

IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST
DEFAMATION

CIV 1840 of 2023

B E T W E E N :

Linda Karen REYNOLDS

Plaintiff

and

Brittany Mae HIGGINS

Defendant

SECOND FURTHER RE
AMENDED DEFENCE

Date of Document:

2023

8 July 2024 14 May 2024 31 10 October

Filed on behalf of:

The Defendant

Date of Filing:

8 July 2024 14 May 2024 31 10

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To the plaintiff's second further re-amended statement of claim dated 27 June 2024 19 April 2024 14 September 2023 (**SOC**), the defendant says as follows. Capitalised terms used in this defence are as defined in the SOC, unless otherwise stated.

The Parties

1 The defendant:

(a) admits the allegations in sub-paragraphs 1.1 to 1.3;

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- (b) admits that the plaintiff held the portfolio of Minister for Defence during the period from 29 May 2019 to 30 March 2021, and otherwise does not admit sub-paragraph 1.4;
- (c) admits the allegations in sub-paragraph 1.5;
- (d) admits that the plaintiff was elected as a Senator for the State of Western Australia, as referred to in paragraph 1.1 of the SOC, in her capacity as a member of the Liberal Party but otherwise does not know, and so cannot admit, sub-paragraph 1.6;
- (e) admits the allegations in sub-paragraphs 1.7 and 1.8;
- (f) does not know, and so cannot admit, sub-paragraphs 1.9 to 1.11;
- (g) admits that the plaintiff attended Curtin University and graduated from that university with a degree in Commerce but otherwise does not know, and so cannot admit, sub-paragraph 1.12;
- (h) does not know, and so cannot admit, sub-paragraphs 1.13 and 1.14;
- (i) admits the allegations in sub-paragraph 1.15;
- (j) does not know, and so cannot admit, sub-paragraph 1.16;
- (k) admits that the plaintiff was pre-selected by the Western Australian Liberal Party to occupy the first spot on the Liberal Party Senate ticket in Western Australian and received 12,878 first preference votes from below-the-line voters in Western Australia, but otherwise does not admit the allegations in sub-paragraph 1.17.

2 The defendant:

- (a) in response to sub-paragraph 2.1:
 - (i) admits that she is, and at all material times was, the account holder and user of Instagram account @brittanyhiggins___;
 - (ii) says that, as at 10 October 2023, the above Instagram account has approximately 63,000 followers;

- (iii) says further that she is presently unable to ascertain whether any of the followers of her Instagram account are located in Western Australia and so cannot admit that allegation;
 - (b) admits the allegations in sub-paragraph 2.2;
 - (c) admits the allegations in sub-paragraph 2.3;
 - (d) in response to sub-paragraph 2.4, admits that she ~~is~~ was at the date of the SOC, the de facto partner of David Sharaz and that Mr Sharaz describes himself as a 'Media and Communications Specialist' on his LinkedIn profile as at 10 October 2023 and that Mr Sharaz is the account holder and user of Twitter account @SharazDavid and otherwise does not admit the allegations;
 - (e) in response to sub-paragraph 2.5, admits that she is the author and publisher of the 4 July Instagram Story, the 20 July 2023 Tweets and the 20 July Instagram Story (referred to together in the SOC as the Publications) but denies that she is the author and publisher of the 27 January 2022 Tweet and denies that the Publications (referred to together in paragraph 5 of the SoC as the Publications) are defamatory of the plaintiff.
- 3 The defendant admits the allegations in paragraph 3.
- 4 The defendant admits the allegations in paragraph 4.
- 5 The defendant:
- (a) admits the allegations in sub-paragraph 5.1;
 - (b) in response to sub-paragraph 5.2:
 - (i) admits that it was generally known to readers of the Publications at the time of those Publications that:
 - (A) the defendant had participated in a recorded interview with Network 10's The Project during which she spoke of the Rape Allegation;
 - (B) that interview was subsequently broadcast by Network 10 during an episode of The Project; and
 - (C) at the time of the broadcast, the defendant had not previously spoken on television about the Rape Allegation;
 - (ii) says further that:
 - (A) the defendant participated in an interview with the Australian

Federal Police about the Rape Allegation after the interview with The Project was recorded, but before the interview was broadcast by Network 10;

- (B) the defendant had previously participated in a preliminary interview with the Australian Federal Police in relation to the Rape Allegation on or about 27 March 2019 and 8 April 2019;

and otherwise does not admit the allegations in sub-paragraph 5.2;

- (c) admits the allegations in sub-paragraph 5.3;
- (d) in response to sub-paragraph 5.4, admits that it was generally known to readers of the Publications that:
 - (i) the plaintiff said the words 'lying cow' within earshot of some of her staff;
 - (ii) the defendant had sent a notice of concerns to the plaintiff alleging that the words 'lying cow' were defamatory of the defendant;
 - (iii) that the parties had entered into a settlement and that the plaintiff had apologised to the defendant,

but otherwise does not know, and so cannot admit, the allegations in sub-paragraph 5.4;

- (e) admits the allegations in sub-paragraph 5.5;
- (f) admits the allegations in sub-paragraph 5.6 but says further that it was also generally known to readers of the Publications that the former ACT Director of Public Prosecutions had stated, when announcing the discontinuance of the charges against Mr Lehmann, that he had formed a view that proceeding with the prosecution of Mr Lehmann was not in the public interest as a retrial would pose a serious and unacceptable risk to the life of the defendant;
- (g) admits the allegations in sub-paragraph 5.7; and
- (h) admits the allegations in sub-paragraph 5.8.

4 July Instagram Story

- 6 In response to paragraph 6 the defendant:

- (a) admits that she authored and published the 4 July Instagram Story, a compilation of images and text, which was available for a period of 24 hours on the defendant's Instagram account as a 'story' to users of the Instagram application;
- (b) admits that the 4 July Instagram Story was of and concerning the plaintiff;
- (c) says that she is presently unable to ascertain the country, or states and territories within a country, from which viewers of the Instagram story on the Instagram account @brittanyhiggins_, viewed the 4 July Instagram Story and so cannot admit that allegation; and
- (d) denies that the 4 July Instagram Story was defamatory of the plaintiff; and
- (e) otherwise does not know, and so cannot admit, the remaining allegations in paragraph 6.

7 The defendant admits the allegations in paragraph 7.

8 The defendant:

- (a) admits that the imputation set out in sub-paragraph 8.3 or any imputation not differing in substance from that imputation is conveyed by the 4 July Instagram Story; and
- (b) denies the 4 July Instagram Story, in its natural and ordinary meaning, with the aid of the extrinsic facts set out in paragraph 5 of the SOC or otherwise, was reasonably capable of conveying, or in fact conveyed, any of the imputations set out in sub-paragraphs 8.1 or 8.2 or any imputation not differing in substance from those imputations; and
- (c) in respect of paragraph 8.2 of the SoC, if there is any imputation conveyed, the 4 July Instagram Story conveyed the imputation that the plaintiff mishandled the defendant's Rape Allegation.

9 In response to paragraph 9, the defendant denies that the 4 July Instagram Story, by way of innuendo, with the aid of the extrinsic facts set out in paragraph 5 of the SOC, or otherwise, was reasonably capable of conveying, or in fact conveyed, any of the imputations set out in sub-paragraphs s 8.1 or 8.2 or imputations not differing in substance from those imputations.

20 July 2023 Tweets

10 In response to paragraph 10, the defendant:

- (a) admits that she authored and published the 20 July Tweets by posting those tweets on her Twitter (X) account;
 - (b) admits that the 20 July Tweets were of and concerning the plaintiff;
 - (c) admits that the 20 July Tweets were available on the defendant's Twitter (X) account;
 - (d) says that she is presently unable to ascertain the country, or states and territories within a country, from which users of the Twitter (X) application viewed the 20 July Tweets and so cannot admit that allegation; and
 - (e) denies that the 20 July Tweets are defamatory of the plaintiff.
- 11 The defendant admits the allegations in paragraph 11.
- 12 In response to paragraph 12, the defendant admits that the imputation set out in paragraph 12 or any imputation not differing in substance from that imputation is conveyed by the 20 July 2023 Tweets, when read together.

