



**DEFENCE**

**NO WAD121/2025**

**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: WESTERN AUSTRALIA**  
**DIVISION: GENERAL**

**LINDA KAREN REYNOLDS**  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
First Respondent

**HWL EBSWORTH LAWYERS (A FIRM)**  
Second Respondent

- A. The headings used in this defence are used for convenience only and do not form part of this defence.
  
- B. In this defence, the Commonwealth does not plead to any of the particulars contained in the Re-Amended Statement of Claim dated 12 November 2025.

To the applicant's 'Re-Amended Statement of Claim' (**SOC**) dated 12 November 2025, the first respondent (the **Commonwealth**) says as follows:

**PARTIES**

- 1. In response to paragraph 1 of the SOC, the Commonwealth:
  - a. admits the allegations in subparagraphs 1.1, 1.2, 1.3, 1.4 and 1.5; and
  - b. as to subparagraph 1.6:
    - i. repeats the matters pleaded in paragraph 7 below;
    - ii. says that the applicant was named as a respondent to the unlitigated legal claims made by Ms Higgins that are referred to in the 21 December Letter (the **Higgins Legal Claims**); and
    - iii. otherwise denies the allegations in subparagraph 1.6.

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Filed on behalf of (name & role of party) Commonwealth of Australia, First Respondent  
Prepared by (name of person/lawyer) Emma Gill and Stephen Bott  
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2. In response to paragraph 2 of the SOC, the Commonwealth:
  - a. admits the allegations in subparagraphs 2.1 and 2.2;
  - b. denies the allegations in subparagraph 2.3 and says that the Commonwealth was named as a respondent to the Higgins Legal Claims; and
  - c. as to subparagraph 2.4:
    - i. repeats the matters pleaded in paragraphs 8A, 20 and 24D below; and
    - ii. otherwise denies the allegations in subparagraph 2.4.
3. In response to paragraph 3 of the SOC, the Commonwealth:
  - a. admits the allegations in subparagraph 3.1;
  - b. denies the allegations in subparagraph 3.2 and says that at all relevant times, the second respondent (**HWLE**) acted for the Commonwealth in relation to the Higgins Legal Claims; and
  - c. denies the allegations in subparagraph 3.3 and says that, at all relevant times, Clayton Utz acted for the applicant in relation to the Higgins Legal Claims.

## **BACKGROUND**

4. The Commonwealth admits the allegations in paragraph 4 of the SOC.
5. The Commonwealth admits the allegations in paragraph 5 of the SOC.
6. The Commonwealth admits the allegations in paragraph 6 of the SOC.
7. Subject to relying on the letter from Blumers Personal Injury Layers (**Blumers**) dated 21 December 2021 (**21 December Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 7 of the SOC.
8. In response to paragraph 8 of the SOC, the Commonwealth:
  - a. admits that the applicant instructed Clayton Utz to act on her behalf in respect of the Higgins Legal Claims referred to in the 21 December Letter; and
  - b. otherwise does not know and therefore cannot admit the allegations in paragraph 8 of the SOC.

- 8A. Subject to relying on the letter from the Minister for Finance to the applicant dated 22 March 2022 (**22 March 2022 Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 8A of the SOC and says further that:
- a. the approval given by the 22 March 2022 Letter was in respect of the applicant's application on or about 18 March 2022 under the *Parliamentary Business Resources Regulations 2017* (Cth) (**PBR Regulations**) for legal assistance in respect of the Higgins Legal Claims referred to in the 21 December Letter; and
  - b. by reason of the approval, pursuant to s 89 of the PBR Regulations, the Commonwealth was entitled to control the conduct of the applicant's defence of the Higgins Legal Claims.
- 8B. The Commonwealth admits the allegations in paragraph 8B of the SOC.
9. The Commonwealth does not know and therefore cannot admit the allegations in paragraph 9 of the SOC.
10. In response to paragraph 10 of the SOC, the Commonwealth:
- a. says that on about 24 March 2022, the applicant (by her solicitors Clayton Utz) informed Ms Higgins (by her solicitors Blumers) that the applicant would not plead a limitation period defence in respect of the Higgins Legal Claims provided that legal proceedings were commenced before 30 June 2022; and

