

Our ref MS:5263490
Your ref MOBL657

5 June 2023

URGENT

Mark O'Brien & Paul Svilans
Mark O'Brien Legal
Level 19, 68 Pitt Street
SYDNEY NSW 2000

Dear Colleagues

Lehrmann v Network Ten Pty Limited and Anor, Federal Court of Australia, Proceedings No. NSD103/2023

We refer to the interview with your client on the 7News Spotlight Program which was broadcast by the Seven Network last night (**Lehrmann Spotlight Program**).

Our client is extremely concerned about the inclusion of material in the Lehrmann Spotlight Program that was produced under various subpoenas issued by your client in the criminal proceedings in the ACT Supreme Court and was not admitted into evidence or otherwise deployed in those proceedings, namely:

1. documents produced under a subpoena issued to Network Ten by your client in the criminal proceedings, being:
 - (a) an audio recording of the meeting between Angus Llewellyn, Lisa Wilkinson, Brittany Higgins and David Sharaz on 27 January 2021; and
 - (b) the rough cut of footage from the interview between Ms Wilkinson and Ms Higgins for *The Project* on 2 February 2021; and
2. a document produced under a subpoena issued to Ms Higgins by your client in the criminal proceedings, being a draft of Ms Higgins' manuscript.

In your letter dated 16 May 2023, you acknowledged that the material referred to in paragraph 1(a) above is subject to the implied Harman undertaking. Similar, in your letter to the Court dated 30 May 2023, you acknowledged that your client and his lawyers who acted for him in the ACT criminal proceedings presently have access to the material referred to in paragraph 2, but not his defamation lawyers in these proceedings.

The effect of the implied undertaking is that any documents produced under subpoenas in the criminal proceedings cannot be used for a collateral or ulterior purposes unrelated to the proceedings in which the documents were obtained, other than with leave of the court: *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 at 308. The implied undertaking is an obligation of substantive law: *Hearne v Street* (2008) 235 CLR 125 at 157–10. A breach of the implied Harman undertaking is a contempt of court.

Please advise **as a matter of urgency**:

1. Did your client, or anyone on his behalf, provide a copy of the material referred to in this letter to a journalist?
2. Was your firm aware that your client, or anyone on his behalf, would be providing a copy of the material referred to in this letter to a journalist?

We require a response to these enquiries by **4pm today**.

Our client reserves its rights.

Yours faithfully
THOMSON GEER



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