20 July Instagram Story

- 13 In response to paragraph 13, the defendant:
- (a) admits that she authored and published the 20 July Instagram Story which was available for a period of 24 hours as a story on the defendant's Instagram account to users of the Instagram application;
 - (b) admits that the 20 July ~~Tweet~~ Instagram story was of and concerning the plaintiff;
 - (c) says that she is presently unable to ascertain the country, or states and territories within a country, from which viewers of the Instagram story on the Instagram account @brittanyhiggins_, viewed the 20 July Instagram Story and so cannot admit that allegation; ~~and~~
 - (d) denies that the 20 July Instagram Story was defamatory of the plaintiff; ~~and~~
 - (e) otherwise does not know, and so cannot admit, the remaining allegations in paragraph 13.
- 14 The defendant admits the allegations in paragraph 14.

- 15 In response to paragraph 15, the defendant admits that the imputation set out in paragraph 15 or any imputation not differing in substance from that imputation is conveyed by the 20 July Instagram Story.

The 27 January 2022 Tweet

15A. In response to paragraph 15A, the defendant:

- (a) admits that David Sharaz authored and published the 27 January 2022 Tweet on his Twitter account (now known as X);
- (b) admits that the 27 January 2022 Tweet was of and concerning the plaintiff;
- (c) denies that the 27 January 2022 Tweet was defamatory of the plaintiff.

15B. In response to paragraph 15B, the defendant:

- (a) admits that she replied to the 27 January Tweet by posting a comment that stated: '@SharazDavid and @lindareynoldswa I have no words. Emoji';
- (b) does not know and so cannot admit the allegations concerning the number of times that her comment was commented on by other X users, re-tweeted or like by them;
- (c) otherwise denies the allegations in paragraph 15B.

15C. In response to paragraph 15C, the defendant:

- (a) admits that the 27 January Tweet no longer appeared on the account of @SharazDavid as at the date of filing the SOC;
- (b) says further that the 27 January Tweet was deleted at a date not presently known to the defendant but before the commencement of these proceedings against her; and
- (c) otherwise does not know, and so cannot admit, the balance of the allegations in paragraph 15C.

15D. The defendant denies the allegations in paragraph 15D.

15E. In further answer to paragraphs 15A to 15D, the defendant says:

- (a) the 27 January 2022 Tweet was published on 27 January 2022;
- (b) any action in defamation for its publication had to be brought by 26 January 2023, which was not done;
- (c) in the premises any cause of action in relation to 27 January 2022 is statute barred under s 15 of the *Limitation Act 2005* (WA).

Damage and Aggravating Conduct

- 16 The defendant denies the allegations in paragraph 16 and says further if any damage has been suffered by the plaintiff, it was suffered in 2021, and not by reason of any of the Publications.
- 17 The defendant:
- (a) in response to paragraph 17.5A, admits that she authored and published the 20 July Threads Posts on or about 20 July 2023 and that they are in the same terms as the 20 July Tweets and 20 July Instagram Story, but says that she is presently unable to ascertain the country, or states and territories within a country, from which viewers of the 20 July Threads Posts on the Threads account brittanyhiggins viewed the 20 July Threads Posts;
 - (b) in response to paragraph 17.6, admits that the 20 July Tweets, 20 July Instagram Story and 20 July Threads Posts were published after a concerns notice was sent to her by the plaintiff on 5 July 2023 about the 4 July Instagram Story; and
 - (c) otherwise denies the allegations in paragraph 17; and
 - (d) says further that none of the matters pleaded in paragraph 17.1 constitute circumstances of the Publications within the meaning of s 35(2) of the Defamation Act 2005 (WA).
- 18 The defendant denies the plaintiff is entitled to seek the relief set out in paragraph 18 or otherwise.

Breach of contract

- 19 The defendant admits the allegations in paragraph 19.
- 20 The defendant does not admit the allegations in paragraph 20.
- 21 The defendant denies the allegations in paragraph 21.

Tortious Conspiracy to Injure by Lawful Means

- 22A The defendant repeats paragraph 17 above.
- 22B The defendant denies the allegations in paragraph 22B.
- 22C The defendant denies the allegations in paragraph 22C.
- 22D As to paragraph 22D, the defendant:

- (a) denies that by reason of the pleaded conduct, the plaintiff suffered loss and damage;
- (b) does not admit the plaintiff suffered any of the loss and damage pleaded;
- (c) says, if contrary to its non-admission, the plaintiff suffered the loss and damage pleaded, denies it constitutes loss of the kind required for the tort of conspiracy.

22E The defendant denies the allegations in paragraph 22E.

22F The defendant denies the allegations in paragraph 22E.

22G. In further answer to paragraphs 22A to 22F, the defendant says:

- (a) if, contrary to the defendant's denial, the loss and damage pleaded constituted loss of the kind required for the tort of conspiracy, the cause of action accrued on 2 March 2021;
- (b) the nature of the loss and damage pleaded means the tort of conspiracy claim is an action for damages relating to a personal injury within the meaning of s 14(1) of the *Limitation Act 2005* (WA), such that the action had to be brought by 1 March 2024, which was not done;
- (c) in the premises the cause of action for the tort of conspiracy is statute barred.

Prayer for relief

22 The defendant denies the plaintiff is entitled to seek the relief set out in paragraph 22 or otherwise paragraphs 23 to 25 or at all.

DEFENCES

Justification: at common law and pursuant to section 25 of the *Defamation Act 2005* (WA) (Defamation Act)

23 Further or alternatively, if (which is denied) it is found that the Publications convey any one or more of the imputations pleaded in paragraphs 8, 12 or 15 of the SOC or imputations not different in substance or the alternative imputation pleaded at paragraph 8(c) above, and are defamatory of the plaintiff, the defendant says each one of those imputations is substantially true.

Particulars

The defendant relies on the particulars set out in Annexure A to this defence. Further

particulars may be provided after discovery and the return of subpoenas.

Contextual truth: pursuant to section 26 of the Defamation Act

24 Further or alternatively, if (which is denied) it is found that the 4 July Instagram Story conveys the imputation pleaded in paragraph 8.2 of SOC, is defamatory of the plaintiff and is not substantially true, the defendant says that:

- (a) the 4 July Instagram Story carries the imputation that the plaintiff mishandled the defendant's Rape Allegation in addition to the imputations pleaded in paragraph 8.2 (**Contextual Imputation**);
- (b) the Contextual Imputation is substantially true; and
- (c) by reason of the substantial truth of the Contextual Imputation, each of the imputations pleaded in paragraph 8.2 of the SOC which are found to have been conveyed as alleged by the plaintiff, defamatory of her and not substantially true does not further harm the reputation of the plaintiff.

Particulars

The defendant relies on the particulars set out in paragraphs 1 to 72 of Annexure A to this defence. Further particulars may be provided after discovery and the return of subpoenas.

Qualified privilege: section 30 of the Defamation Act

25 Further, or alternatively, if (which is denied), it is found that:

- (i) the Publications (except for the 27 January 2022 Tweet) convey any one or more of the imputations pleaded in paragraphs 8, 12, 15 of the SOC or imputations not different in substance or the alternative imputation pleaded at paragraph 8(c) above, and are defamatory of the plaintiff; or
- (ii) the 27 January 2022 Tweet conveys any one or more of the imputations pleaded in paragraph 15D and the Court were to find (contrary to the denial of the defendant) that she was a publisher of it,

the defendant says that:

- (a) the plaintiff published the Publications in the course of giving to the recipients of those Publications information about a subject in which the recipients had an interest or an apparent interest (in the sense that the defendant believed on reasonable grounds that the recipients had such an interest); and
- (b) the defendant's conduct in publishing the Publications was reasonable in the circumstances.

Particulars

The defendant relies on the particulars set out in Annexure B to this Defence. Further particulars may be provided after discovery and the return of subpoenas.

Qualified Privilege: common law *Lange* defence

26 Further, or alternatively, if (which is denied), it is found that:

- (i) the Publications (except for the 27 January 2022 Tweet) convey any one or more of the imputations pleaded in paragraphs 8, 12, 15 of the SOC or imputations not different in substance or the alternative imputation pleaded at paragraph 8(c) above, and are defamatory of the plaintiff; or
- (ii) the 27 January 2022 Tweet conveys any one or more of the imputations pleaded in paragraph 15D and the Court were to find (contrary to the denial of the defendant) that she was a publisher of it,

the defendant says that:

- (a) each of the Publications constituted information, opinions and arguments concerning government and political matters that affected the recipients of the Publications;
- (b) the recipients of the Publications had an interest in receiving such information, opinions and arguments;
- (c) by reason of sub-paragraph (a) and (b) above, the defendant had a duty to publish the Publications; and
- (d) the defendant's conduct in publishing the Publications was reasonable.