### **Particulars**

1. Email from Clayton Utz to Blumers dated 24 March 2022.
  - b. otherwise denies the allegations in paragraph 10.
11. In response to paragraph 11 of the SOC, the Commonwealth:
- a. subject to relying on the terms of the documents for their full force and effect at trial, admits that, on 29 March 2022, the applicant received the documents referred to in subparagraphs 11.1-11.7 of the SOC; and
  - b. otherwise denies the allegations in the paragraph.
12. In response to paragraph 12 of the SOC, the Commonwealth:
- a. says that findings of fact in *Lehrmann v Network Ten Pty Limited (Trial Judgment)* [2024] FCA 369 are not admissible to prove those facts in this proceeding;

### Particulars

1. *Evidence Act 1995* (Cth) s 91.

- b. does not know and therefore cannot admit the allegations in the paragraph; and
- c. says further that the allegations in the paragraph are not relevant to and are not alleged to be relevant to the applicant's claim in negligence against the Commonwealth.

### Particulars

1. The findings of Lee J in *Lehrmann v Network 10 (Trial Judgment)* [2024] FCA 369 were made on 15 April 2024 whereas the Higgins Legal Claims were resolved on 13 December 2022.

- 13A. The Commonwealth admits the allegations in paragraph 13A of the SOC.
- 13. Subject to relying on the email from Noor Blumer to Ashley Tsacalos and Christie Miller dated 8 June 2022 for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 13 of the SOC.
- 14. Subject to relying on the letter from HWLE to Ashley Tsacalos dated 28 June 2022 (**28 June 2022 Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 14 of the SOC.
- 15. In response to paragraph 15 of the SOC, the Commonwealth:
  - a. subject to relying on the terms of the 28 June 2022 Letter for their full force and effect at trial and on the basis that the allegations pleaded relate to the Higgins Legal Claims as defined in this Defence, admits sub-paragraphs 15.1, 15.2, 15.3 and 15.5; and
  - b. otherwise denies the allegations in the paragraph.
- 16. Subject to relying on the letter from Clayton Utz to HWLE dated 25 July 2022 for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 16 of the SOC.
- 17. In response to paragraph 17 of the SOC, the Commonwealth:
  - a. subject to relying on the email from Noor Blumer to Ashley Tsacalos dated 15 August 2022 for its full force and effect at trial, admits the applicant was

notified that the mediation listed for 16 August 2022 was cancelled and rescheduled for 13 December 2022;

- b. says that the applicant was asked in that email to consent to waive or not press the limitation period so long as proceedings were commenced before 28 February 2023; and
- c. otherwise denies the allegations in the paragraph.

18. In response to paragraph 18 of the SOC, the Commonwealth:

- a. says that on about 27 September 2022, the applicant (by her solicitors Clayton Utz) informed Ms Higgins (by her solicitors Blumers) that the applicant would not plead a limitation period defence in respect to the Higgins Legal Claims provided that proceedings were commenced before 6 December 2022; and

#### **Particulars**

1. Email from Clayton Utz to Blumers dated 27 September 2022.

- b. otherwise denies the allegations in the paragraph.

19. In response to paragraph 19 of the SOC, the Commonwealth:

- a. says that it will rely on the terms of the emails sent between the applicant's solicitors and Ms Higgins's solicitors on 28 September 2022, 29 November 2022 and 2 December 2022 for their full force and effect at trial;
- b. says that in those emails:
  - i. the applicant was asked not to rely on a limitation period defence in respect of the Higgins Legal Claims provided that legal proceedings were commenced before nominated dates (28 February 2023 in the email of 28 September 2022 and 30 April 2023 in the email of 29 November 2022); and
  - ii. the applicant agreed not to rely on a limitation period defence if Ms Higgins commenced legal proceedings by 6 December 2022; and
- c. otherwise denies the allegations in the paragraph.

