

NOTICE OF FILING

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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.

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Defence

No. NSD475 of 2023

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

Alexander Hart Greenwich

Applicant

Mark William Latham

Respondent

Relief claimed

1. In response to paragraph 1 of the Statement of Claim (**SOC**), the respondent (**Latham**) denies that the applicant (**Greenwich**) is entitled to any damages, including aggravated damages.
2. In response to paragraph 2 of the SOC, Latham denies that Greenwich is entitled to an injunction against Latham or his servants or agents.
3. In response to paragraph 3 of the SOC, Latham denies that Greenwich is entitled to costs.
4. In response to paragraph 4 of the SOC, Latham denies that Greenwich is entitled to interest pursuant to ss 51 and 52 of the *Federal Court of Australia Act 1976* (Cth).
5. In response to paragraph 5 of the SOC, Latham denies that the Greenwich is otherwise entitled to any further or other order against Latham.

Applicant

6. In response to paragraph 6 of the SOC, Latham:
 - a. admits Greenwich is an Australian politician who is openly homosexual and otherwise does not know and does not admit the facts alleged in subparagraph 6.1;

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- b. admits the facts alleged in subparagraph 6.2-6.3;
- c. admits Greenwich was the former convenor of Australian Marriage Equality and otherwise does not know and does not admit the facts alleged in subparagraph 6.4.

Respondent

- 7. In response to paragraph 7 of the SOC, Latham:
 - a. admits the facts alleged in subparagraphs 7.1 – 7.4;
 - b. in response to subparagraph 7.5:
 - i. says Twitter, at the date of this pleading, is now re-branded as X;
 - ii. admits that he is the operator and publisher of content on the X platform, formerly known as Twitter, with the handle “@RealMarkLatham”, defined in the SOC as Mr Latham’s Twitter account, which at the date of the SOC was followed by about 66,800 Twitter accounts; and
 - iii. otherwise does not know and does not admit the facts alleged within;
 - c. in response to subparagraph 7.6:
 - i. admits that he is the operator and publisher of content on, an account page on the Facebook platform known as “Mark Latham’s Outsiders”, defined in the SOC as Mr Latham’s Facebook account, which at the date of the SOC was followed by about 136,000 Facebook accounts;
 - ii. admits the facts alleged in subparagraphs (a)-(d) and that Mr Latham’s Facebook account contains the matters alleged in those subparagraphs; and
 - iii. otherwise does not know and does not admit the facts alleged within;
 - d. in response to subparagraph 7.7:
 - i. admits that he is the operator and publisher of content on, an account page on the Instagram platform with the handle “@MarkLathamsOutsiders”, defined in the SOC as Mr Latham’s Instagram account, which at the date of the SOC was followed by about 12,400 Instagram accounts; and
 - ii. admits the facts alleged in subparagraphs (a)-(c) and that Mr Latham’s Instagram account contains the matters alleged in those subparagraphs; and

- iii. otherwise does not know and does not admit the facts alleged within.

First matter complained of – Primary Tweet

- 8. Latham admits the facts alleged in paragraph 8 of the SOC.
- 9. Latham admits the facts alleged in paragraph 9 of the SOC, and says that he posted the Primary Tweet, as defined in the SOC, on 30 March 2023.
- 10. Latham admits the facts alleged in paragraph 10 of the SOC.

Primary tweet - Publication

- 11. In response to paragraph 11 of the SOC, Latham:
 - a. says that immediately after he posted the Primary Tweet to his Twitter account:
 - i. the tweet was available for download from that online platform;
 - ii. about 66,700 Twitter accounts were following his Twitter account; and
 - iii. persons following his Twitter account may have downloaded and viewed the Primary Tweet; and
 - b. otherwise does not know and does not admit the facts pleaded within.
- 12. In response to paragraph 12 of the SOC:
 - a. admits the Primary Tweet, as defined in the SOC, was deleted on 30 March 2023;
 - b. Latham says that he deleted the Primary Tweet at sometime before 12:30pm; and
 - c. otherwise denies the facts pleaded within.
- 13. In response to paragraph 13 of the SOC, Latham:
 - a. admits that prior to its deletion the Primary Tweet was commented on, retweeted and seen by people;
 - b. says that Twitter recorded at least 6,171 “views” of the Primary Tweet prior to its deletion; and
 - c. otherwise does not know and does not admit the facts alleged within.

Primary Tweet - Identification

- 14. In response to paragraph 14 of the Statement of Claim, Latham:
 - a. says the Primary Tweet did not name Greenwich;
 - b. admits the Primary Tweet was posted as a comment on the Metcalfe Tweet, as defined in the SOC, which identified Greenwich by name; and

- c. otherwise does not know and does not admit the facts alleged within.