Particulars

The defendant relies on the particulars set out in Annexure B to this Defence. Further particulars may be provided after discovery and the return of subpoenas.

**Fair comment / honest opinion: at common law and pursuant to section 31 of
Defamation Act**

27 Further or alternatively, if (which is denied) it is found that the Publications convey any one or more of the imputations pleaded in paragraphs 8, 12 ~~or~~ 15 or 15D of the SOC or imputations not different in substance or the alternative imputation pleaded at paragraph 8(c) above, and are defamatory of the plaintiff, the defendant says that:

- (a) each of the Publications was an expression of opinion by the defendant rather than a statement of fact;
- (b) those opinions related to a matter or matters of public interest; and
- (c) those opinions were based on proper material and on no other material, or alternatively, was based on material which was to some extent proper material and was an opinion which might reasonably be based on such of the material as is proper material.

Particulars

The defendant relies on the particulars set out in Annexure C to this defence. Further particulars may be provided after discovery and the return of subpoenas.

MITIGATION OF DAMAGES

28 The defendant says further that if (which is denied) the plaintiff is entitled to damages, the defendant will rely in mitigation of damages upon the following facts, matters and circumstances:

- (a) the substantial truth of such of the plaintiff's pleaded imputations or the alternative imputation pleaded at paragraph 8(c) above as are proved to be true;
- (b) the substantial truth of such of the particulars of truth and proper material as are proved to be true;

(ba) that the plaintiff has already recovered \$70,000 in damages for defamation from the Australian Capital Territory in relation to allegations made by the former Director of Public Prosecutions by letter to the Australian Federal Police as to the plaintiff's conduct during the criminal trial of Bruce Lehrmann;

(bb) that the plaintiff has already recovered damages for defamation from the settlement of a suit brought by her against Aaron Patrick and HarperCollins in relation to allegations made about her response to the defendant's Rape

Allegation in the book *Ego: Malcolm Turnbull and the Liberal Party's Civil War*.

(bc) the plaintiff participated in an interview broadcast on Channel Seven's Spotlight Programme on 13 August 2023, during which the plaintiff explained her recollections as to her conduct with respect to the defendant, and her views of the defendant;

- (c) the facts, matters and circumstances proven in evidence in support of the defences pleaded in this defence;
- (d) the circumstances in which it is proved that the Publications were published; and
- (e) such other evidence as is properly admitted at trial.

Dated: 8 July 2024 ~~14 May 2024~~
~~1031 October 2023~~

Prepared by:
Nicholas Owens SC

Arnold
Bloch-Leibler

R Young

K A T Pedersen

ANNEXURE A: PARTICULARS OF JUSTIFICATION & CONTEXTUAL TRUTH

In support of the substantial truth of the imputations, the defendant relies upon the following facts, matters and circumstances:

BACKGROUND

- 1 From early October 2018, the defendant worked for the former Minister for Defence, Steven Ciobo MP as an administration officer and junior media advisor at Parliament House.
- 2 In early March 2019, Mr Ciobo announced that he would not contest the next federal election and stood down as the Minister for Defence Industry. The plaintiff was subsequently announced as Mr Ciobo's replacement as the Minister for Defence Industry.
- 3 After Mr Ciobo's resignation, the defendant applied for, and was subsequently offered, a job as an administration officer and junior media advisor in the plaintiff's parliamentary office, and startedding working in that role in early-mid March 2019.
- 4 At the time she commenced working in the plaintiff's parliamentary office, the defendant was the most junior staff member in the office and Bruce Lehrmann was the second most senior (second to the chief-of-staff).
- 5 Mr Lehrmann had been employed for at least 12 months prior to 23 March 2019, as a policy advisor in the plaintiff's parliamentary office in Canberra, first when the plaintiff was the Assistant Minister for Home Affairs and, later, when she was the Minister for Defence Industry.
- 6 By virtue of the requirements set by section 28 of the *Commonwealth of Australia Constitution Act*, a Federal election needed to be held on or before 18 May 2019, and there needed to be at least 33 days between the date the election was called and polling day. As a result, at the time the defendant commenced working in the plaintiff's parliamentary office, the defendant understood, and believed that those working with her believed, that an election would soon be called.

RAPE ALLEGATION

- 7 On Friday 22 March 2019, a group of staff members from both the plaintiff's office and the Department of Defence attended The Dock, a bar on the Kingston foreshore in Canberra, including the defendant and Mr Lehrmann.
- 8 At approximately 1:40am on Saturday 23 March 2019, the defendant and Mr Lehrmann arrived at the Ministerial Entrance at Parliament House and entered the building with the assistance of security staff. The defendant was observed to be intoxicated by those staff.
- 9 A security guard escorted Mr Lehrmann and the defendant to the plaintiff's Ministerial suite in Parliament House (**Ministerial Suite**), where they arrived at approximately 1:48am. The security guard then left.
- 10 The defendant and Mr Lehrmann then entered the plaintiff's private office where the defendant was raped by Mr Lehrmann (**Rape Allegation**).
- 11 At 2:31am, Mr Lehrmann left the Ministerial Suite.
- 12 At 2:33am, Mr Lehrmann exited Parliament House via security.
- 13 At or about ~~3am~~4:20am, the defendant was found in the plaintiff's office on the plaintiff's couch by a security guard either completely or substantially naked.
- 14 At about 10am, the defendant exited Parliament House via security.

MANAGEMENT OF THE RAPE ALLEGATION (PARAGRAPH 8.2 IMPUTATION AND DEFENDANT'S ALTERNATIVE IMPUTATION AT PARAGRAPH 8(C) OF DEFENCE)

- 15 At or about 11:45am on Tuesday 26 March 2019, Fiona Brown, who was the plaintiff's acting chief of staff at that time, was told by Lauren Barons from the Department of Finance that the defendant and Mr Lehrmann had entered Parliament House after-hours the previous Saturday morning and were inebriated. Ms Barons told Ms Brown that Mr Lehrmann was observed by security to leave a short time after. Ms Barons told Ms Brown that a security guard had found the defendant asleep on the plaintiff's sofa in her office either completely or substantially naked, and that the defendant had left

Parliament House at approximately 10am on the Saturday morning. Ms Barons talked Ms Brown through the human resources protocols she had to follow.

- 16 The entry into the plaintiff's office by Mr Lehrmann and the defendant after hours was considered to be a "serious" security breach.
- 17 Ms Brown convened a meeting with Mr Lehrmann in her office. Ms Brown asked Mr Lehrmann to give his account of what had occurred on the Saturday morning. Mr Lehrmann told her he had come back to the office to drink whiskey. Ms Brown asked Mr Lehrmann whether he had accessed any documents or secured areas. Mr Lehrman had previously received a security breach notice for mishandling a classified document. Ms Brown instructed him to leave the office for the day and that she would walk out with him. Mr Lehrmann collected his things and left without speaking to anyone or waiting for Ms Brown.
- 18 In or about the early afternoon, Ms Brown then convened a meeting with the defendant, informing her that she had something sensitive and serious to discuss with her. In the meeting, the following took place:
 - (a) Ms Brown said she was aware that the defendant had entered Parliament House inebriated, after hours, in the early hours of Saturday morning with Mr Lehrmann and accessed the plaintiff's office.
 - (b) ~~Ms Brown said that she had been informed that she had been found naked.~~
 - (c) The defendant said she didn't remember accessing the office but said she had been out that evening and was inebriated and recalled waking up semi-naked.
 - (d) The defendant broke down when talking about the incident.
 - (e) ~~Ms Brown told the defendant that Ms Brown had been told that the defendant had been asked whether she wanted an ambulance or a doctor or an ambulance had been requested, but the defendant did not recall this;~~
 - (f) Ms Brown asked the defendant if something happened that she did not want to happen.