19A. Subject to relying on the terms of the letter from Blumers Personal Injury Lawyers to HWLE dated 6 December 2022 (**6 December Blumers Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 19A of the SOC.

- 19B. The Commonwealth denies the allegations in paragraph 19B of the SOC, and says that the 6 December Blumers Letter asked HWLE to provide “a template of suggested deed of settlement”.
20. In response to paragraph 20 of the SOC, the Commonwealth:
- a. repeats the matters pleaded in paragraph 8A above;
  - b. admits that on 6 December 2022, the applicant (by her solicitors Clayton Utz) received a letter from HWLE referring to the approval of legal assistance to her pursuant to the PBR Regulations on 22 March 2022 (**6 December HWLE Letter**);
  - c. subject to relying on the terms of the 6 December HWLE Letter for their full force and effect at trial, says that the relevant effect of the 6 December HWLE Letter was that:
    - i. the applicant was informed that it had been decided by the then Attorney-General that the Commonwealth would exercise its discretion to control the conduct of the applicant’s defence of the Higgins Legal Claims pursuant to s 89 of the PBR Regulations;
    - ii. the applicant was informed that the Commonwealth requested her to assist it in the exercise of that control by, among other things, not attending the mediation and not seeking to do so;
    - iii. if the applicant failed to give the Commonwealth the assistance requested of her, the applicant would have been in breach of s 90 of the PBR Regulations; and
    - iv. if the applicant had breached s 90 of the PBR Regulations, the amount of assistance payable to the applicant under the PBR Regulations may have been reduced pursuant to s 85(4) of the PBR Regulations; and
  - d. otherwise denies the allegations in the paragraph.
- 20A. In response to paragraph 20A of the SOC, the Commonwealth:
- a. refers to and repeats the matters pleaded in paragraph 20 above; and
  - b. otherwise denies the allegations in the paragraph.

20B. Subject to relying on the terms of the 6 December HWLE Letter for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 20B of the SOC.

20C. In response to paragraph 20C of the SOC, the Commonwealth:

- a. subject to relying on the terms of the 6 December HWLE Letter for their full force and effect at trial, admits that the 6 December HWLE Letter omits any information in respect of the time and location of the mediation; and
- b. otherwise denies the allegations in the paragraph.

20D. In response to paragraph 20D of the SOC, the Commonwealth:

- a. says that it assumed control of the conduct of the applicant's defence of the Higgins Legal Claims made against the applicant as a result of the approval pleaded in paragraph 8A above, s 89 of the PBR Regulations and the decision communicated in the 6 December HWLE Letter to exercise the discretion to control the conduct of the applicant's defence of the Higgins Legal Claims; and
- b. otherwise denies the allegations in the paragraph and says further that:
  - i. the Commonwealth's statutory power to control the applicant's defence of the Higgins Legal Claims pursuant to s 89 of the PBR Regulations necessarily entitled the Commonwealth to:
    1. resolve the Higgins Legal Claims made against the applicant on terms that do not include an admission of liability, do not include an admission of any wrongdoing on the part of the applicant, and which do not otherwise adversely alter the applicant's legal rights and obligations in respect of matters that have not been the subject of assistance under the PBR Regulations;
    2. act without considering the applicant's wishes in relation to the applicant's defence of the Higgins Legal Claims (including, but not limited to, deciding whether to rely on any available defence including a limitation period); and
    3. act contrary to the applicant's wishes in relation to the applicant's defence of the Higgins Legal Claims (including, but not limited to, deciding whether to rely on any available defence including a limitation period);

- ii. in the premises, the duty of care as alleged by the applicant is inconsistent with the PBR Regulations;
- iii. further and/or in the alternative, the scope of any duty of care owed by the Commonwealth to the applicant did not extend to taking reasonable care to avoid causing harm to the applicant that is not reasonably foreseeable; and
- iv. further and/or in the alternative, the scope of any duty of care owed by the Commonwealth to the applicant did not extend to taking reasonable care to avoid causing harm to the applicant's reputational interests.