Primary Tweet - Imputations

- 15. Latham denies the facts alleged in paragraph 15 of the SOC.
- 16. Latham denies the facts alleged in paragraph 16 of the SOC.
- 17. In response to paragraph 17 of the SOC, Latham:
 - a. repeats his denial of the facts alleged in paragraphs 15 and 16 of the SOC; and
 - b. otherwise does not plead to the paragraph as it alleges no facts against him.

The second matter complained of – DT Quotes

- 18. Latham admits the facts alleged in paragraph 18 of the SOC.
- 19. Latham admits the facts alleged in paragraph 19 of the SOC.
- 20. In response to paragraph 20 of the SOC, Latham:
 - a. admits that:
 - i. he knew and intended that Linda Silmalis, to whom he published the DT Quotes, would republish the DT Quotes; and
 - ii. it was a natural and probable consequence of the publication of the DT Quotes to Linda Silmalis that she would republish the DT Quotes;
 - b. denies that he is responsible for the republication of the DT Quotes in the DT Article because:
 - i. he did not publish the DT Article; and
 - ii. the DT Article did not carry any defamatory meaning of and concerning Greenwich; and
 - c. otherwise denies the facts alleged within.

DT Quotes - Publication

- 21. Latham admits the facts alleged in paragraph 21 of the SOC.
- 22. In response to paragraph 22 of the SOC, Latham:
 - a. does not know and does not admit that the DT Article was downloaded and read by persons in the Australian Capital Territory and each other State and Territory of Australia; and
 - b. otherwise denies the facts alleged within.

DT Quotes - Identification

23. Latham admits the fact alleged in paragraph 23 of the SOC.

DT Quotes - Imputations

24. Latham denies the facts alleged in paragraph 24 of the SOC.

25. Latham denies the facts alleged in paragraph 25 of the SOC

26. In response to paragraph 26 of the SOC, Latham:

- a. denies that Greenwich can rely upon the context of the DT Article to support the imputations he pleads in paragraphs 24 and 25 of the SOC in respect of publication to Linda Silmilas;
- b. denies that Greenwich can rely upon the context of the DT Article to support the imputations he pleads in paragraphs 24 and 25 of the SOC in respect of the alleged republication by Latham in the DT Article; and
- c. otherwise repeats paragraphs 24 and 25 of this Defence above.

Damage

27. Latham denies the facts alleged in paragraph 27 of the SOC.

28. In response to paragraph 28 of the SOC, Latham:

- a. repeats paragraphs 1, 15-16, 20, 22, 24-27 of this Defence above;
- b. denies that he is liable in defamation for the publication of the Primary Tweet or DT Quotes;
- c. denies that he liable in defamation for any republication of the Primary Tweet or DT Quotes;
- d. denies that he is liable for any grapevine effect from the Primary Tweet or DT Quotes;
- e. does not plead to the particulars to paragraph 30 of the SOC as they are particulars and do not require a response; and
- f. otherwise does not know and does not admit the facts alleged within.

29. Latham does not plead to paragraph 29 of the SOC because it does not allege any fact against him.

Serious Harm

30. Latham denies the facts alleged in paragraph 30 of the SOC and its subparagraphs, and further:

- a. denies that the facts pleaded in the subparagraphs could mean the publication of the matters has caused or is likely to cause serious harm to Greenwich's reputation;
- b. in response to the entirety of paragraph 30 of the SOC relies upon the following facts, matters and circumstances that evidence that Greenwich did not suffer serious harm to his reputation:
 - i. the articles on 30 and 31 March 2023 that were positive about Greenwich and criticised Latham, in particular the DT Article and the 15 online newspaper articles particularised under subparagraph (a) of the particulars to paragraph 30 of the SOC;
 - ii. "The Project" segment that Greenwich participated in an interview broadcast to the public on 31 March 2023;
 - iii. the statements of support for Greenwich and criticisms of Latham across politics and the media as recorded in paragraph 48 of this Defence below;
and
 - iv. the statements in the DT Article criticising Latham and supporting Greenwich from:
 1. Greenwich;
 2. Sky News media host Erin Molan;
 3. Penny Sharpe MLC;
 4. Pauline Hanson;
 5. Premier Chris Minns; and
 6. Equality Australia;
- c. in response to subparagraph 30.1:
 - i. repeats paragraphs 11-13, 20-22, and 28 of this Defence above;
 - ii. says the 15 online newspaper articles particularised under subparagraph (a) of the particulars to this paragraph and responses from politicians, media personalities and other members of the public within enhanced the reputation of Greenwich and evidenced that Latham's publication of the Primary Tweet and DT Quotes had enhanced not damaged Greenwich's reputation;

