



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD103 of 2023

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

### BRUCE LEHRMANN

Applicant

**NETWORK TEN PTY LIMITED ACN 052 515 250** and another  
Respondents

Affidavit of: **STUART MACAULAY THOMAS**  
Address: Network Ten Pty Ltd, 1 Saunders Street, Pyrmont NSW 2009  
Occupation: Solicitor  
Date: 29 April 2024

I Stuart MacAulay Thomas, of 1 Saunders Street, Pyrmont, solicitor, affirm:

1. I am the VP Legal and Corporate Affairs for, and the Company Secretary of, Network Ten Pty Ltd (**Network Ten**) and am authorised to make this affidavit on its behalf.
2. Unless otherwise stated, the facts deposed to in this affidavit are within my own knowledge. Where they are not within my own knowledge, they are based on material that I have obtained from Network Ten's business records, which I identify, or the source stated and I believe them to be true to the best of my knowledge and belief.
3. This affidavit is made in response to an invitation from the Court to file evidence in response to matters raised in an email from the Court at 5.02pm on 23 April 2024 (**Email**).

Filed on behalf of (name & role of party)	First Respondent, being Network Ten Pty Limited
Prepared by (name of person/lawyer)	Marlia Saunders
Law firm (if applicable)	Thomson Geer
Tel	02 8248 5836
Email	msaunders@tglaw.com.au
<b>Address for service</b> (include state and postcode)	Level 14, 60 Martin Place, Sydney NSW 2000

[Version 3 form approved 02/05/2019]

### Professional background

4. In my role, I perform the functions of the lead lawyer and company secretary at Network Ten. I have been in my current role since August 2013, prior to which:
  - (a) between April 2011 and August 2013, I was the principal solicitor of Thomas Law, in which I provided legal advisory and transactional services to corporate and business clients, particularly in the media, marketing, digital and creative industries;
  - (b) between 2007 and April 2011, I was employed by Macquarie Radio Network as, initially, its Chief Operating Officer and General Counsel, and then as its Director Legal and Regulatory Affairs;
  - (c) between 2003 and 2006, I was the General Counsel of Nine Network;
  - (d) between 1996 and 2002, I was a partner at the law firm Gilbert + Tobin; and
  - (e) between 1993 and 1995, I was employed as a solicitor at Allens Linklaters, which was then known as Allens Arthur Robinson.

### The law of contempt

5. I accept unreservedly that Australia's contempt of court laws, particularly our *sub judice* contempt laws, are crucial to ensuring accused persons receive a fair trial, and that Network Ten is required, as a responsible broadcaster, to comply with those laws.
6. Network Ten has a privileged and influential position as a mainstream media corporation and commercial television licensee.
7. As Network Ten's most senior legal officer in Australia, it is my responsibility to oversee and implement a legal compliance and risk framework, by which I mean the processes and procedures that are intended to ensure, among other matters, that Network Ten takes appropriate steps to secure compliance with the law.
8. Speaking generally and with regard to my previous experience as the most senior in-house legal counsel at other media organisations, if I had to place Network Ten's legal risk framework on a continuum spanning from cautious to robust, Network Ten sits close to the "cautious" end.
9. In this regard, I understand and am of the view that Network Ten's appetite for and tolerance of legal risk is lower, or more cautious, than its main commercial competitors.
10. In my time at Network Ten, the company has not been charged with, or prosecuted for, contempt of court.

