

## **NOTICE OF FILING**

### **Details of Filing**

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

### **Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59  
Rule 29.02(1)

## Affidavit

No. NSD103 of 2023

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

### BRUCE LEHRMANN

Applicant

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

Affidavit of: **Marlia Ruth Saunders**  
Address: Level 14, 60 Martin Place Sydney NSW 2000  
Occupation: Lawyer  
Date: 1 April 2024

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

[Version 3 form approved 02/05/2019]

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I Marlia Ruth Saunders, of Level 14, 60 Martin Place Sydney NSW 2000, Lawyer, affirm:

1. I am a Partner at Thomson Geer, solicitors for the First Respondent.
2. I am authorised to make this affidavit on the First Respondent's behalf.
3. I have affirmed seven previous affidavits in this proceeding.
4. I make this affidavit from my own knowledge, except where I have stated otherwise. Where I depose to matters on the basis of information given to me, I believe that information to be true and correct.
5. This affidavit is made in support of the First Respondent's application to adduce fresh evidence in the proceeding.

### **Auerbach Evidence**

6. The First Respondent has applied, by an interlocutory application dated 31 March 2024, for leave to reopen its case for the purpose of adducing fresh evidence. The evidence upon which the First Respondent seeks to rely includes, relevantly:
  - (a) evidence that the Applicant, on or about 18 December 2022, provided to an employee of the Seven Network a Cellebrite extract comprising 2,312 pages of text messages exchanged between Ms Brittany Higgins and Mr Ben Dillaway (confidential exhibit TA-1 to the affidavit of Taylor Auerbach sworn 30 March 2024, pages 20–2,331) (**Dillaway Messages**);
  - (b) evidence that the Applicant, on or about 4 March 2023, provided to an employee of the Seven Network a Cellebrite extract comprising a series of text messages exchanged between Ms Brittany Higgins and Mr Peter FitzSimons (confidential exhibit TA-1 to the affidavit of Taylor Auerbach sworn 30 March 2024, pages 2,332–2,347) (**FitzSimons Messages**); and
  - (c) various records evidencing payments made by or on behalf of the Seven Network for the benefit of the Applicant in connection with his appearance in two episodes of the 7News Spotlight program (confidential exhibit TA-1 to the affidavit of Taylor Auerbach sworn 30 March 2024, pages 2,378–2,372) (**Payment Records**).

### **ACT Supreme Court Criminal Proceedings**

7. Between 4 and 27 October 2022, the Applicant was tried in the ACT Supreme Court on the charge of having sexual intercourse with Ms Higgins without her consent (**ACT Criminal Proceedings**).
8. I have reviewed the exhibit lists in the transcript of the ACT Criminal Proceedings, and based on that review:
  - (a) Exhibit H was the only Cellebrite extraction report of text messages exchanged between Ms Higgins and Mr Dillaway that was tendered in the ACT Criminal Proceedings. It comprised 17 pages; and
  - (b) no Cellebrite extraction report of text messages exchanged between Ms Higgins and Mr FitzSimons was tendered.

### **Relevant chronology in this Proceeding**

9. On or about 16 May 2023, the Applicant issued a Notice to Produce a Document in a Pleading or Affidavit (**Notice to Produce**). A copy of the Notice to Produce is annexed and marked **MRS-72**.

10. On or about 16 May 2023, I received a letter from the solicitors for the Applicant in respect of the Notice to Produce. A copy of the letter is annexed and marked **MRS-73**.

***Subpoena to the ACT DPP***

11. On or about 26 May 2023, the First Respondent served a subpoena to produce documents on the ACT Director of Public Prosecutions (**DPP Subpoena**).
12. A copy of the DPP Subpoena is annexed and marked **MRS-74**. The subpoena sought production of the brief of evidence, including all supplementary or updated briefs of evidence, provided to the Applicant or his legal representatives by or on behalf of the ACT DPP in the ACT Criminal Proceedings.
13. On or about 9 June 2023, the ACT DPP produced documents in response to the DPP Subpoena, including a copy of the Electronic Brief of Evidence (**eBrief**) in the ACT Criminal Proceedings.
14. Annexed to this affidavit and marked **MRS-75** is a screenshot of the “Table of Contents” from the eBrief and the metadata for the eBrief. The metadata, including the file name for the location of the eBrief, indicates that it was prepared on 30 March 2022.
15. I have reviewed the eBrief for the purpose of preparing this affidavit and make the following observations:
  - (a) A copy of the AFP Statement of Facts in the ACT Criminal Proceedings is contained in a sub-folder in the eBrief called “SOF3”. Annexed to this affidavit and marked **MRS-76** is a screenshot of the subfolder containing the AFP Statement of Facts.
  - (b) The eBrief contains a police statement from Peter Reid, a Senior Digital Forensic Examiner, dated 28 July 2021, in which Mr Reid records at paragraphs 20 to 28 and 42 of the statement that he performed an extraction of data from Ms Higgins’ mobile phone and created copies of “sixteen chat conversations titled “Identified Chat 1 – BH.pdf to Identified Chat 6 – BH.pdf (respectively)”. I presume that the reference to “Chat 6” is a typographical error, and should in fact state “Chat 16”. Annexed to this affidavit and marked **MRS-77** is a copy of the statement.
  - (c) A copy of a Cellebrite extraction report of text messages exchanged between Ms Higgins and Mr Dillaway is contained in the following series of subfolders in the eBrief: “PHONE DATA > Redacted conversations – Higgins > Identified Chat 3 – BH – Redacted – Ben Dillaway.pdf”. Annexed to this affidavit and marked **MRS-78** is a screenshot of the subfolders containing the Cellebrite extraction report. The report comprises 2,312 pages and appears to be identical to the Dillaway Messages. The metadata also appears to be identical to the metadata attached to the Dillaway Messages (see affidavit of Taylor Auerbach sworn 31 March 2024, annexure E).