- (g) The defendant told Ms Brown that Mr Lehrmann had been on top of her and that she was barely lucid.
- (h) Ms Brown explained the after-hours entry was a breach of the Statement of Standards for Ministerial Staff but that was the end of any disciplinary action with regards to the defendant. Ms Brown gave her a copy of the Statement of Standards to read. Ms Brown invited the defendant to work from home for the rest of the day, or just go home.
- 19 During and after the meeting, Ms Brown had concerns about the defendant and her welfare.
- 20 At the time, the defendant had only known Ms Brown for around three weeks, and they had only met in person two or three times.
- 21 That afternoon, Ms Brown and the plaintiff had a number of phone calls. Ms Brown told the plaintiff there had been a very serious security breach by two staff members and that they had entered the Ministerial Suite in the early hours of Saturday morning. The plaintiff asked Ms Brown for further information. It may be inferred that Ms Brown told the plaintiff all of the information she had about the incident. The plaintiff was already aware of the previous security incident involving Mr Lehrmann's handling of a classified document.
- 22 At 5:10pm, Ms Brown sent the defendant a text message:
- "Hi Brittany checking in to see how you are? I'm here if you need anything. Happy for you to work from home tomorrow or come into the office, let me know what you'd like to do. Best, Fiona".*
- 23 On or about the afternoon of Tuesday 26 March 2019 or during the day of Wednesday 27 March 2019, Ms Brown informed the Prime Minister's Office (PMO) (through Dr John Kunkel, the Prime Minister's Chief of Staff (COS)), of the security incident in which two staff members had come back to Parliament House and entered the office of Senator Reynolds and were drinking late at night or early in the morning, and about the breach of ministerial standards.
- 23A On or about 27 March 2019, a DPS incident report was submitted to the Secretary of the Department of Parliamentary Services. The plaintiff was told about the incident

report or, alternatively, was shown a copy of the incident report, on or about that same day.

- 24 On or about Wednesday 27 March 2019, Ms Brown organised a second phone meeting and phoned the defendant but she was upset. Ms Brown offered to visit her and the defendant declined.

24A On or about 26 or 27 March 2019, Ms Brown had a conversation with Chris Payne, the Departmental Liaison Officer from the Department of Defence who was then working in the plaintiff's ministerial office suite. During that conversation, Ms Brown disclosed to Mr Payne that the defendant had been found undressed in the Minister's suite in the early hours of 23 March 2019.

24B On or about 27 or 29 March 2019, the defendant had a conversation with Mr Payne, during which Mr Payne told the defendant that there was CCTV footage of the defendant entering Parliament House in the early hours of 23 March 2019 and that the defendant had been found undressed in the Minister's office by a security guard on that morning.

- 25 On or about Thursday 28 March 2019, Ms Brown convened another meeting with the defendant. During the meeting:

- (a) Ms Brown made the defendant sign a document called "Acknowledgment of the Statement of Standards for Ministerial Staff";
- (b) Ms Brown offered the defendant contact details for the Employee Assistance Program; and
- (c) the defendant said to Ms Brown words to the effect of: *"I remember him on top of me. I was barely lucid."*

- 26 On 28 March 2019 at 7:53pm, the defendant sent Ms Brown a text message:

"Hello Fiona,

I just wanted to see if it would be okay if I took tomorrow off to go to a doctors appointment? I'm currently on top of the campaign state packs and if approved will happily still do the media monitoring throughout the day too. Kind regards, Brittany".

- 27 On or about the evening of 28 March 2019 or the morning of 29 March 2019, Ms Brown informed the plaintiff that the defendant had told her that she recalled Mr Lehrmann being on top of her. The plaintiff asked Ms Brown to set up a meeting with the defendant for the following Monday.
- 27A On or around 29 March 2019, the plaintiff called Ms Brown and asked her to report the incident to the AFP on the defendant's behalf. Ms Brown did not agree and sought advice from Lauren Barons of the Department of Finance. The plaintiff repeated the request of Ms Brown over the course of that day and Ms Brown continued to refuse.
- 27B That same day, Ms Brown also received a phone call from the chief of staff, Reg Chamberlain, to the Special Minister of State (SMOS), who was, at that time, Alex Hawke. Mr Chamberlin told Ms Brown that the SMOS had been speaking with the plaintiff and also wanted Ms Brown to report the incident to the AFP. Ms Brown also refused as set out above, despite the request being repeated over the course of that day.
- 27C Ms Brown subsequently called the defendant and asked the defendant if she would like Ms Brown to make a report to the police on her behalf. The defendant said that she wanted to speak with her family over the weekend before making a decision about reporting the matter to the police, and Ms Brown relayed this to the plaintiff.
- 27D In a phone call that took place at around 4 pm, the plaintiff then asked Ms Brown to set up a meeting with the defendant for the following Monday.
- 27E At around 6:05 pm that evening, Ms Brown received an email from Ms Barons in which Ms Barons provided in writing advice to Ms Brown about her dealings with the defendant. In that email, Ms Barons stated that 'for a referral to be made on her behalf or without her consent or against her wishes could be harmful to her' and referred to the 1800Respect.org.au website (a domestic and sexual violence support service) and advice given on it. Ms Brown forwarded that email to the plaintiff that same day and the plaintiff acknowledged receipt of it the following morning.
- 28 In the circumstances set out above, by at least 29 March 2019, the plaintiff was aware that:
- (a) Mr Lehrmann and the defendant had entered her Ministerial Suite in the early hours of Saturday 23 March 2019 in what was a serious security incident;
 - (aa) Mr Lehrmann had previously been involved in a serious security incident during which he had mishandled classified information;

(ab) Ms Brown was sufficiently concerned about Mr Lehrmann's conduct to direct him to wait for her to escort him out of Parliament House so she could retain his security pass and to speak with the Director of ASIO about Mr Lehrmann;

(ac) the security incident had been reported to the PMO, who were engaged with it, and the plaintiff had also shared information about it with the SMOS, Alex Hawke and his office, who were also engaged with it;

(b) the defendant was very intoxicated;

(c) there was a sexual element to the ~~security incident~~ after hours entry into the plaintiff's Ministerial Suite;

(d) the defendant was found in a naked or semi-naked state;

(da) Mr Lehrmann told Ms Brown that he had returned to Parliament House with the defendant to drink whiskey and, when asked what he did whilst in the office said 'he didn't wish to get into that';

(db) the defendant had told Ms Brown that she recalled Mr Lehrmann being on top of her and that she was barely lucid;

(e) the defendant had asked for a day off on 29 March 2019 to go to the doctor; and

(f) the defendant was distressed and upset, and Ms Brown was concerned about her welfare.

29 In the circumstances, it may be inferred that by this time the plaintiff understood that there was a possibility that non-consensual sexual contact had occurred.

30 On Sunday 31 March 2019, Ms Brown sent the defendant a WhatsApp message asking her to meet with the plaintiff the following day.

31 On the morning of Monday 1 April 2019, the plaintiff called the defendant into a meeting with the plaintiff and Ms Brown in the plaintiff's office, where the incident had occurred.

32 During the meeting, the defendant felt panicked that she was in the room with the couch where Mr Lehrmann had raped her.

33 During the meeting:

(a) the defendant told the plaintiff and Ms Brown she had been assaulted by Mr

Lehrmann on the couch;

- (b) the plaintiff told the defendant she was not the right person to be talking to about her allegation;
- (c) the defendant told the plaintiff and Ms Brown that she didn't want to lose her job;
- (d) the plaintiff:
 - (i) apologised to the defendant, saying *"I'm sorry this happened to you"*;
 - (ii) said to the defendant words to the effect of: *"I didn't think he was capable of something like that"*;
 - (iii) said to the defendant words to the effect of: *"As women, this is something we go through"*;
 - (iv) referred to the upcoming election;
 - (v) asked the defendant whether she was going to report the matter to the police; and
 - (vi) said if the defendant was going to report the matter to the police, she ~~had to~~should let the plaintiff know.

34 ~~After the meeting, the defendant felt threatened and intimidated.~~

35 On 15 February 2021, which was the day on which Channel 10's The Project televised an interview in which the defendant discussed the Rape Allegation (**The Project Interview**), a government spokesman said that the plaintiff accepted that it was an error to meet with the defendant in the plaintiff's office to discuss the incident (being the events that occurred in Parliament House in the morning of 23 March 2019), and that the meeting should have been conducted elsewhere.

