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Subject: (NSD103/2023) *Lehrmann v Network Ten Pty Limited* [SEC=OFFICIAL]
Date: Tuesday, 23 April 2024 5:01:00 PM

OFFICIAL

Dear Practitioners

His Honour has now had the opportunity of reviewing the submissions filed and the additional material provided to Chambers yesterday.

I have been directed by his Honour to send this communication directed to those acting for Network Ten.

As recorded in the judgment (*Lehrmann v Network Ten Pty Limited (Trial Judgment)* [2024] FCA 369 (J) (at [1032]–[1035])), his Honour found that notwithstanding: (a) the remarks of the Chief Justice of the Australian Capital Territory (reproduced at J [307]); and (b) the apology proffered by Network Ten addressed to the Chief Justice of the Australian Capital Territory (Ex X1, p 210) (which was an apology only for the *consequences* of the speech (see J [1040])), the Senior Litigation Counsel for Network Ten considered, at the time she gave evidence, that her conduct in relation to advising Ms Wilkinson to give the Logies speech, for the reasons it was given (and the Logies speech itself), to be appropriate.

In the judgment, his Honour held that the whole of Network Ten's attributed conduct relating to the giving of the Logies speech, for the reasons it was given (**Relevant Conduct**), to be grossly improper and unjustifiable as amounting to conduct apt to cause disruption to the criminal justice system and, without the Chief Justice making the orders her Honour did, could have imperilled Mr Lehrmann's right to a fair trial (at J [1041]) and amounted to conduct that could be characterised as egregious (at J [1077]) (**Relevant Findings**). His Honour deliberately refrained from expressing a view, for the purposes of dealing with the counterfactual issue of aggravated damages, as to whether he was satisfied the making of the Logies speech, at the time it was made, was intended to, or had the tendency to, interfere with the administration of justice in a particular proceeding.

This is where the matter rested at the time of judgment.

Following the delivery of judgment, however, a solicitor retained on behalf of Network Ten in relation to the proceeding has made public comments relating to the Relevant Findings and has repeatedly expressed the view that the Logies speech not only did not have the tendency to interfere with the administration of justice but presented no difficulty whatsoever.

In the light of all the above, his Honour considers that well in advance of the hearing on 1 May 2024 (**further hearing**), it is appropriate to provide procedural fairness to Network Ten notifying it as to certain preliminary views of his Honour so it may be in a position, if it so wishes, to provide any additional affidavit evidence or submissions in advance of the further hearing. Subject to hearing from Network Ten, those preliminary views are:

1. Based upon:
 - a. the Relevant Conduct, including the findings (at J [310] and [1040]);
 - b. other material adduced in evidence on the cross-claim before his Honour including Ex X1;

- c. the conduct of one of Network Ten's solicitors, following the making of the Relevant Findings, in making the public comments made in relation to the Relevant Findings (which his Honour intends to place into the record at the further hearing),

and in the absence of any other material to the contrary adduced on behalf of Network Ten, his Honour considers it open to infer and, if relevant, act upon the basis that *as at the time of the further hearing*, the considered view to be attributed to Network Ten (as informed by internal and external legal advice) is that the Relevant Conduct was appropriate; and

2. Without forming a concluded view, it is open to argue that at the time the Logies speech was made, it was intended to, or had the tendency to, interfere with the administration of justice in a particular proceeding.

Following the close of the evidence at the further hearing (and following any submissions by Network Ten as to the appropriateness of drawing the inference referred to at (1) and as to arguability referred to at (2)), in the event his Honour's preliminary views are confirmed, his Honour proposes to call upon counsel acting for Network Ten and give the corporation the opportunity to be heard as to the following:

Given: (a) the law of contempt exists to protect the administration of justice: see Nationwide News Pty Ltd v Wills (1992) 177 CLR 1 at 25 per Mason CJ; (b) the protective role of the Court as a superior court of record in relation to the administration of justice generally; and (c) Network Ten is an entity controlling commercial broadcasting licences issued under the Broadcasting Services Act 1992 (Cth) that will, inter alia, continue to publish news and current affairs reports on future pending jury trials, whether it is appropriate for his Honour to direct the Principal Registrar of the Federal Court of Australia to send a copy of all evidence and other papers held by the Federal Court of Australia in relation to the Relevant Conduct and the Relevant Findings and the transcript of the further hearing and the judgment of the Court following the hearing on 1 May 2024 to the Director of Public Prosecutions of the Australian Capital Territory for the purposes of the Director taking any action she considers appropriate in relation to the conduct of Network Ten as it relates to the Relevant Conduct.

In his Honour's preliminary view, this matter stands in contrast to conduct by other parties canvassed in the judgment that could arguably amount to a contempt of another superior court because the protective power of this Court has been brought into focus in relation to the *future risk* to the administration of justice (if the inference referred to at (1) is drawn).

This is a communication directed to providing procedural fairness to one party, Network Ten, and it is only sent to the other parties because it is inappropriate for there to be *ex parte* communication to one party given that the proceeding is yet to be finalised (and not because his Honour presently considers it would be appropriate for those parties to make any submission, given the issue relates to the protective role of the Court as to the administration of justice and not an issue *inter partes*).

Given the history in this matter of communications from Chambers to the parties being published in various media, his Honour has asked me to direct this communication only to counsel his Honour understands are briefed to appear at the further hearing and the solicitors for Network Ten. His Honour will leave the matter to the discretion of counsel for Mr Lehrmann and Ms Wilkinson as to whether they consider it is necessary to distribute this communication to any other person, but given its purpose, it is presently unclear to his Honour as to why it would be necessary to do so in advance of the further hearing.

As noted above, this communication is sent to provide procedural fairness to Network Ten in advance of the further hearing. Although there is no privilege against self-incrimination in relation to a corporation (*Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477), in the circumstances, his Honour does not direct or otherwise require Network Ten to comment, or file affidavit evidence, or file submissions. Having said this, to allow his Honour sufficient time to consider the matter prior to the further hearing, in the event Network Ten determines it will file any affidavit evidence or submissions, this should occur by **5pm on 26 April 2024**.

Yours faithfully

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