(d) A copy of a Cellebrite extraction report of text messages exchanged between Ms Higgins and Mr FitzSimons is contained in the following series of subfolders in the eBrief: "PHONE DATA > Redacted conversations – Higgins > Identified Chat 14 – BH – Redacted – P Fitzsimmons.pdf". Annexed to this affidavit and marked **MRS-79** is a screenshot of the subfolders containing the Cellebrite extraction report. The report comprises 12 pages. The FitzSimons Messages are contained within those subfolders.

### ***First Spotlight Program***

16. On or about 31 May 2023, I caused a letter to be sent to the solicitors for Seven Network (Operations) Limited (**Seven**). A copy of the letter is annexed and marked **MRS-80**.
17. On 4 June 2023, a 7News Spotlight program was broadcast on Channel 7 (**First Spotlight Program**). The First Spotlight Program featured interviews with the Applicant and extracts of materials that were produced, but not tendered, in the ACT Criminal Proceedings.
18. On or about 5 June 2023, the First Respondent served a subpoena to produce on Seven. A copy of the subpoena is annexed and marked **MRS-81**. Category 2 of the schedule to the subpoena required Seven to produce: "One copy of all communications or documents and materials evidencing communications between Mr Bruce Lehrmann and officers, employees or contractors of Seven in relation to the Lehrmann Spotlight Programme".
19. On or about 5 June 2023, I caused a letter to be sent to the Applicant's solicitors. A copy of the letter is annexed and marked **MRS-82**.
20. On or about 5 June 2023, I received a letter from the Applicant's solicitors. A copy of the letter is annexed and marked **MRS-83**. The letter included a statement that "our client is well aware of his obligations pursuant to the decision in Harman, and he has at all times complied with those obligations".
21. On or about 6 June 2023, the solicitors for the Second Respondent sent a letter to the Applicant's solicitors, in which they provided further particulars of mitigation. Among other things, the Second Respondent relied on "The interview the applicant gave to Seven Network that was broadcast on 4 June 2023 including any compensation received for giving or supporting that interview." A copy of the letter is annexed and marked **MRS-84**.
22. On or about 7 June 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-85**.

23. On or about 8 June 2023, I received a letter from the solicitors for Seven. A copy of the letter is annexed and marked **MRS-86**.
24. On or about 8 June 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-87**.
25. On or about 8 June 2023, the solicitors for the Second Respondent sent a letter to Mark Llewellyn at Seven. A copy of the letter is annexed and marked **MRS-88**.
26. On or about 8 June 2023, I exchanged emails with the solicitors for the Applicant about proposed interrogatories which the Respondents sought to be administered to the Applicant and an affidavit I affirmed that day. A copy of the email exchange is annexed and marked **MRS-89**.
27. That evening, I sent sealed submissions to the Court in relation to the proposed interrogatories.
28. On or about 9 June 2023, I received an email from the solicitors for the Applicant in relation to the Respondents' submissions. A copy of the email is annexed and marked **MRS-90**.
29. On or about 9 June 2023, the parties attended a case management hearing before Justice Lee. During the course of that hearing, senior counsel for the Applicant said:

"In correspondence last night, and in the written submissions provided to your Honour, the allegation was made, it was the obvious inference that my client had provided materials to Channel 7 even in breach of his Harman obligations.

He absolutely denies that. It is a grave and serious allegation. It's aggravating the damages in this case."
30. On or about 9 June 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-91**.
31. On or about 9 June 2023, I received a letter from the Applicant's solicitors. A copy of the letter is annexed and marked **MRS-92**.
32. On or about 13 June 2023, I received a letter from the solicitors for Seven. A copy of the letter is annexed and marked **MRS-93**.
33. On or about 14 June 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-94**.
34. On or about 16 June 2023, the solicitors for Seven sent a letter to the solicitors for the Second Respondent. A copy of the letter is annexed and marked **MRS-95**.



35. On or about 16 June 2023, the First Respondent sent a letter of complaint to Seven. A copy of the letter is annexed and marked **MRS-96**.
36. On or about 30 June 2023, Seven sent a letter to the First Respondent in response to the letter of complaint referred to in the preceding paragraph. A copy of the letter is annexed and marked **MRS-97**.
37. On 3 July 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-98**.

### ***Second Spotlight Program***

38. On or about 8 August 2023, I caused a letter to be sent to the solicitors for Seven in relation to the potential broadcast of a second interview with the Applicant. A copy of the letter is annexed and marked **MRS-99**.
39. On or about 9 August 2023, I caused a letter to be sent to the Applicant's solicitors. A copy of the letter is annexed and marked **MRS-100**.
40. On or about 10 August 2023, I received a letter from the Applicant's solicitors. A copy of the letter is annexed and marked **MRS-101**. The letter included a statement that "our client is aware of his obligations pursuant to the Harman implied undertaking...".
41. On 13 August 2023, a 7News Spotlight program was broadcast on Channel 7 (**Second Spotlight Program**). The Second Spotlight Program featured further interviews with the Applicant and extracts of materials that were produced, but tendered, in the ACT Criminal Proceedings.
42. On or about 15 August 2023, the First Respondent served a subpoena to produce on Seven. A copy of the subpoena is annexed and marked **MRS-102**. The subpoena required Seven to produce documents relating to the Second Spotlight Program, including copies of communications between officers, employees or contractors of Seven and the Applicant, or any person on his behalf.
43. On or about 25 August 2023, I received a letter from the solicitors for Seven. A copy of the letter is annexed and marked **MRS-103**.
44. On or about 4 October 2023, I caused a letter to be sent to the solicitors for Seven. A copy of the letter is annexed and marked **MRS-104**.
45. On or about 10 October 2023, I received a letter from the solicitors for Seven. A copy of the letter is annexed and marked **MRS-105**.
46. On or about 3 November 2023, I received a letter from Andrew Bailey, Commander, Investigations – ACT Policing confirming that the disclosure had been referred to the National Anti-Corruption Commission who are leading an ongoing investigation

regarding whether any AFP members may have been involved in this conduct. A copy of the letter is annexed and marked **MRS-106**.