21. In response to paragraph 21 of the SOC, the Commonwealth

- a. repeats the matters pleaded in paragraphs 8A, 15 and 20 above;
- b. says that the 28 June 2022 Letter was sent before the Commonwealth decided to exercise control of the applicant's defence of the Higgins Legal Claims;
- c. says that it was open to the applicant at her election to forego assistance and so resume control of her defence of the Higgins Legal Claims; and
- d. otherwise denies the allegations in the paragraph.

21A. In response to paragraph 21A of the SOC, the Commonwealth:

- a. repeats the matters pleaded in paragraph 20 above; and
- b. otherwise denies the allegations in the paragraph.

21B. Subject to relying on the terms of the letter from HWLE to Blumers dated 7 December 2022 (**7 December Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 21B of the SOC.

21C. In response to paragraph 21C of the SOC, the Commonwealth:

- a. subject to relying on the terms of the 7 December Letter for their full force and effect at trial, says that the relevant effect of the 7 December Letter was that:
  - i. the Commonwealth undertook not to rely on any limitation period that may have been available in respect of the Higgins Legal Claims against the applicant provided that proceedings were commenced by 28 February 2023; and

- ii. the undertaking applied only while the Commonwealth maintained control of the applicant's defence of the Higgins Legal Claims;
  - b. in the premises, the undertaking conveyed in the 7 December Letter did not purport to affect, and was incapable of affecting, the applicant's right to rely on any available limitation period defence should the Commonwealth cease to exercise control of the applicant's defence of the Higgins Legal Claims made against the applicant; and
  - c. otherwise denies the allegations in the paragraph.
22. The Commonwealth admits the allegations in paragraph 22 of the SOC.
23. Subject to relying on the terms of the letter from Clayton Utz to HWLE on 9 December 2022 (**9 December Letter**) for their full force and effect at trial, the Commonwealth admits the allegations in paragraph 23 of the SOC.
24. Subject to relying on the terms of the 9 December Letter for their full force and effect at trial, the Commonwealth admits the allegations in paragraph 24 of the SOC.
- 24A. In response to paragraph 24A of the SOC, the Commonwealth:
- a. repeats the matters pleaded in paragraphs 8A, 20 and 20D above and paragraph 25 below;
  - b. admits that neither the Commonwealth nor HWLE responded to the 9 December Letter prior to the mediation of 13 December 2022;
  - c. admits that neither the Commonwealth nor HWLE informed the applicant or Clayton Utz of the location or time of the mediation of 13 December 2022;
  - d. says that neither the Commonwealth nor HWLE said to the applicant that she could instruct and pay for her own legal representation at the mediation or have a representative attend the mediation on her behalf;
  - e. says that the applicant did not request the Commonwealth or HWLE to permit the applicant to instruct and pay for her own legal representation at the mediation or have a representative attend the mediation on her behalf;
  - f. says that it was open to the applicant at her election to forego assistance and so resume control of her defence of the Higgins Legal Claims; and
  - g. otherwise denies the allegations in the paragraph.

- 24B. Subject to relying on the letter from Blumers to HWLE dated 9 December 2022 and its enclosures for their full force and effect at trial, the Commonwealth admits the allegations in paragraph 24B of the SOC.
- 24C. Subject to relying on the letter from HWLE to Blumers dated 10 December 2022 (**10 December Letter**) for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 24C of the SOC.
- 24D. In response to paragraph 24D of the SOC, the Commonwealth:
- a. subject to relying on the terms of the 10 December Letter for their full force and effect at trial, the Commonwealth admits the allegations in the paragraph;
  - b. says further that the 10 December Letter informed Ms Higgins that the Commonwealth could not resolve at mediation the legal claims made against the applicant in the new material pleaded in paragraph 24C of the SOC (**New Material**) as the applicant had not been granted assistance in respect of those claims under the PBR Regulations; and
  - c. says further that at no time did the Commonwealth purport to or in fact exercise control of the conduct of the applicant's defence of any legal claim made against her in the New Material.
- 24E. The Commonwealth admits the allegations in paragraph 24E of the SOC.
25. In response to paragraph 25 of the SOC, the Commonwealth:
- a. repeats the matters pleaded in paragraphs 8A, 20, 20D and 24D above;
  - b. says that on 13 December 2022, the Commonwealth and Ms Higgins attended a mediation in respect of the Higgins Legal Claims;
  - c. says that the Higgins Legal Claims against the Commonwealth (and its current and former officers, employees, contractors and agents but not including Bruce Lehrmann), the applicant and Senator the Honourable Michaelia Cash were resolved in accordance with the terms of a deed of settlement and release dated 13 December 2022 (the **Deed**);