36 The plaintiff mishandled the aftermath of the incident and failed to support the plaintiff by:

- (aa) not disclosing, or causing to be disclosed, to the defendant all of the information that the plaintiff or Ms Brown had learned about the incident during discussions with the defendant including specifically that the defendant had been found naked or substantially naked passed out on the plaintiff's couch;
- (ab) disclosing details of the incident to others within the plaintiff's office and to the SMOS without the defendant's consent;

- (ac) seeking to cause Ms Brown to report the incident to the AFP on the defendant's behalf without obtaining the defendant's consent to do so and before speaking with the defendant about this;
 - (a) convening the 1 April meeting in her office, which had the potential to be seriously triggering for the defendant, who was already in a distressed state when she was aware that the defendant had said that she recalled Mr Lehrmann being on top of her and that she was barely lucid in the morning of 23 March 2019;
 - (b) seeking to dissuade the defendant from speaking further with the plaintiff about the assault, by telling her she was not the right person to be talking to about it;
 - (c) minimising the significance of the assault by telling the defendant that this is something women go through;
 - (d) referring to the upcoming election; and/or
 - (e) placing pressure on the defendant by asking her whether she was going to report the matter to police, and saying if she was, she ~~had to~~should let the plaintiff know.
- 37 Following the meeting, Ms Brown organised a meeting between the defendant and the Australian Federal Police.
- 38 At about midday, the defendant met with Federal Agents Rebecca Cleaves and Katie Thelning from the Australian Federal Police located within Parliament House.
- 38A In the period from 1 to 5 April 2019, the plaintiff and Ms Brown, with the involvement of Dr Kunkel of the PMO and Mr Chamberlain of the SMOS's Office and the Government Staffing Committee, were engaged in considering and pursuing termination of Mr Lehrmann's employment on the basis of serious misconduct and a breach of the ministerial statement of standards. During this process Ms Brown also consulted with AC Close of the AFP. Mr Lehrman was informed by letter that his employment was terminated late on 5 April 2019.
- 38B During that same period (or in the weeks following it), the plaintiff did not speak with the defendant again about the incident or the Rape Allegation.
- 39 In the knowledge that an election was about to be called, that week on or about 3 April 2019, the plaintiff and Ms Brown gave the defendant the option of:
- (a) going to Perth to work on the plaintiff's election campaign;
 - (b) remaining in Canberra; or

- (c) returning to the Gold Coast to work from home, in relation to which an indication was given to the defendant that if she chose this option there would be no prospect of a role after the election.
- 40 The effect of the indication in sub-paragraph (c) above was to place pressure on the defendant to accept the options in sub-paragraphs (a) or (b) above, where she would be away from her support network.
- 41 ~~At the time those options were given to the defendant, On or around 4 April 2019 the plaintiff and Ms Brown were told by Assistant Commissioner Leanne Close of the Australian Federal Police had been told by the Deputy Commissioner of the Australian Federal Police~~ that the defendant was making a complaint and taking the matter further. ~~During the meeting in which that was communicated to the plaintiff, Assistant Commissioner Close also told the plaintiff that she had concerns from information that she had heard that this may have happened before or could happen again (referring to information that the alleged victim may have been drugged).~~
- 41A ~~The plaintiff mishandled the aftermath of the incident and failed to support the defendant by not telling the defendant that the AFP had approached the plaintiff to discuss the defendant's complaint without the defendant being present, and asking if the possibility that the defendant had been drugged had been raised with her by the AFP, as a matter relevant to the defendant's physical and mental health and well-being in the days following the incident and the appropriateness of her travelling to Perth to work on the election campaign.~~
- 42 During that week, the defendant had a panic attack. The defendant felt unsupported and that the incident was not being managed properly by the plaintiff's office.
- 43 On or about ~~the evening of~~ 5 April 2019, Ms Brown handed over to another acting chief-of-staff and relocated to Brisbane for the election campaign.
- 44 On Sunday 7 April 2019 at 7:46pm, Ms Brown sent the defendant a text message stating:
- "Hi Brittany, hope you've had a good weekend! I thought I should clarify my message earlier which I sent to you, Drew and Dean. As we discussed the other day you can let me know if something doesn't work for you eg, a time to go to WA etc*
- In my comms I didn't want to leave you off the CBR WA staff who were travelling.*

Dean may coordinate but if something doesn't work for you make sure you let me know.

You'll also find Dean good to work with. I'm only a call away! Best, Fiona".

45 At 8:26pm, the defendant sent Ms Brown a text message stating:

"Hi Fiona, Absolutely, thank- you for the message. Yes, I figured as much and really appreciate it. I definitely will keep that in mind if there are any major issues. Enjoy CHQ!"

46 On or about Monday 8 April 2019, the defendant met with Detective Senior Constable Sarah Harman and Constable Kristy Anderson from the ACT Sexual and Child Assault Team. The officers explained the process of lodging a complaint. The defendant told the officers some details about the assault. The officers introduced her to a woman from the Canberra Rape Crisis Centre.

47 On 10 April 2019 at 1.56 pm, Detective Senior Constable Harman made a follow up call to the defendant and left an SMS message that was not responded to.

48 On 11 April 2019, Scott Morrison called an election for 18 May 2019. Calling the election triggered a process whereby government members and staff entered 'election mode' where the primary focus was on the election.

49 On 11 April 2019, the defendant took a day off work as a sick day. She received a WhatsApp message from Ms Brown during that day about making travel arrangements for Western Australia.

50 The defendant felt under pressure to decide whether or not to go to Western Australia.

51 The defendant wanted to work from home in the Gold Coast during the election so that she could pursue her police complaint from a location where she had a support system and so she could continue to work on the election campaign. However, she understood that if she didn't go to Western Australia, she would not have a job after the election.

52 Ms Brown was the plaintiff's chief of staff and the defendant considered that actions taken by Ms Brown were on behalf of the plaintiff. It can be inferred that the plaintiff was kept up to date by Ms Brown with those actions over time.

53 In all the circumstances of her dealings with the plaintiff, including through engagement with Ms Brown set out above, the defendant felt:

(a) confused and unsure about what to do; and

(b) that the plaintiff, whilst signalling that she ought to make a complaint to the police, did not actually want her to pursue such a police complaint; and

- (c) she felt she was under pressure not to do so in the interests of the Liberal Party of whom the plaintiff is a member given the upcoming election.
- 54 On Saturday 13 April 2019 at 1:28 pm, the defendant sent an email to Detective Senior Constable Harman stating:
- "After careful consideration, I've decided not to proceed any further in this regard. I really appreciate your time, professionalism and assistance with the complaint. You have helped me more than you know. It's just not the right decision for me personally, especially in light of my current workplace demands. Thank you again for your candour, and I apologise if I've taken up much of your time."*
- 55 On or about 14 April 2019, the defendant relocated from Canberra to Perth to join the plaintiff's re- election campaign.
- 56 During the period of time the defendant was in Perth working on the plaintiff's campaign, she felt isolated and wastraumatised and in a state of depression and confusion.
- 57 During the period of time the defendant was in Perth working on the plaintiff's campaign, the defendant did not see the plaintiff often, and the defendant was not offered any additional support, from the plaintiff or otherwise.
- 58 The plaintiff mishandled the defendant's Rape Allegation and failed to provide support to the defendant when she:
- (a) through Ms Brown, indicated to informed the defendant that she would not have a job after the election with the plaintiff if she chose to work from the Gold Coast where she had a support network;
 - (b) effectively required her to travel to Perth where she was isolated; and
 - (c) failed to give or arrange for the defendant to be given additional support when she was in Perth knowing of the matters set out in paragraphs 21 to 45 above.
- 59 On 18 May 2019, the Government won the election.
- 60 The defendant did not reapply for her role with the plaintiff.
- 61 The defendant applied for, and accepted a media liaison role with Michaelia Cash, the Minister for Employment, Skills, Small and Family Business, which she commenced on 7 June 2019.
- 62 In or about October 2019, a journalist from *The Canberra Times* made an enquiry with the plaintiff's office regarding an incident that had occurred in her office.

- 63 The plaintiff told her staff about the incident and that there had been a police inquiry into it.
- 64 The plaintiff also told Daniel Try, the chief of staff to Senator Cash, the defendant's then employer, that she intended to send someone from her office to speak with the defendant because there had been a media enquiry about an incident that happened in the plaintiff's office when the defendant had worked for her, disclosing that matter without the defendant's consent to Mr Try.
- 64A The plaintiff mishandled the Rape Allegation, and failed to support the defendant, by disclosing the matter to Mr Try without the defendant's consent in circumstances and without speaking with the defendant.
- 65 The plaintiff did not ~~contact the Prime Minister's Office~~ to inform the Prime Minister, Scott Morrison, of the serious breach of security or the Rape Allegation until 12 February 2021.
- 66 The plaintiff mishandled the defendant's Rape Allegation and failed to provide support to her by not informing the Prime Minister ~~'s Office~~ of the serious breach of security or the Rape Allegation until 2023¹.
- 67 On or around 15 February 2021, after The Project Interview was broadcast, the plaintiff publicly apologised to the defendant for the fact that her actions and handling of the matter added to the defendant's distress. In that statement the plaintiff said *"For my part, I am deeply sorry that Brittany felt unsupported at the time of the incident and in the months that followed, and in fact the years that followed. I am also deeply sorry that some of my actions and my handling of this matter added to Brittany's distress."*
- 68 On 2 March 2021, media reports emerged that on 15 February 2021, the plaintiff said in front of her staff that the defendant was a *"lying cow"*.
- 69 The same day, the plaintiff released a public statement apologising to the defendant and stating that she was *"deeply sorry... for these remarks and for any hurt and distress they have caused..."*.
- 70 The Prime Minister publicly rebuked the plaintiff for the comment, saying it was *"offensive and wrong"*.

