

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/09/2018 10:18:39 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

|                  |   |
|------------------|---|
| Document Lodged: | Affidavit - Form 59 - Rule 29.02(1)                       |
| File Number:     | NSD2179/2017  |
| File Title:      | GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED &<br>ANOR |
| Registry:        | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF<br>AUSTRALIA  |



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 27/09/2018 10:18:44 AM AEST

Registrar

### Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02

## Affidavit of Nicholas Pullen

NSD 2179 of 2017

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

**Geoffrey Roy Rush**

Applicant

**Nationwide News Pty Limited & Anor**

Respondents

Affidavit of: **Nicholas William Grant Pullen**  
Address: Level 26, 530 Collins Street, Melbourne Victoria 3000  
Occupation: Lawyer, HWL Ebsworth Lawyers  
Date: 24 September 2018

### Contents

I, Nicholas William Grant Pullen, say on oath:

1. I am a partner of HWL Ebsworth Lawyers (**HWLE**) and am the solicitor on record for the Applicant in these proceedings.
2. The facts outlined in this affidavit are matters within my knowledge, and are true to the best of my information and belief based on the instructions provided to me by the Applicant, or the Applicant's witnesses, or otherwise from my own enquiries.

|                        |   |
|------------------------|---|
| Prepared on behalf of: | The Applicant   |
| Prepared by:           | Nicholas Pullen   |
| Name of law firm:      | HWL Ebsworth Lawyers                                    |
| Address for service:   | Level 26, 530 Collins Street, Melbourne, Victoria, 3000 |
| Email:                 | npullen@hwle.com.au DX 564, Melbourne                   |

A handwritten signature in black ink, appearing to be "NPullen", located at the bottom left of the page.

A handwritten signature in black ink, appearing to be "Nicholas Pullen", located at the bottom right of the page.

3. This affidavit is sworn in opposition to the Interlocutory Application filed on 17 September 2018 on behalf of the Sydney Theatre Company Limited (**STC**), by which the STC seeks to set aside paragraphs 3, 4, 5, 7, 8 and 13 of the Applicant's Subpoena to Produce filed and served on 3 September 2018 (**the Subpoena**).

### ***Correspondence***

4. The Subpoena was served by email on 3 September 2018 (page 17 of the affidavit of Miriam Stiel dated 12 September 2018).
5. On 4 September 2018, I received an email (page 17 of the affidavit of Miriam Stiel) from Allens Linklaters (**Allens**), the solicitors for the STC, requesting an explanation of the relevance of the documents sought under paragraphs 3, 4, 5, 7, 8 and 13 of the Subpoena.
6. That same day, 4 September 2018, HWLE sent a letter in reply to Allens, seeking to explain the relevance of that material (pages 21 and 22 of the affidavit of Miriam Stiel).
7. There was then no further correspondence on behalf of the STC until the morning of 12 September 2018 (the date the Subpoena was returnable), when Allens provided HWLE with an unsealed copy of the current Interlocutory Application.
8. That same day, 12 September 2018, HWLE requested that, notwithstanding the Interlocutory Application was yet to be determined, Allens might informally provide the parties with any documents falling within the paragraphs of the Subpoena which were not opposed and which were not privileged.
9. Allens provided a copy of those documents on 14 September 2018. In addition, documents have also been produced, on behalf of the STC, in response to a separate Subpoena which had been filed by the Respondents on 24 August 2018.

### ***Documents Produced in Response to the Subpoena***

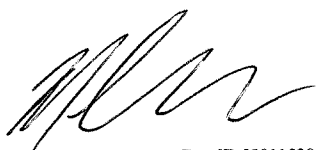
10. I have reviewed the documents produced by the STC. Relevantly, the documents show that:
  - (a) There was no formal complaint made by Eryn Jean Norvill to the STC.