### **Applicant's Evidence in this Proceeding**

47. The trial of this proceeding commenced on 22 November 2023.
48. The Applicant was cross-examined between 23 and 28 November 2023.
49. Annexed and marked **MRS-107** is an extract from the transcript of the evidence given by the Applicant in cross-examination on 28 November 2023 (**Extract**).
50. Had the First Respondent been aware at the time of the trial of the existence of evidence to the effect that the Applicant provided the Dillaway Messages and the FitzSimons Messages to Seven in breach of his undertaking that those documents be used only for the purposes of the ACT Criminal Proceedings, questions would have been put to the Applicant in cross-examination, and submissions advanced in closing to the effect that:
  - (a) the Applicant has committed a disgraceful contempt that warrants a referral for prosecution; and
  - (b) the Applicant's evidence as recorded in the Extract was wilfully false.
51. Had the First Respondent been aware at the time of the trial of the existence of the Payment Records, it would have put those records to the Applicant in cross-examination and advanced submissions in closing to the effect that if the Payment Records are accepted as accurately recording benefits received by the Applicant from Seven, then the Applicant's evidence as recorded in the Extract was wilfully false. The Payment Records would also have been relevant to the Second Respondent's mitigation claim.
52. Further, had the First Respondent been aware at the time of the trial of the matters referred to in the preceding two paragraphs, it would have submitted in closing that those matters:
  - (a) bear adversely on the Applicant's credit in a material way; and
  - (b) support in a material way the First Respondent's submission to the effect that the Applicant has engaged in discreditable conduct amounting to an extreme abuse of process, such that in the circumstances the proceeding ought to be dismissed, or the Applicant ought to be entitled to no damages even if the Court finds that the Applicant has established his claim and all defences have failed.

### **Correspondence in relation to the present application**

53. On 31 March 2024, I wrote to the solicitors for the Applicant, serving the interlocutory application for leave to reopen the First Respondent's case and my affidavit affirmed on

31 March 2024 (including the confidential exhibits to that affidavit). Annexed and marked **MRS-108** is a copy of my letter (excluding the annexures).

54. On 1 April 2024, I received an email from the solicitors for the Applicant. Annexed and marked **MRS-109** is a copy of the email (excluding the attachments).

Affirmed by the deponent )  
at Sydney )  
in New South Wales ) Signature of deponent  
on 1 April 2024 )  
Before me:

.....  
Signature of witness

Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000  
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-72**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

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Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

Form 61  
Rule 30.28(1)

## Notice to Produce

No. NSD. 103/2023

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

**Bruce Lehrmann**

Applicant

**Network Ten Pty Limited ACN 052 515 250** and Anor

Respondents

Applicant to the First Respondent

The Applicant requires you to produce the following documents or things before the Court on 24 May 2023 at 9.30am:

1. One copy of any document evidencing the audio and/or video recording of the face-to-face meeting in Sydney with Higgins, Sharaz, Wilkinson and Llewellyn on 27 January 2021, which lasted for approximately five hours (as referred to in [9(k)] of Schedule B of the First Respondent's Defence filed on 7 March 2023 and [15.8] of the Second Respondent's Defence filed on 1 March 2023).

Date: 16 May 2023



Signed by Paul Svilans  
Lawyer for the Applicant

Filed on behalf of (name & role of party)	Bruce Lehrmann, Applicant
Prepared by (name of person/lawyer)	Paul Svilans
Law firm (if applicable)	Mark O'Brien Lawyer
Tel	+61 2 9216 9830
Fax	-
Email	<a href="mailto:paul.svilans@markobrienlegal.com.au">paul.svilans@markobrienlegal.com.au</a>
<b>Address for service</b> (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

*Note*

If this notice specifies a date for production, and is served 5 days or more before that date, you must produce the documents or things described in the notice, without the need for a subpoena for production.

If you fail to produce the documents or things, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing and you may be liable to pay any costs incurred because of the failure.

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-73**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

Our Ref: MOBL:657  
Your Ref: MS:5263490

16 May 2023

Ms Marlia Saunders  
Partner  
Thomson Geer Lawyers  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

By email: [msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)

Dear Colleagues

**Bruce Lehrmann v Network Ten Pty Limited & Anor  
Federal Court of Australia Proceedings No. NSD103/2023**

We refer to your letter dated 12 May 2023.

Thank you for drawing our attention to the absence of a subpoena list in the Federal Court on 17 May 2023. Our client is content to have the Notice to Produce returnable on 24 May 2023.

The Second Respondent's Defence filed on 2 March 2023 states at [15.8]:

*Higgins came to Sydney to meet privately with Wilkinson and Network 10 Producer Llewellyn on or about 27 January 2021 so that further discussions could take place to enable Wilkinson and Network 10 to consider the reliability of Higgins' allegations. The meeting lasted approximately six hours and was recorded.*

On 2 March 2023, the Applicant issued a Notice to Produce a Document in a Pleading or Affidavit (**Notice to Produce**) to the Second Respondent seeking, amongst other things, a copy of that recording. On 6 March 2023, the Second Respondent's solicitors informed the Applicant's solicitors in respect of that document/recording:

*The document is not in the Second Respondent's control; to the best of the Second Respondent's knowledge, the document is in and controlled by the First Respondent.*



The First Respondent in support of its defence of qualified privilege at [9(k)] of Schedule B pleads:

*A face-to-face meeting in Sydney with Higgins, Sharaz, Wilkinson and Llewellyn on 27 January 2021, which lasted for approximately 5 hours.*

But for the fact the Second Respondent no longer has control of the recording, that recording would have been produced to the Applicant in answer to the Notice to Produce served on the Second Respondent. Separately, we note that the document was produced in the ACT Supreme Court criminal proceedings, meaning that although it is in the possession of Mr Whybrow SC and the Applicant, by reason of the implied Harman undertaking, it is unable to be accessed for the purposes of these proceedings.

In circumstances where both Respondents rely upon that interview in support of their defences, our client presses for production.

Finally, we note that there was a typographical error in the Notice to Produce dated 11 May 2023. Please find **enclosed** by way of service a new Notice to Produce for the recording returnable on 24 May 2023.