### Particulars

1. For the avoidance of doubt, the Higgins Legal Claims included legal claims brought by Ms Higgins against the Commonwealth itself.

- d. says that it will rely on the terms of the Deed for their full force and effect at trial;
- e. says that the applicant is not a party to the Deed;
- f. says that the Deed contains no admission of liability or admission of any allegation made by Ms Higgins against the applicant;
- g. says that the Deed did not purport to release Ms Higgins from any claim relating to the Circumstances (as defined in the Deed) that the applicant might have against Ms Higgins;
- h. says that the applicant's legal rights and obligations with respect to the Higgins Legal Claims made against her were not adversely altered by the Deed;

### **Particulars**

- 1. Had Ms Higgins commenced legal proceedings against the applicant in respect of the Higgins Legal Claims, the applicant could have chosen to (but was not obliged to) rely on the terms of the Deed (such as the releases and indemnities contained in the Deed for the applicant's benefit).
  - i. says that the applicant's legal rights and obligations in respect of matters that had not been the subject of assistance under the PBR Regulations were not adversely altered by the Deed;
  - j. says that the Commonwealth could have entered into the same Deed (or substantially the same Deed) to settle the Higgins Legal Claims against the Commonwealth even without having exercised control over the applicant's defence of the Higgins Legal Claims made against the applicant; and
  - k. otherwise denies the allegations in the paragraph.
26. The Commonwealth does not know and therefore cannot admit the allegations in paragraph 26 of the SOC.
27. The Commonwealth admits the allegations in paragraph 27 of the SOC.
28. Subject to relying on the terms of the letter from HWLE to Clayton Utz dated 16 December 2022 for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 28 of the SOC.

- 29A. Subject to relying on the terms of the email from Ashley Tsacalos to HWLE dated 21 December 2022 for its full force and effect at trial, the Commonwealth admits the allegations in paragraph 29A of the SOC.
- 29B. Subject to relying on the terms of the letter from HWLE to Clayton Utz dated 7 February 2023, the Commonwealth admits the allegations in paragraph 29B of the SOC.
29. The Commonwealth admits the allegations in paragraph 29 of the SOC.
- 30A. The Commonwealth admits the allegations in paragraph 30A of the FASOC.
30. In response to paragraph 30 of the SOC, the Commonwealth:
- a. says that findings of fact in *Lehrmann v Network Ten Pty Limited (Trial Judgment)* [2024] FCA 369 are not admissible to prove those facts in this proceeding; and

### **Particulars**

1. *Evidence Act 1995* (Cth) s 91.

- b. subject to sub-paragraph (a) above, admits the allegations in the paragraph.

### **APPLICABLE LAW**

- 30A The tort of negligence is committed where the allegedly negligent acts or omissions occurred.
- 30B If the acts and omissions alleged in paragraph 31E of the SOC against the Commonwealth occurred, then they occurred in the Australian Capital Territory.
- 30C In the premises, the *Civil Law (Wrongs) Act 2002* (ACT) applies to this claim.

### **FIRST RESPONDENT'S ALLEGED DUTY TO TAKE REASONABLE CARE**

31. [No longer used]
- 31A. In response to paragraph 31A of the SOC, the Commonwealth:
- a. admits the allegations in subparagraphs 31A.1 and 31A.3;
  - b. admits that by 6 December 2022, the Commonwealth knew or ought to have known that:

- i. the applicant's reputation was likely to be adversely affected in the assessment of some members of the public if the Higgins Legal Claims made against the applicant were found by a court to be established;
  - ii. the alleged rape of Ms Higgins and the alleged attempted cover-up of that incident had been the subject of media reporting; and
  - iii. on about 24 February 2021, the applicant took a leave of absence from her parliamentary and ministerial duties; and
- c. otherwise denies the allegations in the paragraph.