- (b) Instead, Ms Norvill had a conversation in a bar at the STC with her agent and Annelies Crowe (the Company Manager of the STC) in April 2016. There is apparently no contemporaneous file-note of that conversation.
- (c) Ms Crowe sent an email on 6 April 2016 to Patrick McIntyre (the Executive Director of the STC) and others. A copy of that email is at pages 1 and 2 of Exhibit NP-1. It appears that Mr McIntyre did not respond to that email.
- (d) There was no formal investigation process or, if there was one, it was not recorded (and the Applicant himself was not consulted) (there is no reference to any investigation in the documents thus far produced).
- (e) After Ms Crowe's email of 6 April 2016, there was then no further correspondence until 9 November 2017, when there was an email exchange between Mr McIntyre and Ms Serena Hill of the STC. A copy of that email exchange is at pages 3 and 4 of Exhibit NP-1. The email from Ms Hill included: *"EJ insisted she didn't want to make a formal complaint so the meeting was 'off the record' so to speak"*.
- (f) The only other written communication by Mr McIntyre on this topic is an email from Mr McIntyre to members of the Board of the STC dated 10 November 2017 informing them of the media interest and the statements made by the STC to the media. A copy of that email (produced in a redacted form by the STC) is at pages 5 and 6 of Exhibit NP-1.
- (g) The official position of the STC on 30 November 2017 to the Daily Telegraph was that:

*Sydney Theatre Company was asked by a New Limited Journalist earlier this month whether it had received a complaint alleging inappropriate behaviour while he was employed by the Company. STC responded truthfully that it had received such a complaint.*

*At the time the complaint was made, the complainant requested that the matter be dealt with confidentially and did not want Mr Rush notified or involved in any investigation. STC complied, acting in the interests of the complainant's health and welfare. As already stated, the Company received the complaint after Mr Rush's engagement had ended.*



*STC has at all times been clear that this was an allegation made to (not by) STC and not a conclusion of impropriety.*

- (h) Despite the content of the formal statement, Mr McIntyre apparently spoke to the Second Respondent that same day on a “*not for attribution*” basis and told him that the STC had decided never to work with Mr Rush again.

***The Relevance of Paragraphs 3, 4 and 5 of the Subpoena***

11. In their Defence filed on 1 February 2018, the Respondents alleged (at paragraph 36.7(h)) that, prior to publication of the matters complained of, the Respondents understood that the “*Sydney Theatre Company had changed its HR policies and practices as a result of the complaint against the Applicant*”. A copy of pages 9 and 10 of the Respondents' Defence is at pages 7 and 8 of Exhibit NP-1.
12. That same assertion was repeated in the Respondents' Amended Defence filed on 20 February 2018 and in the Respondents' Further Amended Defence filed on 23 April 2018. A copy of page 11 of the Respondents' Amended Defence is at page 9 of Exhibit NP-1, and a copy of pages 13 to 15 of the Respondents' Further Amended Defence is at pages 10 to 12 of Exhibit NP-1.
13. The Outline of Evidence of Mr McIntyre, served on behalf of the Respondents, states that the STC, “*due to the seriousness of the allegations made by Eryn Jean Norvill against the Applicant would not work with the Applicant again and subsequently amended its human resources policy*”. A copy of Mr McIntyre's Outline of Evidence is at page 13 of Exhibit NP-1.
14. It is anticipated that the Applicant will contend that those assertions made by Mr McIntyre as set out in his Outline of Evidence are false.
15. On 21 September 2018 HWLE sent a letter to the Respondents' solicitors, asking for confirmation that Mr McIntyre will be appearing to give evidence for the Respondents at the trial in October 2018. A copy of that letter (without its enclosure) is at page 14 of Exhibit NP-1.
16. If Mr McIntyre is giving evidence, and if his evidence will be as set out in his Outline of Evidence, the Applicant contends that he is entitled to test that evidence by analysing



Page 4

any changes made to the STC's Human Resources policies and practices (and the reasons for any such changes).

***The Relevance of Paragraph 7 of the Subpoena***

17. Paragraph 27 of the Respondents' Second Further Amended Defence, filed on 10 August 2018, is as follows:

27. *Following the complaint, the Sydney Theatre Company decided that it would never work with the Applicant again.*

18. This allegation is said to support the truth of imputation 10(f) - namely that *"The applicant's conduct in inappropriately touching an actress during King Lear was so serious that the Sydney Theatre Company would never work with him again"*.