- d. in response to subparagraph 30.2 says each of the imputations pleaded in paragraphs 15, 16, 24 and 25 of the SOC if carried, which is denied, are not serious and are not capable of causing serious harm to Greenwich's reputation;
- e. in response to subparagraph 30.3, says any demeaning language, alleged to be used in the Primary Tweet or DT Quotes, in connection with Greenwich's sexuality or assumed sexual conduct or other vulgar abuse is not capable of causing serious harm to Greenwich's reputation;
- f. in response to subparagraph 30.4, says that he:
 - i. does not know and does not admit that there was any conduct by members of the public as a result of his publication of the Primary Tweet or DT Quotes as alleged in that subparagraph; and
 - ii. relies upon as an intervening or independent cause to any such conduct that is established to have occurred:
 - 1. existing attitudes of members of the public to Greenwich and his politics, including pre-existing prejudice towards the LGBT community; and
 - 2. the responses of persons in politics and the media including Greenwich to the Primary Tweet or DT Quotes as recorded in the DT Article and the 15 online newspaper articles particularised in subparagraph (a) of the particulars to paragraph 30 of the SOC; and
- g. otherwise does not specifically plead to the Particulars as they are particulars and do not require a response.

Concerns Notice

- 31. Latham admits the facts alleged in paragraph 31 of the SOC.
- 32. Latham does not admit or plead to paragraph 32 of the SOC as it makes reference to alleged communications that may be subject to privilege.

Aggravated Damages

- 33. In response to paragraph 33 of the SOC, Latham:
 - a. denies that any of the conduct alleged in the paragraph and subparagraphs to that paragraph was improper, unjustifiable or lacking in bona fides so as to warrant an award of aggravated damages;
 - b. denies the facts alleged in subparagraph 33.1;
 - c. denies that the facts alleged in subparagraph 33.2;

- d. in response to subparagraph 33.3:
 - i. denies that an apology was self-evidently called for; and
 - ii. further says the failure to apologise was not capable of warranting an award of aggravated damages, in the pleaded circumstances, in particular where:
 - 1. the matters were political speech;
 - 2. Greenwich has not apologised for using similar language against Latham; and
 - 3. on 31 March 2023, Greenwich told a public audience on “*The Project*” television program “I don’t need an apology from Mark Latham”;
- e. does not admit or plead to subparagraph 33.4 to the extent that it discloses privilege communications and otherwise says any response to a legal demand is not capable of warranting an award of aggravated damages; and
- f. in response to subparagraph 33.5, denies the facts alleged about his conduct since publishing each of the matters in that subparagraph its subparagraphs and otherwise does not specifically plead to the Particulars of Subsequent Conduct as they are particulars and do not require a response.

Injunctive Relief

- 34. In response to paragraph 34 of the SOC:
 - a. Latham admits he published the DT Quotes to Linda Silmalis after he published the Primary Tweet; and
 - b. otherwise denies the facts alleged within.
- 35. In response to paragraph 35 of the SOC, Latham:
 - a. repeats his denial to the facts alleged about his conduct after the publishing of each of the matters in subparagraph 33.5 of the SOC and its subparagraph pleaded in paragraph 33(f) of this Defence above; and
 - b. otherwise does not plead to the Particulars of Subsequent Conduct in the SOC as they are particulars and do not require a response.
- 36. In response to paragraph 36 of the Statement of Claim, Latham:
 - a. denies the facts alleged in that paragraph; and
 - b. otherwise denies that Greenwich should be entitled to any injunctive relief.

Mitigation of damage

37. In further answer to the claim for damages in paragraph 1 of the SOC, if Latham is liable to Greenwich for damages, which is denied, then Latham will rely on the following matters, including pursuant to s38 of the Defamation Act 2005 (NSW):
- a. The conduct of Greenwich in making Greenwich's attack as defined in paragraph 38 of this Defence below;
 - b. the public statements Greenwich has made about the matters that vindicated his own reputation:
 - i. his tweet on 30 March 2023 that commenced "*For those wondering how I'm doing after Latham's homophobic attacks today*";
 - ii. his public statement to reporters on 31 March 2023 that was republished in the mainstream media that included the words "*This has obviously been hurtful for me. I had a bit of a cry late yesterday at the end of the day. After being in this gig for a decade and getting re-elected, I didn't think I'd still be subjected to homophobic abuse.*";
 - iii. his interview on "*The Project*" television program broadcast to the public on 31 March 2023;
 - iv. his public statement on about 1 May 2023 that he would commence defamation proceedings against Latham that was republished in the mainstream media; and
 - v. his public statement on about 17 May 2023 that he would commence defamation proceedings against Latham that was republished in the mainstream media.