31B. In response to paragraph 31B of the SOC, the Commonwealth:

- a. admits that by 6 December 2022, the Commonwealth knew or ought to have known that Ms Higgins had made public statements concerning her alleged rape by Mr Lehrmann and the alleged cover-up of that incident; and
- b. otherwise denies the allegations in the paragraph.

31C. In response to paragraph 31C of the SOC, the Commonwealth:

- a. repeats the matters pleaded in paragraphs 8A, 20 and 20D above;
- b. says that the Commonwealth assumed a position of power and control over the applicant's defence of the Higgins Legal Claims by deciding to exercise control over that defence pursuant to s 89 of the PBR Regulations;
- c. says that it was open to the applicant at her election to forego assistance and so resume control of her defence of the Higgins Legal Claims so as to bring the Commonwealth's power and control over her defence of the Higgins Legal Claims to an end; and
- d. otherwise denies the allegations in the paragraph.

31D. In response to paragraph 31D of the SOC, the Commonwealth:

- a. repeats the matters pleaded in paragraphs 8A, 20, 20D and 25 above;
- b. says that the SOC is embarrassing because it does not plead to the requirements of s 34 of the *Civil Laws (Wrongs) Act 2002* (ACT); and
- c. otherwise denies the allegations in the paragraph.

## FIRST RESPONDENT'S ALLEGED BREACH

31E. In response to paragraph 31E of the SOC, the Commonwealth:

- a. repeats the matters pleaded in paragraphs 8A, 20, 20D, 25 and 31D above;
- b. says that the SOC is embarrassing because it does not address the requirements of s 43 of the *Civil Law (Wrongs) Act 2002* (ACT);
- c. denies the allegations in subparagraph 31E.1, and says further that:
  - i. the allegation that there was no “meaningful prospect of liability being established” does not have any recognisable content outside the context of the *Legal Services Directions 2017* (Cth);
  - ii. in respect of the Higgins Legal Claims, there was a “meaningful prospect of liability being established” against the applicant for the purpose of the *Legal Services Directions 2017* (Cth);
  - iii. paragraph 2 of Appendix C to the *Legal Services Directions 2017* (Cth) permits settlement of a monetary claim only if there is “the existence of at least a meaningful prospect of liability being established”;
  - iv. the issue of non-compliance with the *Legal Services Direction Directions 2017* (Cth) may not be raised in any proceeding (whether in a court, tribunal or other body) except by, or on behalf of, the Commonwealth; and

### Particulars

1. *Judiciary Act 1903* (Cth) s 55ZG(3).
- v. in the premises and for the avoidance of doubt, the applicant cannot raise as an issue an allegation that there was no “meaningful prospect of liability being established” for the purpose of the *Legal Services Directions 2017* (Cth);
- d. denies the allegations in subparagraph 31E.2, and says further that:
  - i. including a Protection Clause (within the meaning of the SOC) in the Deed would have provided the applicant with a benefit that was extraneous to the mere resolution of the Higgins Legal Claims;
  - ii. the Commonwealth’s exercising of control of the applicant’s defence of the Higgins Legal Claims did not prevent the applicant from acting in her

own interests in relation to any alleged reputational harm that may be caused by Ms Higgins' publicly repeating the substance of the Higgins Legal Claims; and

- iii. including a Protection Clause (within the meaning of the SOC) in the Deed would have been contrary to longstanding Commonwealth policy of not providing legal assistance to Ministers and Commonwealth employees to protect reputational interests; and

### **Particulars**

- 1. This policy can be traced back to at least the Attorney-General's Department's Legal Practice Manual and in its Legal Services Instruction No. 1 of 1994.

- e. denies the allegations in subparagraph 31E.3, and says further that providing the applicant with a copy of the Deed would have breached the terms of the Deed.