Yours faithfully



**Paul Svilans**

Principal

T +61 2 9216 9830

M [REDACTED]

E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-74**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

**NOTICE OF FILING AND HEARING****Filing and Hearing Details**

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)  
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File Title: BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250  
& ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
Reason for Listing: Case Management Hearing  
Time and date for hearing: 09/06/2023, 9:30 AM  
Place: Court Room 18B, Level 17, Law Courts Building 184 Phillip Street Queens  
Square, Sydney

LAST DAY FOR SERVICE IS 1 JUNE 2023.

Registrar

**Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Rule 1.32

**Subpoena to produce documents**

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

No. NSD103 of 2023

**BRUCE LEHRMANN**

Applicant

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

To: The Director of Public Prosecutions, Reserve Bank Building, 20-22 London  
 Circuit, Canberra City ACT 2601

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.**

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

**You should read all of the Notes set out in this subpoena.**

The last date for service of this subpoena is 31 May 2023. (See Note 1)

Date: 25 May 2023



Signed by a Justice of the Federal Court of Australia

Issued at the request of the Respondent, whose address for service is:

Place: Level 14, 60 Martin Place, Sydney NSW 2000

Email: msaunders@tglaw.com.au

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

### **Details of subpoena**

You must comply with this subpoena by attending Court personally or by a lawyer to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents at **9:30am on 9 June 2023** before Justice Lee at the Federal Court of Australia, New South Wales District Registry, Level 21, Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000

### **Schedule of documents**

One copy of the brief of evidence provided to the accused, Mr Lehmann, or his legal representatives, by or on behalf of the Director of Public Prosecutions in Supreme Court of the Australian Capital Territory proceedings SCC 264 of 2021, including all supplementary or updated briefs of evidence and disclosure documents (including audio and video files) provided in accordance with clauses 4.1 and 4.2 of the ACT DPP *Prosecution Policy of the Australian Capital Territory*.

#### **Notes**

##### **Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

##### **Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

##### **Conduct money**

3. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

##### **Applications in relation to subpoena**

4. You have the right to apply to the Court:
  - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest

immunity or confidentiality in relation to any document or thing the subject of the subpoena.

**Loss or expense of compliance**

5. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court – arrest**

6. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

**Schedule**

No. NSD103 of 2023

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

**Respondents**

Second Respondent: Lisa Wilkinson

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-75**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000



Viewing mode:

Fullscreen

Normal

Exit

**Brief Head**

**Brief of Evidence**

- SECTION 1: [Civilian Witnesses](#)  
SECTION 2: [Police Witnesses](#)  
SECTION 3: [Forensic Witnesses](#)  
SECTION 4: [Investigations Documents](#)

**Exhibit List**

**Third Schedule**

**Statement of Facts**

**DPP use only:**

[Witness List A \(DPP Only\)](#)

24

eBrief - sheet.xlsm Properties

General

Summary

Statistics

Content

Custom



eBrief - sheet.xlsm

Type: Microsoft Excel Macro-Enabled Workbook (.xlsm)

Location: /Volumes/Untitled/DPP Brief (Lehmann)/Electronic  
brief/e-Brief - - LEHRMANN, Bruce CC2021-8143 -  
30032022

Size: 444KB (454,871 bytes)

Created: Monday, 19 June 2023 at 12:45 pm

Modified: Wednesday, 30 March 2022 at 3:01 pm

Attributes:  Read-only  Hidden

Cancel

OK

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-76**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---











Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



Name

- >  AUDIO
-  Defence Copy - Disclosure Statement as at 28Feb22.pdf
- >  DOCUMENTS
-  eBrief - sheet.xlsm
- >  IMAGES
- >  PHONE DATA
- ∨  SOF3
  -  Statement of Facts.pdf
- >  VIDEO
- >  Z - SECONDARY

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-77**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

**Statement in the matter of Operation COVINA**

**Name** Peter John REID  
**Occupation** Senior Digital Forensic Examiner  
**Date** 28/07/2021

---

STATES:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.
2. I acknowledge having read ACT Court Procedures Rules 2006, Schedule 1, being the "Expert witness code of conduct", and fully agree to abide by its contents, both in relation to this statement and any subsequent evidence I present before the court.
3. I declare that I have made all inquiries on matters relevant to my area of expertise that I believe desirable and appropriate, and to the best of my knowledge, no matter of significance that is relevant has been withheld from the court.
4. My full name is Peter John REID. I am a Senior Digital Forensic Examiner with the Australian Federal Police (AFP) located at the AFP Forensic Facility in Majura in the Australian Capital Territory (ACT).
5. I have been involved professionally in the Information Technology (IT) field since 1980 holding positions in hardware and software development and IT infrastructure design and deployment.
6. I have been involved in the forensic examination of electronic evidence since August 2010.
7. My duties as a Senior Digital Forensic Examiner include the provision of assistance to the AFP and external agencies with the identification, preservation, examination, analysis reporting of computers, mobile phones, smartphones, communications equipment



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Initials

storage media, as well as the installation, maintenance and development of equipment and software used to conduct forensic examinations.

8. I hold a Graduate Diploma of Digital Forensics and a Graduate Certificate of Computer Security, both obtained from Edith Cowan University in Western Australia.
9. I also hold a number of industry qualifications and have undertaken industry based training courses in digital forensics.
10. I am currently certified as a Computer Forensic Analyst (GCFA), a Network Forensic Analyst (GNFA) and hold the Advanced Smartphone Forensics Certification (GASF) awarded by the Global Information Assurance Certification (GIAC).
11. I have completed computer forensic industry based training courses in X-Ways Software Technology's X-Ways Forensics, Guidance Software's EnCase software, SANS FOR508: Advanced Digital Forensics, Incident Response and Threat Hunting, SANS FOR572: Advanced Network Forensics and Analysis and SANS FOR585: Smartphone Forensic Analysis In-Depth.
12. In addition I have completed forensic training courses in mobile electronic devices including Micro Systemation's .XRY and hold the following certifications awarded by Cellebrite, CUFM: Certified UFED (Universal Forensic Extraction Device) Field Manager, CUFO: Certified UFED Field Operator, CASA: Certified Advanced Smartphone Analysis, CCOM: Cellebrite Certified Operations Manager, CCPA: Cellebrite Certified Physical Analyst
13. I have previously testified in the ACT Supreme Court on the results of my analysis of digital evidence.
14. On 15 March 2021 about 09:30 am, I attended the Belconnen Police Station in the ACT and met with Detective Leading Senior Constable (D/LSC) Trent MADDERS (██████████) and Senior Constable (SC) Emma FRIZZELL (██████████) in order to extract the contents of a mobile phone.
15. About 10:21 am, that same date, I was informed by D/LSC MADDERS that I was no longer required as the phone was unable to be provided by the owner that day.
16. On 21 April 2021, AFP Seizure 3624845/001 was submitted for examination in relation to Police Real-Time Online Management Information System (PROMIS) case 6381473.