19. Given that plea, the Applicant contends that he is entitled to test whether such a decision was ever made by the STC (on the current documents no such decision is evident) and the reasoning behind any such decision.

20. The source of that information is Mr McIntyre (see paragraphs 36.7(i) and 36.7A(b) of the Respondents' Further Amended Defence (pages 10 and 12 of Exhibit NP-1). This was confirmed in the proposed Cross-Claim sought to be filed by the Respondents.

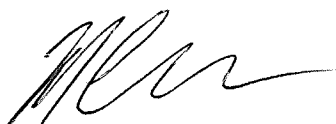
21. The Applicant seeks to test that proposition by access to all documents and statements released by or on behalf of the STC to any journalist or member of the press, which might cast light on the STC's attitude towards him and whether or not it is true the STC *"decided that it would never work with [him] again"*.

22. The Applicant is content if the date of that category commences 1 January 2016 so that it does not capture the media releases promoting *King Lear*.

***The Relevance of Paragraph 8 of the Subpoena***

23. The Applicant relies on the conduct of the Respondents in defending these proceedings as a matter that has aggravated his hurt to feelings. This includes the Respondents' conduct in seeking to file an unmeritorious Cross-Claim joining the STC to the proceedings.

24. Paragraph 8 of the Subpoena seeks the communications in relation to the Cross-Claim.



25. At page 15 of Exhibit NP-1 is a copy of an extract of the transcript of the Respondents' Interlocutory Application (seeking leave to file a Cross-Claim) before His Honour Justice Wigney on 16 April 2018. That extract includes the following submissions on behalf of the Applicant:

*There's no evidence of a letter of demand to the STC seeking contribution, there's no evidence of any response by the STC and what defences they think that they have. Nothing. Where is compliance with the Civil Dispute Resolution Act?*

*...Why haven't we seen a letter of demand if this was such a genuine claim? Anyone who has a genuine claim, with respect, would have sent such a letter of demand...*

26. Those questions remain unanswered, and the Applicant contends he is entitled to any such correspondence in order to determine whether the Respondents' proposed Cross-Claim was genuine.


***The Relevance of Paragraph 13 of the Subpoena***

27. At pages 16 to 23 of Exhibit NP-1 is an article published on 24 November 2017, entitled "*The Curious Case of Sexual Harrassment at Sydney Theatre Company*". The article includes the following:

*But one of the alleged sexual harassment cases STC will not talk about is one in the recent past. One performer alleged sexual harassment against a fellow cast member.*

*The issue was dealt with by the alleged victim withdrawing from the production and the alleged aggressor continuing in their role.*

28. The article, on its face, is not about the production of *King Lear*.
29. I have reasonable grounds for believing, based on instructions from people who were working with the STC at the time, that the alleged harassment occurred during the STC's production of *Disgraced* in about April 2016.

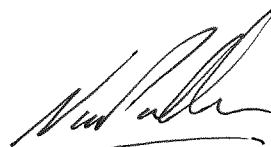


30. The Applicant seeks to test whether any changes to the STC's Human Resources policies and practices were as a result of that complaint, not the complaint made by Ms Norvill.

Sworn / Affirmed by the deponent

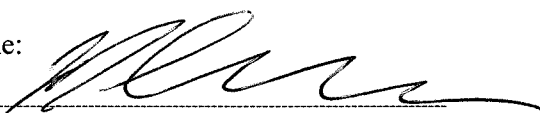
at (place) MELBOURNE

on (date) 24 / 09 / 2018



Signature of deponent

Before me:



Signature of witness

Full name of witness: .....

**Matthew Charles Craven**

Qualification of witness: .....

**Level 26, 530 Collins St Melbourne**

**An Australian Legal Practitioner**

**within the meaning of the**

**Legal Profession Uniform Law (Victoria)**



**Affidavit**

**NSD 2179 OF 2017**

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

**Geoffrey Roy Rush**  
Applicant


**Nationwide News Pty Limited & Anor**  
Respondents

Affidavit of: Nicholas William Grant Pullen  
Address: Level 26, 530 Collins Street, Melbourne Vic 3000  
Occupation: Lawyer, HWL Ebsworth Lawyers  
Date: 24 September 2018

**EXHIBIT NP-1**

This is the Exhibit marked "NP-1" which is exhibited to the affidavit of Nicholas William Grant Pullen sworn on 24 September 2018.