- 71 On 21 March 2021, the plaintiff and defendant reached a settlement in relation to defendant's claim that the "lying cow" comment was defamatory of her. The settlement was on a 'no admissions' basis but included the plaintiff giving the defendant another public apology and paying compensation to her, which the defendant donated (except for legal fees) to a sexual assault charity.
- 72 The plaintiff mishandled the Rape Allegation and failed to support the defendant, including by undermining her credibility and making allegations about her honesty after the defendant had disclosed the Rape Allegation in the televised interview with The Project.

72A In all of the circumstances set out in paragraphs 18 to 72 above, the plaintiff mishandled the Rape Allegation and failed to support the defendant.

ACTIONS DURING LEHRMANN'S TRIAL (PARAGRAPH 8.3 IMPUTATION)

- 73 The plaintiff was called as a witness in Mr Lehrmann's criminal trial.
- 74 The plaintiff and her partner usually reside in Perth and, while her partner attended the trial, the plaintiff remained in Perth.
- 75 The plaintiff's partner attended the trial with the knowledge of the plaintiff because (as the ~~defendant~~ plaintiff stated under cross-examination in Mr Lehrmann's criminal trial) the plaintiff that she "wanted to know what was said". The plaintiff's partner attended multiple days of the criminal trial and sat in Court, including during the time the defendant was giving evidence.
- 76 At 4:27 pm on 6 October 2021, while the defendant was giving evidence at Mr Lehrmann's criminal trial, the plaintiff sent a text message to Mr Lehrmann's barrister stating:
- "Hi, do you have the daily transcripts and if so are you able to provide my lawyer?"*
- 77 Prior to sending this message, the plaintiff had been told by her lawyer that her partner, who sat in Court during the defendant's evidence, should not discuss the defendant's evidence with her. It can be inferred that the plaintiff understood that she should not seek access to information about the evidence given by the defendant before the

plaintiff gave evidence. Notwithstanding this, the plaintiff made the request for those daily transcripts as set out above.

78 After the plaintiff requested the daily transcripts, her lawyer also told her that it was an inappropriate request.

79 The plaintiff sent another text message to Mr Lehrmann's barrister one minute later, at 4:28pm on 6 October 2021 stating:

"Also, if you have text messages between Brittany and Nicky they may be revealing."

80 The plaintiff was a witness in the trial. By her conduct in seeking to assist the defence team, the plaintiff acted in a manner which was not impartial as between the prosecution and defence, and which suggested she was not disinterested in the outcome of the trial.

81 The plaintiff's partner was also seen discussing matters with the defence team during the trial.

82 The plaintiff's conduct in sending those text messages after seeking access to daily transcripts of the defendant's evidence was the subject of questioning at the trial. Justice McCallum allowed the plaintiff to be questioned on her conduct sending the text messages because those matters were relevant to the credit of the plaintiff as a witness.

83 The Plaintiff's conduct during the trial was also later the subject of questioning through a private complaint made by the ACT DPP, Mr Drumgold, to the ACT Chief of Police. This complaint was later made public through a freedom of information request.

83A In *Drumgold v Board of Inquiry & Ors (No. 3)* 2024 ACTSC 58, Justice Kaye found that there was sufficient information known to the DPP at the time of conducting his cross-examination of the plaintiff such that the DPP had a basis to put the propositions advanced by the DPP in his cross-examination of the plaintiff to her.

84 There were also widespread media reports commenting on and questioning the appropriateness of the plaintiff's conduct at the trial, in particular, the conduct of the plaintiff in texting Mr Lehrmann's barrister the text message set out above and which,

as stated in paragraph 79, gave the impression that the plaintiff was not impartial as between the prosecution and defence, and not disinterested in the outcome of the trial.

85 In the circumstances, the plaintiff engaged in conduct which was open to question (and was questioned including by the judge and the ACT DPP) at the trial of Mr Lehrmann.

HARASSMENT CONDUCT (PARAGRAPH 8.1 IMPUTATION)

86 The defendant refers to the matters set out at paragraphs [568](#) and 74 to [84](#) above.

[86A](#) In or about early 2022, the defendant made complaints against the Commonwealth, the plaintiff and Senator Cash arising from her employment during 2019 with them. The plaintiff subsequently made an application to the Commonwealth for legal assistance in relation to those claims under section 85 of the *Parliamentary Business Resources Regulations 2017* (Cth).

[86B](#) On or about 26 June 2022, the solicitors for the Commonwealth wrote to the plaintiff on a confidential basis (the letter also stating that legal professional privilege applied to the communication) advising the plaintiff that the Commonwealth intended to mediate those complaints with the defendant.

[86C](#) On 6 December 2022, the solicitors for the Commonwealth again wrote to the plaintiff on a confidential basis (the letter again stating that legal professional privilege applied to the communication) providing further information about the Commonwealth's participation in a mediation with the defendant, to be held on 13 December 2022. In that letter the Commonwealth directed the plaintiff not to make any public comment about the mediation or the defendant's claim and to maintain confidentiality in relation to all information related to the mediation.

[86D](#) On or about 12 December 2022, the plaintiff provided the correspondence set out in paragraphs 86B and 86C above, together with her response to the latter letter in which the plaintiff's lawyers described the defendant's claims as 'spurious', to Janet Albretchen of *The Australian*.

[86E](#) On or about 15 December 2022, Ms Albretchen published an article in *The Australian* entitled '*Linda Reynolds muzzled in Brittany Higgins Lawsuit Defence*' which referred to that confidential correspondence.

87 Further, on 17 February 2023, the plaintiff gave an interview to Ms Albretchsen of *The Australian* commenting on the defendant's Rape Allegation. During this interview, the plaintiff alleged that she had supported the defendant after the incident, notwithstanding the defendant had given sworn testimony to the effect that she was not and did not feel appropriately supported, and the apologies made by the plaintiff about those matters in 2021. The plaintiff also told *The Australian* that she had, in fact, been told by Ms Brown about the defendant's statement that she recalled Mr Lehrmann on top of her prior to meeting with the defendant on 1 April 2019 in a manner that contradicted sworn evidence the plaintiff had given in the criminal prosecution of Mr Lehrmann.

87A Prior to the publication of this article, the plaintiff had provided a number of documents to Ms Albretchsen including a copy of an internal departmental email marked 'Sensitive: Personal' between Fiona Brown and Lauren Barons (which, at that time, had not entered the public domain) in relation to the plaintiff dated 29 March 2019, a tweet sent by the defendant in 2019 and a question time answer dossier, information used in the 17 February 2023 interview and articles that accompanied it.

87B Ms Albretchsen published a further article on 17 February 2023 entitled "Brittany Higgins' compensation payout clouded by 'secret' email. In that article, Ms Albretchsen made reference to the email to Ms Brown from Ms Barons, describing it as a 'previously secret email' and stated that it raised further questions about the settlement reached between the Commonwealth and the defendant.

87C The plaintiff continued to send documents to Ms Albretchsen from time to time from February 2023 onwards including providing a copy of additional correspondence exchanged with the Commonwealth's solicitors relating to the plaintiff's requests for legal assistance to participate in the ACT Board of Inquiry into the Criminal Justice System (**Sofronoff Inquiry**) on or about 31 May 2023, and a draft and then final copy of a submission made by the plaintiff to the Sofronoff Inquiry (which is not publicly available on the Inquiry website) on or about 11 July 2023.

88 On or about 7 June 2023, the plaintiff made a statement that questioned the settlement reached by the defendant with the Commonwealth in relation to a personal injury claim made by the defendant against it, the plaintiff and Senator Cash in December 2022 and suggested it be referred to the National Anti-Corruption Commission (**NACC**). It can be

inferred from that statement that the plaintiff was suggesting publicly that there was something untoward about that settlement.