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Initials

17. About 4:10 pm, I commenced an examination of AFP Seizure 3624845/001 which was identified as an Apple XS Max iPhone, model A2101, bearing IMEI<sup>1</sup> 357299099071224. This phone will now be referred to as '*iPhone Xs Max – LEHRMANN*' in this statement.
18. My examination comprised of a physical identification and examination of the hardware and internal components, where possible, forensic acquisition of all accessible data held on the items when possible, a verification of the integrity of the acquired data and the production of electronic case files for each seized item. These examinations were recorded through contemporaneous notes, digital photographs and report logs from the verified forensic examination tools utilised.
19. On 23 April 2021, a copy of the data extracted from the '*iPhone Xs Max – LEHRMANN*' was made available for review.
20. On 26 May 2021 about 09:30 am, I attended the Belconnen Police Station in the ACT and met with D/LSC MADDERS and SC FRIZZELL.
21. About 09:40 am I was handed a mobile phone by D/LSC MADDERS I now believe to belong to a person I was introduced to as Ms Brittany HIGGINS.
22. About that same time I sighted a consent form allowing me to perform an extraction of the Apple iPhone.
23. I moved the iPhone to an adjacent interview room to commence my examination and an extraction.
24. The phone was identified as an Apple iPhone Xs Max, model A2097, bearing IMEI 357224094849978. This phone will now be referred to as '*iPhone Xs Max – HIGGINS*'.
25. About 09:58 am, I commenced an extraction of the '*iPhone Xs Max – HIGGINS*'.
26. About 12:08 pm, I handed the phone back to Ms HIGGINS.
27. About 1:36 pm, I created a verified copy of the extraction.
28. On 27 May 2021, I made the contents of the '*iPhone Xs Max – HIGGINS*' available for review.
29. On 22 July 2021, about 10:00 am, I attended the Winchester Police Complex in the ACT and met with SC FRIZZELL.

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<sup>1</sup> IMEI – International Mobile Equipment Identity



.....  
Initials

30. About 10:15 am, I was handed AFP Seizures 3632871/001 and 3632871/002.
31. AFP Seizures 3632871/001 is a black Apple iPhone.
32. AFP Seizures 3632871/002 is a black Apple iPhone contained in a case bearing the initials "BMH".
33. About 11:05 am, I commenced examinations of both aforementioned seizures.
34. I was unable to extract the contents of either seizure as the PIN numbers provided were unsuccessful in unlocking either device at that time. Further unlock codes were available but were not attempted due to a wait time required by one seizure.
35. About 12:10 pm, I had a conversation with SC FRIZZELL and, as a result of that conversation, I returned to the AFP Forensic Facility at Majura in the ACT, in possession of both seizures.
36. About 1:59 pm, I continued my examination of AFP Seizures 3632871/001 and 3632871/002.
37. About 4:00 pm that same date, none of the provided unlock codes were unsuccessful. I then suspended my examinations.
38. On 26 July 2021, D/SLC MADDERS informed me that he had completed his review of the two phones identified as 'iPhone Xs Max - LEHRMANN' and 'iPhone Xs Max - HIGGINS'.
39. About 1:31 pm I received an email from SC FRIZZELL requesting that I download two (2) images of interest from an iCloud account. The credentials for the account were provided in the email.
40. About 4:10 pm I attempted to login to the iCloud account, however it required two factor authentication which prevented me from accessing the account at that time.
41. As a result of D/LSC MADDERS's review of the phone referred to as 'iPhone Xs Max - LEHRMANN', I created copies of;
- Four (4) chat conversations
    - Titled "Identified Chat 1 - BL.pdf" to "Identified Chat 4 - BL.pdf" (respectively)
    - Located in folders "Identified Chat 1" to "Identified Chat 4" (respectively)
  - Three (3) email items
    - Titled "Identified Email 1 - BL.pdf" to "Identified Email 3 - BL.pdf" (respectively)
    - Located in folders "Identified Email 1" to "Identified Email 3" (respectively)

.....  
Initials



- An Excel spreadsheet 'iPhone Xs Max - LEHRMANN - Identified Chat Items of Interest.xlsx'
  - An Excel spreadsheet 'iPhone Xs Max - LEHRMANN - Identified Email Items of Interest.xlsx'
42. As a result of D/LSC MADDERS's review of the phone referred to as 'iPhone Xs Max - HIGGINS, I created copies of;
- Sixteen (16) chat conversations
    - Titled "Identified Chat 1 - BH.pdf" to "Identified Chat 6 - BH.pdf" (respectively)
    - Located in folders "Identified Chat 1" to "Identified Chat 6" (respectively)
  - An Excel spreadsheet 'iPhone Xs Max - HIGGINS - Identified Chat Items of Interest.xlsx'
43. On 27 July 2021, I created copies of the aforementioned chats, emails and spreadsheets on a digital versatile disc (DVD), which is attached to this statement as **APPENDIX A**.
44. About 11:15 am, I received an email from SC FRIZZELL authorising me to download files of interest from a Google account.
45. About 12:10 I accessed the iCloud account and located the two files of interest referenced in SC FRIZZELL's email.
46. I downloaded the two (2) files and, at the request of SC FRIZZELL, reviewed the metadata contained within each file which are images. From the information available to me at the time, I was unable to ascertain the date and time the images were taken.
47. About 12:20 pm, SC FRIZZELL requested I download all available data from Google Drive File Storage associated with the Google account.
48. About 3:00 pm the download of the Google Drive had completed.
49. I read this statement before I signed it.