Sworn by Nicholas William Grant Pullen:



---

Sworn before:



---

**Matthew Charles Craven**  
Level 26, 530 Collins St Melbourne  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

- 36.5 in the nature of the business environment in which the Respondents operate, the Respondents are engaged in the business of providing information to the public;
- 36.6 prior to publishing the first and second matters complained of, the Respondents had the following information:
- (a) that a complaint had been made to the Sydney Theatre Company by the Complainant in substance that the Applicant had touched her genitals during the production of King Lear without her consent;
  - (b) that the complaint was received by the Sydney Theatre Company when the Applicant's engagement with the Sydney Theatre Company had ended;
  - (c) that the Sydney Theatre Company had conducted an investigation into the complaint;
  - (d) that the Sydney Theatre Company continued to work with the Complainant to minimise the risk of future instances of the alleged behaviour occurring in the workplace;
  - (e) that the Complainant had requested at the time that her identity be withheld;
  - (f) that the Applicant denied the allegation;
  - (g) that the Applicant stated that he had not been approached by the Sydney Theatre Company or the Complainant, nor any representative of either of them regarding the complaint, nor informed of the nature of the complaint or what it involves;
- 36.7 prior to publishing the third matter complained of, the Respondents had the following information:
- (a) that set out in the preceding particular;
  - (b) that the Sydney Theatre Company had prepared a report following its investigation of the complaint;
  - (c) that the Applicant had a conversation with Patrick McIntyre, a board member of the Sydney Theatre Company, on about 9 or 10 November 2017 during which conversation the Applicant was told that a

complaint had been made but he was not told specific information regarding the nature of the complaint;

- (d) that the Applicant had harassed the Complainant throughout the production of King Lear but that the alleged genital touching had only occurred during the final week of the production;
  - (e) that another board member of the Sydney Theatre Company had confirmed that the incident had occurred;
  - (f) that other members of the Sydney Theatre Company were aware of the Applicant's conduct and felt strongly about it;
  - (g) that further similar complaints have been made to the Sydney Theatre Company about the Applicant's conduct;
  - (h) that the Sydney Theatre Company had changed its HR policies and practices as a result of the complaint against the Applicant;
  - (i) that the Sydney Theatre Company had vowed to never work with the Applicant again;
  - (j) that Meyne Wyatt had published a Facebook post which stated "I was in the show. I believe whoever has come forward. It's time for Sydney Theatre Company and the industry in Australia and worldwide to make a stand on this behaviour!!! It's been going on for far too long! And this culture of protecting people in power has to stop";
  - (k) that Meyne Wyatt had worked on the production of King Lear;
  - (l) that Brendan McClelland had published a Tweet which stated "It wasn't a misunderstanding. It wasn't a joke";
  - (m) that Brendan McClelland had worked alongside the Complainant;
  - (n) that Brendan McClelland was at the time working on the Sydney Theatre Company's production of The Three Sisters;
- 36.8 the Respondents were reasonably satisfied about the sources of the information in the matters complained of and the integrity, authenticity and accuracy of those sources;
- 36.9 the Respondents believed what it published to be true;

36.7 prior to publishing the third matter complained of, the Respondents had the following information:

- (a) that set out in the preceding particular;
- (b) that the Sydney Theatre Company had prepared a report following its investigation of the complaint;
- (c) that the Applicant had a conversation with Patrick McIntyre, the Executive Director a board member of the Sydney Theatre Company, on about 9 or 10 November 2017 during which conversation the Applicant was told that a complaint had been made of inappropriate conduct but he was not told specific information regarding the nature of the complaint;
- (d) that the Applicant had harassed the Complainant throughout the production of King Lear but that the alleged genital touching had only occurred during the final week of the production;
- (e) that another board member of the Sydney Theatre Company had confirmed that the incident had occurred;
- (e1) that the complaint made was about sexual harassment by the Applicant;
- (f) that other members of the Sydney Theatre Company were aware of the Applicant's conduct and felt strongly about it;
- (g) that further similar complaints have been made to the Sydney Theatre Company about the Applicant's conduct;
- (h) that the Sydney Theatre Company had changed its HR policies and practices as a result of the complaint against the Applicant;
- (i) that the Sydney Theatre Company had vowed to never work with the Applicant again;
- (j) that Meyne Wyatt had published a Facebook post which stated "I was in the show. I believe whoever has come forward. It's time for Sydney Theatre Company and the industry in Australia and worldwide to make a stand on this behaviour!!! It's been going on for far too long! And this culture of protecting people in power has to stop";
- (k) that Meyne Wyatt had worked on the production of King Lear;

36.6C the information set out in sub-paragraph 36.6(a) was not included in the second matter complained of.

36.7 prior to publishing the third matter complained of, the Respondents had the following information:

- (a) that set out in paragraph 36.6 ~~the preceding particular~~;
- (b) that the Sydney Theatre Company had prepared a report following its investigation of the complaint;
- (c) that the Applicant had a conversation with Patrick McIntyre, the Executive Director of the Sydney Theatre Company, on about 9 or 10 November 2017 during which conversation the Applicant was told that a complaint had been made of inappropriate conduct but he was not told specific information regarding the nature of the complaint;
- (d) that the Applicant had harassed the Complainant throughout the production of King Lear but that the alleged genital touching had only occurred during the final week of the production;
- (e) that another board member of the Sydney Theatre Company had confirmed that the incident had occurred;
- (e1) that the complaint made was about sexual harassment by the Applicant;
- (f) that other members of the Sydney Theatre Company were aware of the Applicant's conduct and felt strongly about it;
- (g) that further similar complaints have been made to the Sydney Theatre Company about the Applicant's conduct;
- (h) that the Sydney Theatre Company had changed its HR policies and practices as a result of the complaint against the Applicant;
- (i) that the Sydney Theatre Company had vowed to never work with the Applicant again;
- (j) that Meyne Wyatt had published a Facebook post which stated "I was in the show. I believe whoever has come forward. It's time for Sydney Theatre Company and the industry in Australia and worldwide to make a stand on this behaviour!!! It's been going on for far too long! And this culture of protecting people in power has to stop";

- (k) that Meyne Wyatt had worked on the production of King Lear;
- (l) that Brandon McClelland had published a Tweet which stated "It wasn't a misunderstanding. It wasn't a joke";
- (m) that Brandon McClelland had worked alongside the Complainant;
- (n) that Brandon McClelland was at the time working on the Sydney Theatre Company's production of The Three Sisters;
- (o) that the Applicant had been told by Mr McIntyre the identity of the Complainant;
- (p) that the STC stood by the Complainant's claims;
- (q) the background information about Meyne Wyatt in paragraphs 13 to 15 of Schedule C;
- (r) the background information about Brandon McClelland in paragraphs 16 to 18 of Schedule C;
- (s) that Brandon McClelland's tweet was reposted by several other Sydney actors;
- (t) the statement from the Applicant's management referred to in paragraphs 31 to 41 of Schedule C;
- (u) the statements made by Patrick McIntyre in paragraphs 1 to 8 of the second page of Schedule C;
- (v) the preliminary findings of an Actors Equity survey referred to in paragraph 9 of the second page of Schedule C;
- (w) the matters relating to Kevin Spacey in paragraphs 10 and 11 of the second page of Schedule C;
- (x) a statement issued by the STC on 30 November 2017 which contained the information set out at paragraphs 13, 14 and 15 of the third page of Schedule C;
- (y) that executives at the STC said that they wholeheartedly believed the claims of the Complainant and one of them said the words set out at paragraphs 21 to 23 of the third page of Schedule C;
- (z) that a high-profile actor came forward to support the complainant.