89 On or around, the same day, the Prime Minister, Anthony Albanese, stated publicly that such an action would be "*entirely inappropriate*".

90 On 4 July 2023, the plaintiff asked the NACC to investigate the circumstances of the settlement between the defendant and the Commonwealth. The plaintiff then informed the media of that fact, notwithstanding that this was a matter for the NACC, and continued to publicly question the settlement. It can be inferred that the plaintiff was making comments to the media, rather than simply making a referral, to seek to persuade the public that there was an issue with the settlement.

90A The plaintiff participated in an interview broadcast on Channel Seven's Spotlight Programme on 13 August 2023, during which the plaintiff:

- (a) challenged the defendant's veracity on the rape allegation;
- (b) undermined the defendant's trauma she experienced during the period of time when the defendant was in Perth working on the plaintiff's campaign; and
- (c) insinuated the defendant stole the plaintiff's Carla Zampatti jacket.

91 In the circumstances, the plaintiff has engaged in a campaign of harassment against the defendant, including by:

- (aa) providing confidential information to the media relating to the mediation of the complaints made by the plaintiff against the Commonwealth, the defendant and Senator Cash;
- (ab) questioning, directly or indirectly, the circumstances of the defendant's personal injury claim against the Commonwealth;
- (a) undermining her credibility; and
- (b) questioning, directly or indirectly, :
 - (i) the truth of sworn testimony given by the defendant about the handling of the Rape Allegation by the plaintiff; and
 - (ii) the circumstances of the settlement of her personal injury claim against the Commonwealth.

20 JULY TWEETS AND INSTAGRAM STORY (PARAGRAPH 12 & 15 IMPUTATIONS)

92 On 1 February 2023, the Board of Inquiry into the Criminal Justice System in the

Australian Capital Territory, chaired by Walter Sofronoff commenced (**Sofronoff Inquiry**). The Sofronoff Inquiry was established by the ACT to ensure that the Territory's framework for progressing criminal investigations and prosecutions is robust, fair and respects the rights of those involved. Specifically, the Inquiry examined the conduct of criminal justice agencies involved in the criminal trial of Mr Lehrmann.

- 93 The plaintiff provided a submission to the Sofronoff Inquiry.
- 94 By that submission, the plaintiff asserted that the *Crimes Act 1900* (ACT) should be amended to deter individuals from using the media and/or Parliamentary forums in relation to an alleged criminal offence that ought properly be the subject of the criminal justice process, pointing to a section of the NSW Crimes Act that makes it an offence for anyone who knows or believes that a serious indictable offence has been committed to fail to report it to the police. The submission proposed that 'consideration should be given to establishing a new offence or expanding the existing offences under sections 724 and 725 of the *Criminal Code 2002* (ACT) to prohibit a person from publicising allegations or an alleged criminal act where that person has a reckless disregard, or is recklessly indifferent, to the risk of hindering a court, tribunal, commission, board or other entity in the exercise of its functions in a legal proceeding or an investigation by doing so.'
- 95 If enacted, the effect of the plaintiff's submissions would be to obstruct the agency of victims of sexual assault in how they engage with the criminal justice system and tell their story, which would have the consequence that victims may not tell their stories at all (in effect, silencing them).

ANNEXURE B: PARTICULARS OF QUALIFIED PRIVILEGE (COMMON LAW AND SECTION 30 OF THE DEFAMATION ACT)

In support of the defences of qualified privilege, pleaded in paragraph [259](#) and paragraph [26 30](#), the defendant relies upon the following facts, matters and circumstances:

DUTY AND INTEREST

1 The defendant published the Publications in the course of giving to the recipients information about the following subjects, each of which was of interest or apparent interest to the recipients (**Subjects**):

- (a) In relation to the 4 July 2023 Instagram Story:
 - (i) the Federal Government's handling of the defendant's Rape Allegation;
 - (ii) the conduct of the plaintiff, then a Minister and Senator for Western Australia, and the employer of the defendant, in handling the defendant's Rape Allegation;
 - (iii) allegations that the Federal Government, including the plaintiff, a member of that Government and the defendant's employer, had mishandled the Rape Allegation including by:
 - (A) allegedly treating the Rape Allegation as a political inconvenience or political crisis to be managed in the lead up to an impending Federal election, rather than dealing with it seriously and appropriately as a genuine and serious allegation of criminal conduct that required investigation and action;
 - (B) the plaintiff convening a meeting with the defendant in the office in which the rape was alleged to have occurred, and the plaintiff and Federal Government later accepting this was not an appropriate thing to have done;
 - (C) allegedly treating the defendant in such a way that she was reluctant to pursue her allegations through the police and was placed in such a position that she felt she had to choose between pursuing her allegation of rape through the police or maintaining her job with the plaintiff;
 - (iv) the culture and safety of Parliament House as a workplace;

- (v) the treatment of women in Australian politics and within Parliament House;
- (vi) the treatment of sexual assault complainants in Parliament House and within the Federal Government, and generally;
- (vii) the way in which sexual violence against women is discussed publicly or as part of a national conversation;
- (viii) the conduct of the plaintiff, at that time the Minister for Defence and a member of the Federal Government, following the broadcast of The Project Interview, including:
 - (A) public acknowledgements and apologies given by the plaintiff of the distress experienced by the defendant as a result of the way in which her Rape Allegation was handled by the plaintiff, her office and the Federal Government; and
 - (B) a comment made by the plaintiff in or around March 2021 that the defendant was a “*lying cow*” to members of her staff present in her Ministerial Office, and the resolution of a notice of concerns issued by the defendant to the plaintiff.
- (ix) the investigation of the Rape Allegation by the ACT Police and the subsequent criminal trial of Bruce Lehrmann;
- (x) the conduct of the plaintiff, who was called as a witness, during the criminal trial of Mr Lehrmann;
- (xi) the conduct of the plaintiff following the discontinuance of the criminal prosecution of Mr Lehrmann including by giving interviews to *The Australian*, and speaking publicly about her handling of the Rape Allegation and the defendant;
- (xii) public criticisms made by the plaintiff in Parliament and the media, about the handling by the Federal Government of a personal injury claim made by the defendant against the Commonwealth, the plaintiff and Senator Michaelia Cash (**Claim**) and the terms of settlement reached between the Commonwealth and the defendant;
- (xiii) the referral by the plaintiff of the Claim to the Federal National Anti-Corruption Commission; and

- (xiv) allegations made by the plaintiff, a Senator for Western Australia and former Minister, that the Federal Government was prejudiced in the way that it dealt with her request for Commonwealth funding to participate in the Sofronoff Inquiry.
 - (b) In relation to the 20 July 2023 Tweets and Instagram Story, the defendant refers to and repeats paragraphs 1(a)(v), 1(a)(vi) and 1(a)(vii) above and says further:
 - (i) the Sofronoff Inquiry generally, and submissions made to it;
 - (ii) the submission made by the plaintiff, a Senator for Western Australia, former Minister and current member of the Liberal Party, to the Sofronoff Inquiry;
 - (iii) the impact of the #MeToo movement on the Federal Government;
 - (iv) the impact of the justice system on sexual assault survivors and potential reforms to that system; and
 - (v) the defendant's work as an advocate for sexual assault survivors, including the #LetHerSpeak campaign and the #March4Justice.
 - (c) In relation to the 27 January 2022 Tweet:
 - (i) the matters set out in (a)(i) to (vi) and (viii) above; and
 - (ii) the investigation of the Rape Allegation by the ACT Police, the laying of charges against Bruce Lehrmann and the trial to be held later in 2022 at which the plaintiff was likely to be called as a witness.
- 2 The Publications were published to the recipients of those Publications, being viewers of the Instagram story on the Instagram account @BrittanyHiggins_ and users of Twitter (X), in the course of giving them information about the Subjects.
 - 3 The defendant believed on reasonable grounds that the recipients of the Publications, had an interest or had an apparent interest in the Subjects for the reasons set out in paragraph 4 and 5 below, and because the recipients are followers of the defendant (other than in the case of the 27 January 2022 Tweet where the recipients are persons, or a subset of persons, who read her comment on the 27 January 2022 Tweet).
 - 4 Each of the Subjects was a matter of public interest.
 - 5 Each of the Subjects related to government and political matters.
 - 6 The defendant had a legal, social or moral duty, to provide her opinion and response to members of the Australian public who are followers of the defendant on the news

articles, or public statements made by the plaintiff, upon which the 4 July Instagram Story, 20 July 2023 Tweets and/or 27 January 2022 Tweet comments on and which related to government and political matters and which are also matters about and of concern to the defendant, as detailed in Annexure A.

