins approached Maiden) but that Higgins had elected not to pursue the complaint. The response from ACT Police corroborated the information which Higgins had provided to Maiden about having made a contemporaneous complaint to police in April 2019 and, by so doing, lent credibility to Higgins' allegations. The Respondents reasonably believed that the ACT Police response lent credibility to Higgins' allegations.
33. The Respondents sought comment from the Speaker of the House of Representatives, Tony Smith, and the President of the Senate, Scott Ryan, but did not receive responses.
34. Prior to the publication of the second matter complained of, the Respondents also sought comment from the Department of Parliamentary Services but did not receive a response.
35. The totality of the information and documents in the Respondents' possession was consistent with and corroborated Higgins having made contemporaneous complaints about her alleged rape by the Applicant to at least the following persons or organisations:
  - a. the Australian Federal Police;
  - b. ACT Police;

- c. the Canberra Rape Crisis Centre;
  - d. Brown;
  - e. Dillaway;
  - f. Reynolds;
  - g. Payne; and
  - h. Try.
36. The making of these contemporaneous complaints lent credibility to Higgins' allegations and the Respondents reasonably believed that they lent credibility to Higgins' allegations.
37. The Respondents considered and discussed Higgins' allegations, and the documents in the Respondents' possession, at length in discussions between Maiden, Lisa Muxworthy (Editor-in-Chief) and Oliver Murray (Editor).
38. In the premises of the matters particularised in paragraphs 19 to 37 of this Schedule, in combination with the matters particularised in Parts A, B and C of this Schedule:
- a. the Respondents reasonably believed that Higgins was a credible and reliable complainant;
  - b. the Respondents reasonably believed that Higgins' account of her alleged rape by the Applicant was credible, reliable, trustworthy and worthy of investigation; and
  - c. the Respondents reasonably believed that Higgins' allegations ought to be reported in the public interest.
39. The Respondents sought and obtained legal advice prior to publishing the Matters Complained Of (in respect of the content of which they do not waive privilege).

*Drafting of the Matters Complained Of*

40. The Matters Complained Of made it clear that the Respondents were reporting on a sexual assault complaint or allegation made by Higgins, and reported that Fiona

Brown had said Ms Higgins did not initially disclose the alleged rape in her first meeting with Brown, and reported the difference of opinion between Higgins and Brown regarding the day on which the discussion actually occurred.

41. The Respondents took care to moderate the Matters Complained Of to avoid injury, or minimise injury, to the Applicant's reputation that might be caused by the reporting of Higgins' allegations, including by:
- a. omitting the Applicant's name, photograph, image or likeness and any description of the Applicant that might identify him to third parties, including to persons acquainted with the Applicant;
  - b. drafting the Matters Complained Of in such a way that they did not invite readers to speculate as to the Applicant's identity nor to conduct their own research in an effort to discover the Applicant's identity;
  - c. emphasising that Higgins' allegations were not proven facts but were her allegations (including by use of phrases such as 'Higgins says', 'staffer alleges', 'Higgins claims', 'Higgins has told', 'alleged rape' and 'alleged sexual assault');
  - d. highlighting that Higgins' allegations had not been investigated by police;
  - e. refraining from naming the Applicant in any further reporting of the matters the subject of the Matters Complained Of until he was charged by police with the rape of Higgins;
  - f. adopting fair, measured and neutral language throughout the Matters Complained Of.

*Fairness and balance*

42. The Respondents' conduct insofar as it relates to the Applicant has been fair and balanced, in that they:
- a. broke the story that the Applicant's lawyer, John Korn, said the Applicant was innocent and would plead not guilty to charges of rape;
  - b. attended and fully and fairly reported on the Applicant's criminal trial, including statements made by the Applicant's counsel, Steven Whybrow SC, after the



Applicant's trial was aborted due to juror misconduct and Higgins made a public statement outside court; and

- c. broke the story that the ACT Director of Public Prosecutions would not proceed with a second trial of the Applicant.

43. The Respondents did not approach the Applicant for comment prior to the publication of the Matters Complained Of. The Respondents' decision not to do so was reasonable in all the circumstances because:

- i. the Matters Complained Of did not name the Applicant; include his photograph, image or likeness; describe him by reference to his job description as a staff member in Reynolds' office; otherwise describe him in a manner that identified him to third parties, including to persons acquainted with the Applicant; nor invite readers to speculate as to the Applicant's identity nor to conduct their own research in an effort to discover the Applicant's identity;
  - ii. they knew that prior to publication of the Matters Complained Of, the Applicant had declined to respond to the allegation that he had raped Higgins when contacted by Network Ten Pty Ltd which proposed to publish similar matter to the Matters Complained Of;
- b. when he was interviewed by police in April 2021, the Applicant told police that he had no intention to respond to media enquiries about the alleged rape of Higgins.