DEFENCES

If the Applicant can establish a cause of action in defamation in relation to one or more of the matters, which is denied, Latham relies on the following defences:

Common Law Qualified Privilege

Reply to Attack – Primary tweet

38. On 22 March 2023, Greenwich had a telephone call with Olivia Ireland in which he said the following words attacking Latham (**Greenwich's attack**):

"Mark Latham is a disgusting human being and people who are considering voting for One Nation need to realise they are voting for an extremely hateful and dangerous individual who risks causing a great deal of damage to our state."

39. On 22 March 2023, Ms Ireland writing on the Sydney Morning Herald website republished Greenwich's attack in her article titled "*Video shows LGBTQ protestors pleading for help outside Mark Latham event*" (**Online SMH attack**).
40. On 22 March 2023, Susan Metcalfe republished Greenwich's attack on her account on the Twitter platform with the handle @susanamet attributed to Greenwich with a hyperlink to Ms Ireland's article, the Online SMH attack (**Tweet attack**).
41. On 22 March 2023, Greenwich provided to media outlets for republication a video press release, a transcript of which is annexed and marked "Schedule A" (**Pre-recorded Attack**) that, inter alia, further attacked Latham by claiming that "*For weeks, months and almost years, Mark Latham has been whipping up these thugs into a violent frenzy*". The Pre-recorded Attack, or parts thereof, were republished by 7News, Nine News and Sky News by television and online broadcasts to a public audience;
42. On 22 March 2023, Jordan Baker and Perry Duffin writing in the Sydney Morning Herald print edition republished Greenwich's attack in their article entitled "*'Time to rise': Christian activist charged after protest violence*" (**Second Online SMH attack**).
43. On 23 March 2023, Jordan Baker and Perry Duffin writing in the Sydney Morning Herald print edition republished Greenwich's attack in their article entitled "*Police keeping eye on militant religious groups after protests*" on page 7 of that edition (**Print SMH attack**).
44. On 30 March 2023, in direct reply to the Tweet attack republishing both Greenwich's attack and the Online SMH attack, Latham published the Primary Tweet, as a comment on that tweet, Latham posted the Primary Tweet.
45. Latham posted the Primary Tweet pursuant to a duty or interest to respond to the attack on his reputation that occurred in Greenwich's attack, the Online SMH attack, the Second Online SMH attack, the Tweet attack and the Print SMH attack.
46. The Primary Tweet was posted to the identical public audience to which the Tweet attack was published, and was also made available to same public audience as the Online SMH attack, Second Online SMH attack, Print SMH attack, and Pre-recorded Attack.
47. Given the wide public audience who had read or viewed one or more of the Greenwich attack, Tweet attack, Online SMH attack, Second Online SMH attack, Print SMH attack, and Pre-recorded Attack that affected the reputation of Latham each recipient or potential recipient of the Primary Tweet had a reciprocal interest to Latham in posting the Primary Tweet in reading the Primary Tweet.
48. Latham says that in the circumstances pleaded in paragraphs 38-47 of the Defence above he published the Primary Tweet on an occasion of qualified privilege.

DT Quotes and DT Article

49. After Latham posted the Primary Tweet, political and media figures made public statements about the Primary Tweet attacking Latham (the **Latham attacks**):

a. On 30 March 2023, Senator Pauline Hanson posted a video in which she said:

I am responding to the comments made by Mark Latham on social media. I want you to know that I don't condone them and neither do my members of parliament or party associates.

I think they are disgusting.

I've actually tried to ring Mark a couple of times, to no avail, and I have clearly sent a text message to him telling him my views and also I've asked him to give the people an apology.

I will leave it at that. It is now over to Mark to answer the people.

b. On 30 March 2023, Penny Sharpe MLC said:

I was physically sickened by that tweet.

Homophobia is always unacceptable and there is never an excuse. Mr Latham should apologise to Alex Greenwich immediately.

It's been a long time since I've seen something that awful said out loud in public, it really is completely unacceptable.

People have been bullied over these issues over time. I've worked with families whose sons were murdered in the 70s and 80s through violence against gay men.

This is a serious matter and it brings back a lot of terrible memories that really I thought we had gotten through.

They shouldn't be listening to this kind of material, we love every person no matter who they are.

It also doesn't reflect who New South Wales is, we've just had World Pride, this incredible celebration of inclusion and people really being able to be who they are.

c. On 30 March 2023, Jenny Leong MLA said:

The hateful homophobic and transphobic bile that spews from former Labor leader turned One Nation MP Mark Latham demonstrates why no political party or independent representative should engage with him.

Being an elected representative doesn't give him a free pass.

The Greens are committed to working with all elected members of parliament across the political spectrum who show respect for equality and recognise that we

all collectively play a role in stamping out discrimination in our communities – One Nation clearly doesn't meet this baseline.

It is clear that all political parties, all independents elected to the new parliament need to take a stand and refuse to work with this toxic man.