\_\_\_\_\_  
(Signature)

Peter John REID  
AFP20609  
Majura Forensic Facility  
28/07/2021

.....  
Initials

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-78**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:






























---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

## Name

- >  AUDIO
-  Defence Copy - Disclosure Statement as at 28Feb22.pdf
- >  DOCUMENTS
-  eBrief - sheet.xlsm
- >  IMAGES
- ✓  PHONE DATA
  - >  Email headers
  - >  iCloud data - Higgins
  - ✓  Redacted conversations - Higgins
    -  Identified Chat 1 - BH - Redacted - Jacob Kay.pdf
    -  Identified Chat 2 - BH - Redacted - Matthew Higgins.pdf
    -  Identified Chat 3 - BH - Redacted - Ben Dillaway.pdf
    -  Identified Chat 4 - BH - Redacted - Fiona Brown.pdf
    -  Identified Chat 5 - BH - Redacted - Sarah Harman.pdf
    -  Identified Chat 6 - BH - Redacted - Michelle Lewis.pdf
    -  Identified Chat 7 - BH - Redacted - Rosie Lewis.pdf
    -  Identified Chat 8 - BH - Redacted - David Sharaz.pdf
    -  Identified Chat 9 - BH - Redacted - Emma Webster.pdf
    -  Identified Chat 10 - BH - Redacted - David Sharaz.pdf
    -  Identified Chat 11 - BH - Redacted - Emma Frizzell.pdf
    -  Identified Chat 12 - BH - Redacted - Laura Tingle.pdf
    -  Identified Chat 13 - BH - Redacted - Chris Kenny.pdf
    -  Identified Chat 14 - BH - Redacted - P Fitzsimmons.pdf
    -  Identified Chat 15 - BH - Redacted - N Fordham.pdf
    -  Identified Chat 16 - BH - Redacted - J Fitzsimmons.pdf
  - >  Redacted conversations - Lehrmann
- >  SOF3
- >  VIDEO
- >  Z - SECONDARY

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-79**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:



















---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

## Name

- > AUDIO
  -  Defence Copy - Disclosure Statement as at 28Feb22.pdf
- > DOCUMENTS
  -  eBrief - sheet.xlsm
- > IMAGES
- ▼ PHONE DATA
  - > Email headers
  - > iCloud data - Higgins
  - ▼ Redacted conversations - Higgins
    -  Identified Chat 1 - BH - Redacted - Jacob Kay.pdf
    -  Identified Chat 2 - BH - Redacted - Matthew Higgins.pdf
    -  Identified Chat 3 - BH - Redacted - Ben Dillaway.pdf
    -  Identified Chat 4 - BH - Redacted - Fiona Brown.pdf
    -  Identified Chat 5 - BH - Redacted - Sarah Harman.pdf
    -  Identified Chat 6 - BH - Redacted - Michelle Lewis.pdf
    -  Identified Chat 7 - BH - Redacted - Rosie Lewis.pdf
    -  Identified Chat 8 - BH - Redacted - David Sharaz.pdf
    -  Identified Chat 9 - BH - Redacted - Emma Webster.pdf
    -  Identified Chat 10 - BH - Redacted - David Sharaz.pdf
    -  Identified Chat 11 - BH - Redacted - Emma Frizzell.pdf
    -  Identified Chat 12 - BH - Redacted - Laura Tingle.pdf
    -  Identified Chat 13 - BH - Redacted - Chris Kenny.pdf
    -  Identified Chat 14 - BH - Redacted - P Fitzsimmons.pdf
    -  Identified Chat 15 - BH - Redacted - N Fordham.pdf
    -  Identified Chat 16 - BH - Redacted - J Fitzsimmons.pdf
  - > Redacted conversations - Lehrmann
  - > SOF3
  - > VIDEO
  - > Z - SECONDARY

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-80**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

31 May 2023



Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - 7News Spotlight Program  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We act for Network Ten Pty Limited in the above defamation proceedings brought by Bruce Lehrmann in the Federal Court of Australia.

Our client has recently become aware that Seven Network (Operations) Limited (**Seven**) intends to air an "exclusive interview" with Mr Lehrmann on its 7News Spotlight Program on 4 June 2023 (**Lehrmann Spotlight Program**).

We anticipate receiving instructions to apply for leave to issue a subpoena to produce to Seven or the appropriate related entity for documents relating to the Lehrmann Spotlight Program including:

1. all unedited raw footage (including camera tapes) and audio recordings created or obtained in relation to the Lehrmann Spotlight Program;
2. all correspondence between employees or contractors of Seven or its related entities and Mr Lehrmann in relation to the Lehrmann Spotlight Program;
3. any participation or interview agreement signed by Mr Lehrmann in relation to the Lehrmann Spotlight Program;
4. any statutory declaration signed by Mr Lehrmann in relation to the Lehrmann Spotlight Program; and
5. any records of payment by Seven or its related entities to Mr Lehrmann.

We request that all material in relation to the Lehrmann Spotlight Program be retained for this purpose.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M

E msaunders@tglaw.com.au



## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-81**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

**NOTICE OF FILING AND HEARING****Filing and Hearing Details**

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 5/06/2023 9:30:17 AM AEST  
Date Accepted for Filing: 5/06/2023 11:42:19 AM AEST  
File Number: NSD103/2023  
File Title: BRUCE LEHRMANN v NETWORK TEN PTY LIMITED ACN 052 515 250  
& ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
Reason for Listing: Case Management Hearing  
Time and date for hearing: 09/06/2023, 9:30 AM  
Place: Court Room 18B, Level 17, Law Courts Building 184 Phillip Street Queens  
Square, Sydney

The last date for service of this subpoena is 6 June 2023

Registrar

**Important Information**

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Rule 1.32

## Subpoena to produce documents

No. NSD103 of 2023

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

### BRUCE LEHRMANN

Applicant

**NETWORK TEN PTY LIMITED (ACN 052 515 250)** and another named in the schedule  
 Respondents

To: The Proper Officer, Seven Network (Operations) Limited, 6-8 Central Avenue,  
 Eveleigh NSW 2015

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.**

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

**You should read all of the Notes set out in this subpoena.**

**You must complete the Declaration by Addressee (Subpoena Recipient) set out towards the end of this subpoena.**

The last date for service of this subpoena is 6 June 2023. (See Note 1)

Date: 2 June 2023

A handwritten signature in black ink, appearing to read 'Marlia Saunders'.