### **SECOND RESPONDENT'S ALLEGED FIDUCIARY DUTIES**

32. In response to paragraph 32 of the SOC, the Commonwealth:

- a. says that there was no conflict of interest between the Commonwealth and the applicant by reason of the Commonwealth exercising control of the applicant's defence of the Higgins Legal Claims under s 89 of the PBR Regulations;
- b. denies any allegation in subparagraph 32.4 in so far as it is alleged that there was any conflict of interest between the Commonwealth and the applicant; and
- c. otherwise does not plead to the paragraph as it contains no allegations against the Commonwealth.

33. [No longer used]

### **SECOND RESPONDENT'S ALLEGED BREACH**

34. The Commonwealth does not plead to paragraph 34 of the SOC as it contains no allegations against the Commonwealth.

### **SECOND RESPONDENT'S ALLEGED NEGLIGENCE**

35. The Commonwealth does not plead to paragraph 35 of the SOC as it contains no allegations against the Commonwealth.

36. The Commonwealth does not plead to paragraph 36 of the SOC as it contains no allegations against the Commonwealth.
37. The Commonwealth does not plead to paragraph 37 of the SOC as it contains no allegations against the Commonwealth.

### **ALLEGED LOSS AND DAMAGE**

38. In response to paragraph 38 of the SOC, the Commonwealth:
- a. repeats the matters pleaded in paragraphs 20, 25, 31D and 31E above;
  - b. says that the applicant's claim is embarrassing because it does not address the requirements of s 45 of the *Civil Law (Wrongs) Act 2002* (ACT);
  - c. denies the allegations in the paragraph;
  - d. says that the harm alleged would have occurred in any event as a result of the Commonwealth settling Ms Higgins' claims against the Commonwealth;
  - e. says further that:
    - i. the applicant was a "covered person" within the meaning of the *Parliamentary Injury Compensation Scheme Instrument 2016*;

### **Particulars**

- 1. The applicant was a "member": see s 5 of the *Parliamentary Injury Compensation Scheme Instrument 2016*.
- ii. the mental harm particularised in paragraph (e)(i) of the particulars to paragraph 38 of the SOC is either a disease suffered by the applicant or an injury other than a disease suffered by the applicant arising out of or in the course of her Parliamentary activities and thus an "injury" within the meaning of the *Parliamentary Injury Compensation Scheme Instrument 2016*;
- iii. the injury occurred after the commencement of s 49 of the *Parliamentary Injury Compensation Scheme Instrument 2016*, which commenced on 4 May 2016; and
- iv. in the premises, by reason of s 49 of the *Parliamentary Injury Compensation Scheme Instrument 2016*, an action or other proceeding

for damages does not lie against the Commonwealth in respect of that injury; and

- f. says further that distress and other emotions not amounting to a recognised psychiatric illness do not constitute actionable damage.

**Particulars**

See also *Civil Law (Wrongs) Act 2002* (ACT) s 35.

39. In response to paragraph 39 of the SOC, the Commonwealth:

- a. repeats the matters pleaded in paragraph 38 above (including, for the avoidance of doubt, that no action can be maintained in relation to the alleged mental distress for the reasons pleaded in paragraph 38(c) and (d));
- b. denies the allegations in the paragraph; and
- c. says further in the alternative that the applicant's loss in respect of legal costs incurred in commencing proceedings and issuing concern notices is reduced to the extent that those costs are recovered from other persons.

**Particulars**

See *Reynolds v Higgins* [2025] WASC 345 (S).

Date: 6 February 2026



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Signed by Emma Gill  
AGS lawyer  
For and on behalf of the Australian Government Solicitor  
Lawyer for the First Respondent

This pleading was settled by Ruth Higgins SC and Christopher Tran of counsel

**Certificate of lawyer**

I, Emma Gill, certify to the Court that, in relation to the defence filed on behalf of the First Respondent, 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: 6 February 2026



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Signed by Emma Gill  
AGS lawyer  
For and on behalf of the Australian Government Solicitor  
Lawyer for the First Respondent

## NOTICE OF FILING

### Details of Filing

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*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.