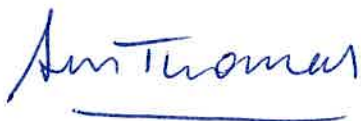
11. By way of example only, Network Ten was one of the few major media organisations in Australia not to be charged with contempt in respect of publications and broadcasts following Cardinal George Pell's conviction on charges relating to allegations of historical sexual abuse in or around December 2018 (such conviction subsequently overturned on appeal).
12. I was involved in establishing Network Ten's approach to reporting arising out of that conviction, which was the subject of suppression orders. The result of the legal advice was that Network Ten took careful steps to avoid any reporting that included: (a) any information that identified or would have the tendency to identify Cardinal Pell; (b) any details as to the nature of the proceedings, the charges to which they related, the outcome of those proceedings or the fact of a conviction; or (c) any details as to where or how viewers could source further information about the suppressed proceedings.
13. However, the current proceeding has illustrated, and the Court's findings make clear, that Network Ten failed in relation to its approach and advice in relation to Lisa Wilkinson's speech at the TV Week Logies Awards on 19 June 2022 (**Logies Speech**).
14. Network Ten accepts his Honour's finding that the Logies Speech could have undermined Mr Lehmann's right to a fair trial and that it follows that the legal advice given in relation to the Logies Speech involved a serious mistake.
15. On behalf of Network Ten, I offer a sincere and unreserved apology for Network Ten's role in the approval of the Logies Speech and the consequences that ensued.

#### **This proceeding and the Email**

16. While I have had oversight of this proceeding, the day-to-day running of it has been conducted by Senior Litigation Counsel, Tasha Smithies, and Thomson Geer Partner, Marlia Saunders.
17. On 15 April 2024, I attended Court for the delivery of his Honour's judgment. I sat in Court as his Honour read a summary of his judgment.
18. Notwithstanding Network Ten's overall success in the proceeding, I have reflected on his Honour's judgment. In particular, I have reflected on his Honour's criticisms of Network Ten and Ms Smithies in relation the Logies Speech. As a part of this, I have tried to identify the errors that were made and actions that can be taken to prevent the recurrence of issues like the ones raised by the Logies Speech.

#### **Ms Smithies' advice**

19. I regard Ms Smithies as a diligent and talented lawyer. She is held in high regard by Network Ten.



20. Network Ten accepts Ms Smithies acted in good faith in providing the advice she did to Ms Wilkinson about the Logies Speech.
21. However, Network Ten also acknowledges the seriousness of his Honour's findings in Part M.4(IV) of his judgment and accepts that Ms Wilkinson should have been advised by Ms Smithies to give an anodyne and responsible speech, such as one in the terms identified in paragraph [1037] of the judgment.
22. The failure to advise Ms Wilkinson in this way was a serious error on behalf of Ms Smithies and, therefore, Network Ten.
23. I have also reviewed the evidence that Ms Smithies gave on 13 and 14 February 2024 in relation to the Logies Speech, and the criticisms of that evidence in the judgment.
24. I respectfully agree that that evidence discloses a failure on Ms Smithies' part to reflect on and develop insight into the inappropriateness of the advice that was given.
25. I have spoken to Ms Smithies about these matters and believe that she has learned from the conclusions reached in the judgment and will incorporate those learnings into her legal advice going forward.

### **The Email**

26. I wish to address the two principal matters raised in the Email.
27. **First**, the Email refers to public comments made by a solicitor engaged by Network Ten after the delivery of judgment (Justin Quill). Mr Quill is not an employee of Network Ten, and nor was he involved in the day-to-day representation of Network Ten in the proceeding.
28. In the weeks leading up to delivery of the judgment, I expected that there would be a great deal of media interest in the judgment and that Network Ten would receive many requests for comment. To that end, I asked Mr Quill to act as a spokesperson for Network Ten. I chose Mr Quill because he has acted for Network Ten in other matters over several years, is experienced and specialised in media laws and regularly provides expert commentary on legal issues concerning the media.
29. Mr Quill's comments made in response to questions from the media following the judgment which related to the Logies Speech and the legal advice that was given by Ms Smithies were not suggested, solicited, approved or authorised by Network Ten. A few weeks prior to the delivery of judgment, I had briefly discussed with Mr Quill what he might say if he was asked about the Logies speech. My recollection is that we agreed he would just refer back to the outcome of the defences. I recall a similar comment was made in a brief meeting that occurred immediately after the delivery of judgment, when it was agreed that

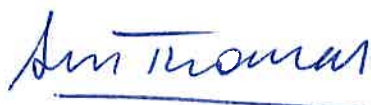


any question about the Logies Speech should just be brought back to the successful truth defence. On the basis of those discussions, I did not know or anticipate that Mr Quill would make the comments he made about the speech.