The only reason One Nation gets any power in our democracy and our parliaments is because political parties and elected representatives continue to work with them.

- d. On 30 March 2023, Prime Minister Anthony Albanese said:

I am concerned that with social media we seem to have a circumstance whereby people would say things through various applications they'd never say to someone face to face and we know that can be very hurtful and it can have drastic consequences.

- e. On 30 March 2023, journalist Deborah Knight said:

Mark Latham's tweet is off the charts.

I won't repeat it, you can't, what he's written is something you would never say.

Mark Latham needs to take a good hard look in the mirror for posting stuff like this.

- f. On 30 March 2023, commentator Andrew Bolt said:

Now to the crisis in Pauline Hanson's One Nation. It's a crisis called Mark Latham. I would ask Mark Latham to come on tonight to explain what went wrong for him in the NSW election last weekend. He is the leader of One Nation there and he didn't do as well as be expected. But as you can see no Mark nor will there ever be.

Now I know you've you know that we've had blow-ups before. I mean last year I called him out for his racist joke about Channel 9 journalist Sarah Abo. Latham hates criticism he accused me of many foul and false things and that was it with us even though I had supported him for quite a while. I didn't and you didn't expect him to come back on my show but he was the leader of One Nation in NSW and he was promoting some sensible policies at last week's election so I did ask him on to explain them and I told you that the voters and the policies were more important than my feelings. Now Latham did ask to come on again just before the election. I said fine we talk the elections again but never again.

Latham this morning put a tweet so disgusting that even he felt ashamed after a while and eventually deleted it but much too late. This tweet was so disgusting, so homophobic, so vile in a pornographic way that I cannot even hint about what he said about a gay politician Alex Greenwich. But it was the kind of thing a scumbag would write. A drunk one, except he wrote it not at night but at 10:30am

this morning. Now what was going through his mind I do not know, but not for the first time I wonder if he has some issue that needs seeing to. Now Latham seems to have a self-destruct button and he is punching it far too often. Many former colleagues in Labor refuse to speak to him after he betrayed them in a seeming rage. Betrayed secrets and all sorts of things. There was also the Abo joke. There was a fight with a taxi driver whose arm was broken. And now this tweet which I don't think he will ever live down.

He will be a pariah and not just here at Sky. I wonder how he will be able to function effectively as a political leader who has earned the contempt of so many for his abuse, particularly the media. And this is a real problem for Pauline Hanson, the national One Nation leader. Latham taints her. She's tried to rein him in but now this. Doesn't Latham even know that Hanson's closest adviser for years, a really top bloke, is himself gay. Hanson is of course furious. She doesn't trust herself to come on herself tonight in case she really explodes and makes things worse but she did record this response and send it to us.

...

We have also tried to contact Mark but also no response. Mark get treatment. You are such a clever man. You have so much to offer. When you are up you can be wonderful company and also kind but you seem to have a death wish. You crack and then say things that are so cruel and so vicious and now so homophobic that the one who is hurt most is you. Goodbye and good luck.

- g. On 31 March 2023, Premier Chris Minns said:

I think that they're vile and shameful comments and I think he revealed himself to be a bigot. They have been directed at a member of parliament ... who is extraordinarily effective and manages to elevate the conversation and make major changes in the state.

One of the things that can't be forgotten is that comments like this, even though in and of themselves they're terrible, they unleash ghouls on people like Alex. It's not what we need in public life.

Members of the LGBTQI community are two and a half times more likely to require urgent medical attention due to mental health conditions and deserve the support of political leaders.

There should be an unambiguous and universal condemnation of these comments.

50. The Primary Tweet and the Latham attacks resulted in significant public media coverage directed towards the fitness of Latham, as a re-elected MLC to serve in public life such as the online newspaper articles listed in subparagraph (a) to the particulars to paragraph 30 of the SOC and the Sky News opinion piece from Andrew Bolt referred to in those articles (the **controversy**).
51. By 1 April 2023, Latham had not made any public comment about the controversy.
52. On about 1 April 2023, Latham received a text message from Linda Silmalis, asking him for comment about the condemnation of the Primary Tweet and for the reason why he deleted the Primary Tweet.
53. On about 1 April 2023, Latham sent the DT Quotes as a text message to Linda Silmalis in response to her text message seeking comment from him.
54. As a journalist Linda Silmalis had a professional interest in receiving the DT Quotes from Latham that were his comment about the controversy and his reasons for deleting the Primary Tweet to publish to the general public.
55. Having received a text message from Linda Silmalis and being the only person who could provide his comment on the controversy and reasons for deleting the Primary Tweet, Latham had a reciprocal interest in sending the DT Quotes to Linda Silmalis knowing she would publish the DT Quotes to the general public.
56. Latham says that in the circumstances pleaded in paragraphs 49-55 of the Defence above, he published the DT Quotes, and further, if he is found liable, which is denied, he republished the DT Quotes in the DT Article, on an occasion of qualified privilege.