36.7A the sources of the information set out in the preceding paragraph were:

- (a) As to the information set out in sub-paragraphs 36.7(b), (c), (d), (f), and (i), (p) and (y), a confidential source connected with the Sydney Theatre Company (**Confidential Source 2**);
- (b) As to the information set out in sub-paragraphs 36.7(c), (h) and (i), (o), (p), (u), (x) and (y), ~~a confidential source connected with the Sydney Theatre Company (Confidential Source 3) executive director, Patrick McIntyre;~~
- (c) As to the information set out in sub-paragraph 36.7(c) and (p), Confidential Source 12;
- (d) As to the information set out in sub-paragraphs 36.7(e) and (f), a confidential source connected with the Sydney Theatre Company (**Confidential Source 34**);
- (e) As to the information set out in sub-paragraphs 36.7(e1), (f) and (g), an email received by the Respondents on 30 November 2017 by a person claiming to have direct knowledge of the particular case;
- ~~(f) As to the information set out in sub-paragraph (h), Sydney Theatre Company executive director, Patrick McIntyre;~~
- (g) As to the information set out in sub-paragraph 36.7(j) and (z), the Facebook page of Meyne Wyatt;
- (h) As to the information set out in sub-paragraph 36.7(k), the Information page relating to the Production that was at the time available on the website of the Sydney Theatre Company;
- (i) As to the information set out in sub-paragraph 36.7(l) and (s), the Twitter feed of Brandon McClelland and others reposting his tweets;
- (j) As to the information set out in sub-paragraphs 36.7(m) and (n), information available on the Internet in relation to the Sydney Theatre Company's production of The Three Sisters;
- (k) As to the information set out in sub-paragraphs 36.7(q) and (r) the information that was available on the Internet through searches conducted by the Second Respondent;

## **OUTLINE OF EVIDENCE OF PATRICK MCINTYRE**

No. NSD2179 of 2017

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

**Geoffrey Roy Rush**

Applicant

**Nationwide News Pty Limited** and another

Respondents

Patrick McIntyre will give evidence about the following matters:

1. **BACKGROUND**

1.1 His role as Executive Director of the Sydney Theatre Company.

2. **FUTURE EMPLOYMENT OF THE APPLICANT**

2.1 That the Sydney Theatre Company, due to the seriousness of the allegations made by Eryn Jean Norvill against the Applicant, would not work with the Applicant again and subsequently amended its human resources policies.



Our Ref: NWP:JJM:687924

21 September 2018

Mr Robert Todd  
Ashurst Australia  
Level 11, 5 Martin Place  
SYDNEY NSW 2000

Email: [robert.todd@ashurst.com](mailto:robert.todd@ashurst.com)

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Sir,

**Geoffrey Roy Rush v Nationwide News Pty Ltd & Anor**  
**Federal Court of Australia Proceedings: NSD2179/2017**

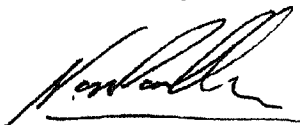
We refer to your letter of 10 September 2018 serving a Notice to Admit.

We \*enclose our client's Notice of Dispute.

The Notice to Admit contains extraordinary matters to respond to. We note it contains all the allegations contained in Ms Norvill's signed statement dated 13 August 2018. In the circumstances, please confirm by return correspondence whether or not Ms Norvill will be providing evidence on behalf of the Respondent at the forthcoming hearing.

Similarly, we note Ms Miriam Steil in her affidavit dated 12 September 2018 objecting to certain material being produced by the STC pursuant to a subpoena has sworn that Patrick McIntyre of the STC has not received a subpoena. Please also confirm by return correspondence whether Mr McIntyre will be appearing on behalf of the Respondent at the forthcoming hearing.