30. Those statements made by Mr Quill do not reflect the considered view of me or Network Ten in relation to those matters. They do not reflect any external or internal legal advice received by me or Network Ten.
31. In particular, to the extent that Mr Quill may have been understood to convey that the Logies Speech did not have the tendency to interfere with the administration of justice, I disagree with that view. My view, which as VP Legal and Corporate Affairs I consider is appropriately to be attributed to Network Ten, is that it is open to argue that the Logies Speech had that tendency. That is obviously the case. The giving of the speech resulted in McCallum CJ, for the reasons given by her Honour, vacating and then relisting Mr Lehrmann's criminal trial. I unreservedly accept the correctness of her Honour's decision in the interests of protecting an accused person from conduct that may have had a tendency to interfere with his right to a fair trial.
32. **Secondly**, the Email raises whether it is open to argue that, at the time the Logies Speech was made, it was intended, or had the tendency, to interfere with the administration of justice.
33. As just stated, I accept that it is open to argue that the Logies Speech had a tendency to interfere with Mr Lehrmann's right to a fair trial.
34. I wish to state unequivocally, however, that there was never any such intention on Network Ten's part. As I have endeavoured to explain above, Network Ten strives to comply with the law at all times. I would never engage in conduct with the intention of interfering with the administration of justice or tolerate any such conduct on the part of the staff reporting to me.
35. While I think Ms Smithies made a serious mistake on this occasion, I believe she acted in good faith and in the misguided belief that the Logies Speech did not have any capacity to interfere with Mr Lehrmann's right to a fair trial. I do not believe that she had any intention to interfere with that right.

#### Updated training

36. Network Ten takes the findings made by his Honour in Part M.4(IV) of the judgment very seriously.
37. In response to them, I have asked Network Ten's Senior Counsel, Dr Matt Collins AM KC, to make himself available to answer questions generally about the judgment, and



specifically to conduct a training session with Network Ten's in-house pre-publication clearance team on:

- (a) the matters raised in part M.4(IV) of the judgment;
- (b) Australia's contempt of court laws more generally; and
- (c) any other matter he deems fit, having regard to the findings in his Honour's judgment as they relate to Network Ten and its staff (editorial, legal or otherwise).

38. Since I have been employed by Network Ten, I have overseen the continual development and refinement of its legal training program. This legal training program is run by Ms Smithies and includes training on issues commonly encountered by journalist and editorial staff, including issues relation to defamation, court reporting (including contempt of court), statutory restrictions and other like issues. As a part of the training program, Ms Smithies meets with journalists and editorial staff at least once a year, and in some cases more than once a year, to provide legal training.

39. A key focus of the training program identified above is that journalists and editorial staff are trained to:

- (a) identify areas that may involve potential legal risk; and
- (b) Without reservation or hesitation, seek legal advice from Network Ten's in-house clearance team, including in circumstances of any doubt as to whether or not a legal issue arises.

40. Importantly for Network Ten, the matters raised in the judgment in relation to Ms Wilkinson support its view that its training program is effective, in that Ms Wilkinson sought legal advice from Ms Smithies, being the most senior member of the in-house prepublication clearance team after having identified the potential legal risk in her giving a speech at the TV Week Logies Awards. The shortcoming on this occasion concerned the content of the advice.

#### **Attendance at Court on 1 May 2024**

41. I plan to be in Court for the further hearing set down for 1 May 2024.

42. I would welcome the opportunity, should the Court wish or require it, to address the Court on any matters contained in this affidavit.





Affirmed by the deponent  
at Sydney  
in New South Wales  
on 29 April 2024  
Before me:

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Signature of deponent



Signature of witness

**Sophie Helen Rose Meixner**  
Australian Legal Practitioner  
Level 14 / 60 Martin Place, Sydney in the state of New South Wales



## NOTICE OF FILING

### Details of Filing

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& ANOR  
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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.