DT Quote and DT Article – Reply to Attack

57. Latham sent the DT Quotes in a text message to Linda Silmalis pursuant to a duty or interest to respond to the attack on his reputation that occurred in the Latham attacks.
58. The DT Quotes and the DT Article was published to the same public audience to which the Latham attacks were published.
59. Given the wide public audience who had read or heard one or more of attacks against Latham comprising the Latham attacks that affected the reputation of Latham, Linda Silmalis and all readers of the DT Article had a reciprocal interest to Latham sending the DT Quotes in reading the DT Quotes.
60. Further to paragraph 56 of this Defence above, Latham says that in the circumstances pleaded in paragraphs 49-59 of the Defence above he published the DT Quotes, and further he is found liable, which is denied, he republished the DT Quotes in the DT article, on an occasion of qualified privilege.

Statutory Qualified Privilege – s30 Defamation Act 2005 (NSW) – DT Quotes and Article

61. The DT Quotes were published to Linda Silmalis and her readers of the DT Article in the course of giving them information about Latham's comment on the controversy and his reasons for deleting the Primary Tweet (the **Information**).
62. When the DT Quotes and DT Article were published, Latham believed that Linda Silmalis and the readers of the DT Article had an interest in the Information (**Apparent Interest**).
63. Latham's belief in the Apparent Interest was reasonable because:
 - a. of the controversy;
 - b. he knew Linda Silmalis to be an experienced and trusted journalist; and
 - c. Linda Silmalis had requested the information from him.
64. Latham's conduct in publishing the DT Quotes to Linda Silmalis was reasonable because:
 - a. The DT Quotes were plainly his comment on the controversy and reasons for deleting the Primary Tweet;
 - b. Latham was a politician responding to a request for comment from a journalist about a highly topical political issue of the week and where immediate comment and publication of that comment was required;
 - c. Latham was aware of the Latham attacks pleaded in paragraph 48 of the Defence above;
 - d. Latham was aware of Greenwich's responses to the Primary Tweet pleaded in subparagraphs 37(b)(i)-(iii) above;
 - e. Latham was aware of Greenwich's attack and that on 22 March 2023, the Pre-recorded attack was republished on television broadcasts to the public;
 - f. Latham understood that the content of Greenwich's attack and the Pre-recorded attack concerned an incorrect assumption that on 21 March 2023, Latham instigated or encouraged his supporters to engage in conduct of an aggressive or violent nature towards members of the LGBTIQI community outside the St Michael's Church in Belfield, New South Wales;
 - g. Latham had been informed by Tania Mihailuk, a former Labor NSW MLC and fellow NSW One Nation MLC candidate who he respected and trusted, that Greenwich had attended Sydney Boys High School to speak to senior students about homosexuality, believed that information to be true and relied upon that information in preparing his response;

- h. it was Latham's belief at the time, and now, that it was inappropriate for primary and high schools in NSW to have discussions about sexuality with their students and it was One Nation NSW policy to remove gender, sexual and relationship courses from schools;
 - i. the DT Quotes were his own opinions on the controversy and reasons for deleting the Primary Tweet and he knew the text message he sent Linda Silmalis accurately reflected his current state of mind;
 - j. in the circumstances of providing a comment to a journalist it was impracticable and unnecessary for Latham to also seek comment from Greenwich before responding to Linda Silmalis' request for comment;
 - k. Latham knew Linda Silmalis to be a trusted and professional journalist who would:
 - i. accurately publish his statement;
 - ii. seek Greenwich's response or comment and publish it where appropriate;
 - iii. draft her article in a manner that did not defame any person; and
 - iv. distinguish between opinions, suspicions, allegations and proven facts in her article;
 - l. Linda Silmalis published the DT Quotes in the DT Article that:
 - i. did not carry any defamatory imputation of or concerning Greenwich or any person other than Latham and Latham cannot defame himself;
 - ii. distinguished between opinions, suspicions, allegations and proven facts in her article;
 - iii. sought and published a response from Greenwich to the DT Quotes; and
 - iv. also published comments criticising Latham from:
 1. Sky News media host Erin Molan;
 2. Penny Sharpe MLC;
 3. Pauline Hanson MP;
 4. Premier Chris Minns; and
 5. Equality Australia.
65. In the circumstances pleaded in paragraph 49-64 of this Defence above, where Latham is found liable in defamation for publishing the DT Quotes, which is denied, he has a defence under s30 of the *Defamation Act 2005* (NSW).