REASONABLENESS:

The 4 July Instagram Story:

- 7 The defendant's conduct in publishing the 4 July Instagram Story was reasonable in the circumstances set out below.
- 8 By reasons of the matters set out above, the defendant reasonably held the view that the 4 July Instagram Story was in the public interest.
- 9 The 4 July Instagram Story expressed the defendant's honest opinions about matters of public interest based on proper material, for the reasons set out in Annexure B-C.
- 10 The 4 July Instagram Story was based on information set out in Annexure A and which was a matter of public record.
- 11 The 4 July Instagram Story responded to media reports of comments made by the plaintiff about matters directly relevant to the defendant's Rape Allegation, its prosecution and her Claim, matters about which the defendant has direct and personal knowledge.
- 12 The matters the subject of the 4 July Instagram Story had been the subject of extensive reporting since February 2021, and were also raised during:
 - (a) the criminal prosecution of Mr Lehrmann;
 - (b) the Sofronoff Inquiry; and
 - (c) media interviews given by the plaintiff.
- 13 The views of the plaintiff upon which the 4 July Instagram Story commented were matters of public record as a result of the plaintiff's cross-examination in the criminal trial of Mr Lehrmann and the interview given by the plaintiff to *The Australian*. In the circumstances, it was reasonable for the defendant not to seek comment from the plaintiff on statements made in the 4 July Instagram Story commenting on those views.
- 14 The defendant considered that it was in the public interest in the circumstances for the 4 July Instagram Story to be published expeditiously because:
 - (a) the subject matter was related to articles that had been published that day, and was therefore part of public discourse on that day; and

- (b) the articles commented on matters related to her Rape Allegation and her Claim, and its resolution, and the recipients who were followers of the defendant had an interest in receiving the defendant's views on the matters discussed in the article.
- 15 The 4 July Instagram Story was published as an Instagram Story, which is available on Instagram for a period of 24 hours only to followers of the defendant's Instagram account and, if searched for by a user of Instagram, by such a user.

The 20 July 2023 Tweets and Instagram Story:

- 16 The defendant's conduct in publishing the 20 July Tweets and 20 July Instagram Story was reasonable in the circumstances set out below.
- 17 By reasons of the matters above, the defendant reasonably held the view that the 20 July Tweets and 20 July Instagram Story were in the public interest.
- 18 The 20 July Tweets and 20 July Instagram Story expressed the defendant's honest opinions about matters of public interest based on proper material, for the reasons set out in Annexure B.
- 19 The 20 July Tweets and 20 July Instagram Story were based on the information set out in paragraphs 92 to 95 of Annexure A and which were a matter of public record.
- 20 The defendant has worked as a sexual assault survivor advocate since 2021 and has significant experience in, and knowledge of, the issues faced by sexual assault survivors in seeking recourse through the criminal justice system, the work of the #LetHerSpeak campaign and the #March4Justice movement.
- 21 The 20 July Tweets and 20 July Instagram Story responded to, and relied upon, articles published in *The Australian*, by Stephen Rice and Janet Albrechtsen, both experienced journalists with almost 40 years and 20 years respectively of professional experience in investigative journalism, and who stated in that article that they had been provided with a copy of the submission made by the plaintiff to the Sofronoff Inquiry.
- 22 It was reasonable for the defendant to presume the article was investigated, researched, authored and fact-checked by experienced and competent journalists and editors.
- 23 The defendant reasonably believed that the information included in *The Australian* article about the contents of the submission made by the plaintiff to the Sofronoff Inquiry was true and correct, and represented the plaintiff's views about the matters upon which the submission commented.

- 24 The defendant considered that it was in the public interest in the circumstances for the 20 July Tweets and 20 July Instagram Story to be published expeditiously because:
- (a) the subject matter was related to an article that had been published that day, and was therefore part of public discourse on that day; and
 - (b) the articles commented on matters related to her advocacy for sexual assault survivors, and her Rape Allegation (in general terms), and the recipients of the defendant's Instagram and Twitter (X) content had an interest in receiving the defendant's views on the matters discussed in the article.
- 25 The 20 July Instagram Story was published as an Instagram Story, which is available on Instagram for a period of 24 hours only to followers of the defendant's Instagram account and, if searched for, by users of the Instagram application.

27 January 2022 Tweet

- 26 The defendant's conduct in publishing the 27 January 2022 was reasonable in the circumstances set out below.
- 27 By reasons of the matters set out above, the defendant reasonably held the view that commenting on the 27 January 2022 Tweet was in the public interest; alternatively, if the Court finds that the defendant was a publisher of the 27 January 2022 Tweet (which is denied), that the Tweet was in the public interest.
- 28 The 27 January 2022 Tweet responded to a public statement made by the plaintiff on her Australian Parliamentary website.
- 29 The 27 January 2022 Tweet expressed the defendant's honest opinions about matters of public interest based on proper material, for the reasons set out in Annexure C.
- 30 The 27 January 2022 Tweet was also based on information set out in Annexure A, which was a matter of public record.
- 31 The defendant considered that it was in the public interest in the circumstances for her comment on the 27 January 2022 Tweet; alternatively, if the Court finds that the defendant was a publisher of the 27 January 2022 Tweet (which is denied) to be published expeditiously after she was alerted to the publication of the statement on the plaintiff's website upon which the 27 January 2022 Tweet comments ~~because~~ the recipients who read her comment on the 27 January 2022 Tweet, or a subset of persons, had an interest in receiving the defendant's views on the matters set out in that statement.

- 32 The subject matter of the comments made by Mr Sharaz (and, if, which is denied, the defendant if found to be a publisher) in the 27 January 2024 Tweet relate to matters which has been the subject of extensive reporting since February 2021. In the circumstances, it was reasonable for the defendant not to seek comment from the plaintiff on statements made in the 27 January 2024 Tweet commenting on those views.

ANNEXURE C: PARTICULARS OF HONEST OPINION/FAIR COMMENT

In support of the defence of honest opinion, the defendant relies upon the following facts, matters and circumstances:

- 1 The Publications contained expressions of the opinion of the defendant.

PUBLIC INTEREST

- 2 The opinions related to the matters set out at paragraph 1 of Annexure B, each of which is a matter of public interest.

FACTS UPON WHICH COMMENTS WERE BASED

- 3 Those opinions were based on the following facts and matters:
 - (a) In relation to the 4 July 2023 Instagram Story:
 - (i) the facts and matters set out in paragraphs 1 to 91 of Annexure A; and
 - (ii) the issuing by the plaintiff of proceedings against the defendant's fiancée alleging that she had been defamed by the defendant's fiancée in a tweet made by him commenting on information posted on the plaintiff's website about work allegedly done by the plaintiff to support women in Parliament;
 - (b) In relation to the 20 July Tweet and 20 July Instagram Story:
 - (i) the facts and matters set out in paragraphs 92 to 95 of Annexure A;
 - (ii) the facts and matters set out in the articles published in *The Australian* by Stephen Rice and Janet Albrechtsen, both experienced journalists with almost 40 years and 20 years respectively of professional experience in investigative journalism, and who stated in that article that they had been provided with the copy of the submission made by the plaintiff to the Sofronoff Inquiry; and
 - (iii) the results of a survey conducted by the Australian Bureau of Statistics which estimated that 87% of those who are the victim of sexual assault do not report those assaults to the authorities;
 - (c) [In relation to the 27 January 2022 Tweet:](#)

- (i) the facts and matters set out in paragraphs 1 to 82 94 of Annexure A; and
- (ii) the issuing by the plaintiff of proceedings against the defendant's then fiancée alleging that she had been defamed by the defendant's then fiancée in a tweet made by him commenting on information posted on the plaintiff's website about work allegedly done by the plaintiff to support women in Parliament.

4 The opinions in the Publications which were based on the facts and matters in the preceding paragraph were proper material and fair comment on matters of public interest because:

- (a) those facts and matters were substantially true; or
- (b) the Publications were published on an occasion of qualified privilege.

5 The defendant honestly holds the opinions expressed in the Publications.

6 The defendant says further the Publications responded to news articles reporting on comments made by, or submissions made by, the plaintiff about matters which directly or indirectly related to the Rape Allegation or the Claim, matters relevant to the defendant and of public interest for the reasons set out above, and, in the circumstances, the opinions expressed by the defendant constitute fair comment.