Yours faithfully,



**Nicholas Pullen**  
Partner  
HWL Ebsworth Lawyers

+61 3 8644 3408  
[npullen@hwle.com.au](mailto:npullen@hwle.com.au)

**Jeremy Marel**  
Associate  
HWL Ebsworth Lawyers

+61 2 9334 8705  
[jmarel@hwle.com.au](mailto:jmarel@hwle.com.au)

Adelaide  
Brisbane  
Canberra  
Darwin  
Hobart  
Melbourne  
Norwest  
Perth  
Sydney

- Well, with respect, your Honour, if this is allowed, this is going to add a week to the trial, and I will make that good when I go through the cross-claim. And that's why his Honour ultimately allowed it. The other case in Tada Constructions, that my learned friends rely on, which is, I think, behind tab 5 of their bundle, in that case, the applicant didn't – your Honour will see they neither consented to nor opposed the application at paragraph 3. And importantly, the delay was explained in paragraph 14 because the subject matter that give rise to the cross-claim arose from events that had only occurred a few weeks earlier. So they were new events.
- And if your Honour turns to where Dodds-Streeton J sets out the principles at paragraphs 59, 60 and 62, importantly, setting out a decision of Collier J in Lenleys Project:
- The court should have regard to whether the applicant has shown an acceptable explanation for the delay. The prejudice to the respondent –*
- in this case, Mr Rush:
- ...and the merits of the application.*
- Now – and at 63 it was found there was no prejudice. There was no prejudice, it wasn't opposed, the facts giving rise to it arose very late, and they put on the cross-claim it would seem within weeks of those facts arising. Now, here, it's quite a different case. We say it's a severe prejudice to Mr Rush. My learned friend says he can still be ready for a trial date in August. There's no suggestion that the STC can be. In fact, there's no evidence the STC even knows about this. There's no evidence of a letter of demand to the STC seeking contribution, there's no evidence of any response by the STC and what defences they might think that they have. Nothing. Where is compliance with the Civil Dispute Resolution Act?
- We wouldn't have to guess, we wouldn't have to stand here and guess that defences the STC might raise. If there was evidence of correspondence that they've, in fact, raised the genuine complaint to the STC that they're libel, and we had a response from the STC knowing what their position is. Why haven't we seen a letter of demand if this was such a genuine claim? Anyone who has a genuine claim, with respect, would have sent such a letter of demand. Now, as far as merits are concerned, your Honour, we just have to, in answer to my learned friend's application, satisfy your Honour that the cross-claim does lack merit. We don't have to satisfy your Honour to the same standard as a strikeout application.
- HIS HONOUR: Well – but one of the – when one is considering an amendment, for example, one ground of opposition is that the amendment would be libel to be struck out as not raising a reasonable defence or - - -
- MS CHRYSANTHOU: Yes.



SUBMIT EVENT ([HTTP://DAILYREVIEW.COM.AU/SUBMIT-EVENT/](http://dailyreview.com.au/submit-event/))

[➔ LOGIN/JOIN](#)

🐦 <https://twitter.com/PSW/hashtag/PSW>

**Search site.**

60

**By Raymond Gill (<https://dailyreview.com.au/author/raymond-gill/>)** November 24, 2017

Earlier this month a group of state theatre companies released a joint statement in the wake of the revelations about sexually predatory behaviour in the arts, most notably by producer Harvey Weinstein and actor Kevin Spacey.

Its version of the statement was published on the main page of Sydney Theatre Company's website under the heading "Sexual Harassment is Unacceptable (<https://www.sydneytheatre.com.au/community/stc-commitments/sexual-harassment-is-unacceptable>)". The statement says, "We have a responsibility to proactively work to prevent, and put an end to sexual harassment, abuse and predatory behaviour in our industry and workplace".

It continues: "We are an organisation of individuals that care deeply about our people and our community. STC is responding to the need for action through a range of existing and new workplace communications and support initiatives. We want our staff and artists to feel empowered and informed about what to do and who to talk to in case of an incident. We strive to be a place where everyone, especially our staff and artists, feel safe and supported".

Given the vagueness of the statement an STC spokesperson told *Daily Review* that "STC has several policies – the Workplace, Bullying and Harassment Prevention Policy and the Grievance Procedure Policy. These policies are continually evaluated and updated. Inductions are carried out at the commencement of each production that refer to the existence of the policies and set out who employees should talk to if they want to discuss an issue".