66. To the extent that Latham is held liable in defamation for republishing the DT Quotes in the DT Article, which is denied, his conduct in doing so was reasonable for the same reasons pleaded in paragraph 64 of this Defence above.
67. In the circumstances pleaded in paragraph 49-66 of this Defence, where Latham is found liable in defamation for republishing the DT Quotes in the DT Article, which is denied, he has a defence under s30 of the *Defamation Act 2005* (NSW).

Common Law Qualified Privilege – Australian Constitution extension

68. The DT Quotes concerned governmental and political matters in Australia because they concerned:
 - a. the Primary Tweet that was made by Latham a NSW MLC in response to attacks from a NSW MLA Greenwich;
 - b. the DT Quotes were of and concerning a NSW MLA Greenwich and were made by Latham a NSW MLC; and
 - c. responded to a controversy about Latham’s conduct and fitness for office as an MLC and NSW One Nation Party leader that resulted in and from the Latham attacks comprising attacks on Latham from political leaders across the political spectrum including from One Nation Leader Pauline Hanson.
69. Latham’s conduct in publishing the DT Quotes was reasonable in the circumstances for the reasons pleaded in paragraph 64 of this Defence above and he therefore published the DT Quotes on an occasion of qualified privilege at common law as extended by the Australian Constitution.
70. To the extent that Latham is held liable in defamation for republishing the DT Quotes in the DT Article, which is denied, his conduct in doing so was reasonable for the same reasons pleaded in paragraph 64 of this Defence above, and he therefore republished the DT Quotes in the DT Article on an occasion of qualified privilege at common law as extended by the Australian Constitution.

Public Interest – s29A Defamation Act 2005 (NSW) – DT Quotes and Article

71. The DT Quotes and any republication of them concerned an issue of public interest namely the conduct and fitness of a member of the Legislative Council of NSW because:
 - a. the Primary Tweet that was made by Latham a NSW MLC in response to attacks from a NSW MLA Greenwich;
 - b. the DT Quotes were of and concerning a NSW MLA Greenwich and were made by Latham a NSW MLC; and

- c. responded to a controversy about Latham's conduct and fitness for office as an MLC and NSW One Nation Party leader that resulted in and from the Latham attacks comprising attacks on Latham from political leaders across the political spectrum including from One Nation Leader Pauline Hanson.
72. Latham believed that the publication of the DT Quotes and any republication of the DT Quotes by Linda Silmalis were in the public interest (**Latham's beliefs**).
73. Latham's beliefs were reasonable in the circumstances because of the reasons pleaded in paragraph 63 of this Defence above and the importance of freedom of expression in the discussion of issues of public interest.
74. In the circumstances pleaded in paragraphs 71-73 above, Latham has a defence under s29A of the *Defamation Act 2005* (NSW) where he is found liable in defamation for:
- a. publishing the DT Quotes; or
 - b. republishing the DT Quotes in the DT Article.

Honest Opinion – s31 Defamation Act 2005 (NSW) – Primary Tweet

75. The Primary Tweet was an expression of opinion (**Primary Tweet Opinion**).
76. The Primary Tweet Opinion was related to a matter of public interest, that is Greenwich's attack, by a NSW MLA, on Latham, a NSW MLC to the effect that he was a disgusting human being, is a disgusting human being and an extremely hateful and dangerous individual who risks causing a great deal of damage to our state who was therefore unfit to serve as a NSW MLC.
77. The Primary Tweet Opinion was based on proper material:
- a. Greenwich's attack, as republished in the Metcalfe Tweet, and it was substantially true that Greenwich's attack occurred;
 - b. on 21 March 2023, Latham was a speaker at St Michael's Church in Belfield for a community forum on religious freedom and parental rights (the **Event**), as recorded in the Online SMH Attack, hyperlinked to the Metcalfe Tweet, and this material is substantially true;
 - c. a violent incident occurred at the Event when LGBTQ protesters were confronted by people outside St Michael's Church, as recorded in the Online SMH Attack, hyperlinked to the Metcalfe Tweet, and this material is substantially true;
 - d. on 21 March 2023, Latham tweeted, "*I didn't see what happened on the front street but I sincerely convey my best wishes to those injured and thank the police officers*

involved for their work. No one should take the law into their own hands. Violence at political events is wrong", as recorded in the Online SMH Attack, hyperlinked to the Metcalfe Tweet, and this material is substantially true;

- e. Greenwich's attack as read in the Online SMH Attack, hyperlinked to the Metcalfe Tweet, blamed Latham for the violence that occurred at the Event, and it is substantially true that Greenwich's attack blamed Latham for the violence;
 - f. Latham was an NSW MLC and leader of the NSW One Nation party, material that was substantial true and on Latham's Twitter account, recorded in the Online SMH Attack, hyperlinked to the Metcalfe Tweet, and otherwise notorious or apparent in the context the Primary Tweet was published;
 - g. Greenwich was an independent NSW MLA in the Online SMH Attack, material that was substantially true, recorded in the Online SMH Attack hyperlinked to the Metcalfe Tweet, and otherwise notorious or apparent in the context the Primary Tweet was published; and
 - h. Greenwich is an openly gay man who has participated in homosexual sexual activities, material that was set-out in specific or general terms in the Primary Tweet and is substantially true.
78. To the extent that any of the proper material in paragraph 77 of the Defence is not proper material the Primary Tweet Opinion might reasonably be based on such of the material as is proper material.
79. In the circumstances pleaded in paragraphs 75-78 above, Latham has a defence under s31 of the *Defamation Act 2005* (NSW) where he is found liable in defamation.