Signed by a Justice of the Federal Court of Australia

Issued at the request of the First Respondent, whose address for service is:

Place: Level 14, 60 Martin Place, Sydney NSW 2000

Email: msaunders@tglaw.com.au

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



### Details of subpoena

You must comply with this subpoena by attending Court personally or by a lawyer to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents at **9.30am on 9 June 2023** before Justice Lee at the Federal Court of Australia, New South Wales District Registry, Level 21, Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000.

### Schedule of documents

In this schedule:

**Lehrmann Spotlight Programme** means the 7News Spotlight programme containing an interview with Mr Bruce Lehrmann scheduled to be aired on Channel 7 on 4 June 2023.

**Related Body Corporate** has the same meaning as set out in section 50 of the *Corporations Act 2001* (Cth).

**Seven** means Seven Network (Operations) Limited and any Related Body Corporate of Seven Network (Operations) Limited involved in the commission, production or broadcast of the Lehrmann Spotlight Program.

The documents and things you must produce are as follows:

1. One copy of all raw footage (including but not limited to camera tapes) and audio recordings created or obtained for the Lehrmann Spotlight Programme, including but not limited to rushes and outtakes.
2. One copy of all communications or documents and materials evidencing communications between Mr Bruce Lehrmann and officers, employees or contractors of Seven in relation to the Lehrmann Spotlight Programme.
3. One copy of any participation or interview agreement entered into between Mr Bruce Lehrmann and Seven in relation to the Lehrmann Spotlight Programme.
4. One copy of any statutory declaration or statement signed by Mr Bruce Lehrmann in relation to the Lehrmann Spotlight Programme.



5. One copy of any documents recording or evidencing payments made or anticipated to be made to Mr Bruce Lehrmann or to anyone on his behalf or for his benefit, by Seven in relation to the Lehrmann Spotlight Programme.



## **Notes**

### **Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

### **Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

### **Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

### **Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

### **Applications in relation to subpoena**

5. You have the right to apply to the Court:
  - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

### **Loss or expense of compliance**

6. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

### **Contempt of court – arrest**

6. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

46  
5

**Schedule**



No. NSD103 of 2023

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

**Respondents**

Second Respondent: Lisa Wilkinson

Date: 2 June 2023

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-82**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



Our ref MS:5263490  
Your ref MOBL657

5 June 2023

**URGENT**

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

Dear Colleagues

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

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

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

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

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

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

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

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

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

Our client reserves its rights.

Yours faithfully  
**THOMSON GEER**



**Marlia Saunders**

Partner

T +61 2 8248 5836

M

E msaunders@tglaw.com.au

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-83**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Our Ref: MOBL:657  
Your Ref: MS:5263490

5 June 2023

Ms Marlia Saunders  
Partner  
Thomson Geer Lawyers  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

By email: [msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)

Dear Ms Saunders

**Bruce Lehrmann v Network Ten Pty Limited & Anor**  
**Federal Court of Australia Proceedings No. NSD103/2023**

We refer to your letter of this date.

Our client is well aware of his obligations pursuant to the decision in *Harman*, and he has at all times complied with those obligations.

We respond to your questions as follows:

1. We are instructed no;
2. No.

Yours faithfully



**Paul Svilans**

Principal

T +61 2 9216 9830

M [REDACTED]

E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-84**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



Our Ref: AJJ/220244  
Your Ref: MOBL:657

Level 40  
ANZ Tower  
161 Castlereagh Street  
SYDNEY NSW 2000  
AUSTRALIA  
DX 179 SYDNEY

6 June 2023

Telephone: [02] 9394 1144  
Facsimile: [02] 9394 1100  
[www.gdlaw.com.au](http://www.gdlaw.com.au)

Mr Paul Svilans  
Principal  
Mark O'Brien Legal

Via email: [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

Dear Colleagues

**Lisa Wilkinson & Anor ats Bruce Lehrmann  
Federal Court of Australia - Proceedings No: NSD103/2023**

We refer to the Defence filed in these proceedings on behalf of the second respondent.

Pursuant and in addition to section 38 of the *Defamation Act 2005* (NSW), on the question of any damages payable our client further relies on:

1. Federal Court Proceedings No. NSD104 of 2023 *Lehrmann v News Life Media Pty Ltd and Anor* and the recent settlement of the proceedings against News Life and Samantha Maiden, including as follows:
  - (a) the publication of the Editor's notation on 30 May 2023 added to the publication complained of in that proceeding;
  - (b) the payment of compensation to the applicant by reason of the settlement of the proceeding;
  - (c) the public statement the applicant made on 30 May 2023 that included, "*I am extremely happy with the settlement, in particular the acknowledgement by news.com.au that it does not suggest that I was guilty of sexual assault*";
2. Federal Court Proceedings No. NSD 316 of 2023 *Lehrmann v Australian Broadcasting Corporation* and any outcome of that proceeding by way of Court order or settlement;
3. The interview the applicant gave to Seven Network that was broadcast on 4 June 2023 including any compensation received for giving or supporting that interview;
4. The interview the applicant gave Janet Albrechtson and/or Stephen Rice that was published on *The Australian* website and *The Weekend Australian* on 17 March 2023; and



{DEC/S2405462:1}



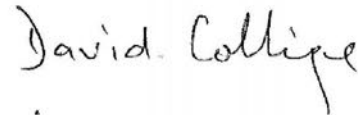
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5. The interview the applicant's senior counsel Stephen Wybrow gave, with the permission of the applicant, Janet Albrechtson and/or Stephen Rice that was published on *The Australian* website and *The Weekend Australian* on 19 May 2023.