Do You Value Independent Arts Journalism & Would You Like To Help Us Produce More? [Find Out More](#)

[\(https://dailyreview.com.au/support/\)](https://dailyreview.com.au/support/)  
**One of the alleged sexual harassment cases STC will not talk about is one in the recent past. One performer alleged sexual harassment against a fellow cast member.**

Asked how the process of raising and dealing with sexual harassment claims is dealt with at STC, the spokesperson said: "Our response would depend on the situation. Actions could include face-to-face interviews and consultation with the affected parties, and if relevant their agents and/or union. We also provide support through our Employee Assistance Program which provides independent, confidential counselling".

So has STC dealt with sexual harassment issues among its employees and contractors?

"Sydney Theatre Company has investigated a very small number of issues over the last few years. Sydney Theatre Company respects the confidentiality of the complainants and will not comment further," the spokesperson said.

STC must be a very unusual theatre if the interim results from a survey of performers conducted by the Media Entertainment and Arts Alliance (MEAA) are anything to go by. It found that a staggering 40% of respondents said they had experienced sexual harassment of a physical nature (touching, groping etc.) in their work while 60% reported sexual harassment that included lewd or suggestive comments and jokes. Ten per cent said they had experienced sexual assault, including stalking.

But one of the alleged sexual harassment cases STC will not talk about is one in the recent past. One performer alleged sexual harassment against a fellow cast member.

The issue was dealt with by the alleged victim withdrawing from the production and the alleged aggressor continuing in their role.

The STC's method in settling the complaint of alleged sexual harassment had, and still has, a profound effect on the company. The fallout from its handling of the incident has seen the career trajectories of at least four senior STC figures alter dramatically.

*Daily Review* is not naming the parties involved in the initial incident, or the production they were cast in, because the performer who alleged the sexual harassment has made it known that they want to remain anonymous.

Zoe Angus, the National Director of MEAA's Equity, would not comment on this incident, however she said the interim results of the Equity survey into sexual harassment show that whatever policies or processes that are in place at theatre companies are not adequate.

ELBOURNE/68528/)

On Sunday, 32 members of Equity's National Performers' Committee will meet in Sydney to discuss sexual harassment in the performing industry, analyse the interim results of the survey on sexual harassment and discuss case studies.

► (H

|    |                   |
|----|-------------------|
| f  | Share on Facebook |
| 🐦  | Share on Twitter  |
| G+ | Share on Google+  |

About The Author: Raymond Gill  
(<https://Dailyreview.com.au/Author/Raymond-Gill/>)

Raymond Gill is the editor and publisher of Daily Review.

Do You Value Independent Arts Journalism & Would You Like To Help Us Produce More? Find Out More  
(<https://dailyreview.com.au/support/>)



## 10 RESPONSES TO "THE CURIOUS CASE OF SEXUAL HARASSMENT AT SYDNEY THEATRE COMPANY"

**Seaton Smithy says:**

November 29, 2017 at 8:49 am (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/#comment-113367>)

"The issue was dealt with by the alleged victim withdrawing from the production and the alleged aggressor continuing in their role."

Sounds like it wasn't "dealt with".

Perhaps "The issue resulted in the alleged victim withdrawing from the production while the alleged aggressor continuing in their role."

Reply (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/?replytocom=113367#respond>)

---

**Daffy says:**

November 26, 2017 at 12:10 pm (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/#comment-113034>)

In terms of how seriously the STC actually takes this sort of thing, it would be rather telling to know is whether – in addition keeping the alleged perpetrator in his role -they have since employed him again in other shows?

Reply (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/?replytocom=113034#respond>)

---

**Sultana says:**

December 3, 2017 at 5:03 pm (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/#comment-113820>)

ELBOURNE/68528//

If the allegation was found to be unsubstantiated, then that would be perfectly reasonable. 'Alleged' does not equal guilty. Wrongfully discriminating based on unproven allegations is just as reprehensible as bullying or sexual intimidation.

▶ {H}

Reply (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/?replytocom=113820#respond>)

---

**Mantaray says:**

December 20, 2017 at 9:15 am (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/#comment-115328>)

And....where does it say it was a "he" or a "him" doing the alleged harrassing? Lynch mob mentality ring a bell with ANY leftists EVER?

Reply (<https://dailyreview.com.au/curious-case-sexual-harassment-sydney-theatre-company/68556/?replytocom=115328#respond>)

---

**Sharon says:**