Honest Opinion – s31 Defamation Act 2005 (NSW) – DT Quotes and Article

80. The DT Quotes and any republication of them were an expression of opinion (**DT Quotes Opinion**).
81. The Primary Tweet Opinion was related to a matter of public interest, namely the conduct and fitness of a member of the Legislative Council of NSW because:
- a. the Primary Tweet that was made by Latham a NSW MLC in response to an attack from a NSW MLA Greenwich;
 - b. the DT Quotes were of and concerning a NSW MLA Greenwich and were made by Latham a NSW MLC; and
 - c. responded to a controversy about Latham's conduct and fitness for office as an MLC and NSW One Nation Party leader that resulted in and from the Latham

attacks comprising attacks on Latham from political leaders across the political spectrum including from One Nation Leader Pauline Hanson.

82. The DT Quotes Opinion was based on proper material:
- a. the political controversy about the Primary Tweet known to Linda Silmalis for which she was seeking comment from Latham and as recorded in the DT Article as represented by comments condemning Latham for the Primary Tweet from Pauline Hanson MP and Premier Chris Minns, and it was substantially true that there was a political controversy about Latham;
 - b. Greenwich had claimed that the Primary Tweet had caused him hurt, as known to Linda Silmalis, recorded in the DT Article and set-out in general or specific terms in the DT Quotes, and it was substantially true that Greenwich had made that claim;
 - c. Greenwich's attack, as known to Linda Silmalis and partially reproduced as "disgusting human being" in the DT Article, and it was substantially true that Greenwich's attack occurred;
 - d. Latham spoke at a church in Belfield the prior week (**Event**), as known to Linda Silmalis, and recorded in the DT Article and article entitled "*Broken crucifix' allegedly saw church protest turn violent*" hyperlinked to the DT Article (**Hyperlinked article**), and this material is substantially true;
 - e. a violent incident occurred at the Event when LGBTQ protesters were confronted by people outside the Church, as known to Linda Silmalis, and referred to in DT Article and Hyperlinked article, and this material is substantially true;
 - f. Greenwich's attack blamed Latham for the violence that occurred at the Event, as known to Linda Silmalis and referred to in the DT Article, and it is substantially true that Greenwich blamed Latham for the violence;
 - g. Latham was an NSW MLC and leader of the NSW One Nation party, material that was substantial true known to Linda Silmalis and referred to in the DT Article and otherwise notorious or apparent in the context the DT Quotes were published or republished;
 - h. Greenwich was an independent NSW MLA in the Online SMH Attack, material that was substantially true, known to Linda Silmalis and referred to in the DT article and

otherwise notorious or apparent in the context the DT Quotes were published or republished;

- i. Greenwich had attended schools to talk to students about being gay, material that was set-out in general or specific terms in the DT Quotes and was substantially true;
- j. Latham posted the Primary Tweet that graphically referred to sexual activity, as known to Linda Silmalis and referred to in general terms in the DT Article as a homophobic offensive tweet, and it was substantially true that Latham had posted the Primary Tweet that graphically referred to sexual activity; and
- k. Latham had deleted the Primary Tweet, material known to Linda Silmalis as recorded in the DT Article, and it was substantially true that Latham had deleted the Primary Tweet.

83. To the extent that any of the proper material in paragraph 82 of the Defence is not proper material the DT Quotes might reasonably be based on such of the material as is proper material.

84. In the circumstances pleaded in paragraphs 80-83 above, Latham has a defence under s31 of the *Defamation Act 2005* (NSW) where he is found liable in defamation, which is denied, to the publication of the DT Quotes or the republication of the DT Quotes.

Date: 7 August 2023



Signed by Victoria-Jane Otavski
Solicitor for the Respondent

This pleading was prepared by Victoria-Jane Otavski, solicitor for Mr Mark Latham, and Mr Barry Dean, Counsel for Mr Mark Latham.

Certificate of lawyer

I Victoria-Jane Otavski certify to the Court that, in relation to the defence filed on behalf of the 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: 7 August 2023



Signed by Victoria-Jane Otavski
Solicitor for the Respondent