Yours faithfully,  
**GILLIS DELANEY LAWYERS**



**Anthony Jefferies**  
Partner  
Direct Line: (02) 9394 1132



**David Collinge**  
Special Counsel  
Direct Line: (02) 9394 1114

cc. Thomson Geer  
Marlia Saunders  
[msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-85**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

7 June 2023



Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - 7News Spotlight Program  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to the interview with Bruce Lehrmann on the 7News Spotlight Program which was broadcast by the Seven Network on 4 June 2023 (**Lehrmann Spotlight Program**).

The Acting DPP of the Australian Capital Territory has confirmed to us that some of the material used in the Lehrmann Spotlight Program appears to be material that was produced pursuant to a compulsory court process in the criminal proceedings in the ACT Supreme Court, namely:

1. the audio recording of the meeting between Angus Llewellyn, Lisa Wilkinson, Brittany Higgins and David Sharaz on 27 January 2021; and
2. the rough cut of footage from the interview between Ms Wilkinson and Ms Higgins for *The Project* on 2 February 2021.

Such material was not admitted into evidence or otherwise deployed in those proceedings, and has not been made available as part of the ACT Board of Inquiry.

As you know, any documents produced pursuant to compulsory court processes, such as subpoenas or warrants, cannot be used for a collateral or ulterior purpose unrelated to the proceedings in which the documents were obtained, other than with leave of the court: *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 at 308. The implied undertaking also binds others to whom documents and information are given: *Hearne v Street* (2008) 235 CLR 125 at 160.

Please confirm by **12pm on 8 June 2023** that the material referred to above is not in your client's possession as the result of a breach of the implied undertaking.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M

E  msanders@tglaw.com.au

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-86**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

8 June 2023

Ms Marlia Saunders  
Thomson Geer  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

**By Email:**  
**msaunders@tglaw.com.au**

Dear Ms Saunders

**Bruce Lehrmann v Network Ten & Anor: Federal Court proceedings  
Seven Spotlight**

We refer to your letter dated 7 June 2023.

We assume that your letter is written in your capacity as solicitors for Network Ten in these proceedings. In that case, it is not clear from your letter what basis your client has to require Seven to provide you with confirmation as to the status of documents used in its television program.

Our client would therefore be grateful if you would indicate such basis or other right which Network Ten considers it has to make such a request.

In the meantime, we are instructed that as far as our client is aware, the material referred to in your letter did not come into its possession in breach of the implied undertaking.

Yours faithfully



**Justine Munsie**

**Partner**

Direct Line: [REDACTED]

Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-87**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

8 June 2023

Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoena issued to Seven Network  
(Operations) Limited  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to the subpoena to produce documents issued to your client dated 5 June 2023 (**Subpoena**).

We note that the Subpoena is returnable at the case management hearing at 9.30am tomorrow (9 June 2023).

Can you please urgently confirm:

- 1 that a representative of your client will be producing material in response to the Subpoena at the case management hearing tomorrow; and
- 2 that your client does not have any objections to the scope of the Subpoena.

We anticipate that the material produced by your client in response to the Subpoena will include documents disclosing whether Bruce Lehrmann provided your client with the audio recordings of the meeting between Lisa Wilkinson, Brittany Higgins, David Sharaz and Angus Llewellyn on 27 January 2021. If your client disagrees that such documents are within the scope of the Subpoena, please advise us immediately.

Subject to your client's response to the matters raised above, our client will be seeking general access orders to any material produced by your client in response to the Subpoena at tomorrow's case management hearing.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-88**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000





Our Ref: DEC/AJJ/220244

8 June 2023

Spotlight  
Seven Network (Operations) Limited  
PO Box 7077  
Alexandria NSW 2015

Level 40  
ANZ Tower  
161 Castlereagh Street  
SYDNEY NSW 2000  
AUSTRALIA

Telephone: [02] 9394 1144  
Facsimile: [02] 9394 1100  
[www.gdlaw.com.au](http://www.gdlaw.com.au)

by email: [REDACTED]

**Attention: Mark Llewellyn**

Dear Mr Llewellyn

### **Spotlight**

We refer to our letter to you on 6 June 2023 to which we have received no response.

The Spotlight programme made serious and false allegations about our client. We believe that those allegations were made using documents produced in the criminal trial of R v Lehmann.

Those documents were protected, in that they could not be used for any purpose other than those proceedings unless tendered as an exhibit in Court. The misuse of such documents is a serious matter, because it undermines the administration of justice. As a result of this, in future criminal trials, persons subpoenaed to produce material will be reluctant to do so and trials will be misconducted because of the absence of important documents. That is why such conduct, and all of those persons involved in that conduct, either knowingly or recklessly, amounts to contempt.

A further type of contempt arises from the Spotlight programme which impacts the upcoming defamation trial. Your broadcast levelled allegations (both expressly and implicitly) against parties and witnesses to those Federal Court proceedings. The broadcast, which was deceptively edited, has been referred to and repeated across all other media this week, leading to further false claims and allegations against those parties and witnesses. Seven itself has repeated the allegations, **attached** is a separate complaint that we sent to Sunrise on our client's behalf about these issues.

This conduct of the Seven Network appears to have been deliberate and calculated. It beggars belief that a 90 minute programme was prepared, apparently over many weeks if not months, and at no time was any contact made with our client or Network 10 to attempt to obtain their comment. No approach was made to Mr Peter FitzSimons prior to the publication of what you now know is a falsified text message. You impugned him without conducting even



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the most basic checks. You have known about this for two days and done nothing to correct this egregious error nor have you apologised to our client's husband.

The Seven Network, and its journalists and you as Executive Producer have breached your obligations as journalists. We have seen the complaint to ACMA made by Network 10 about the Spotlight programme. We agree with it and we endorse it and will be making a separate complaint on behalf of Ms Wilkinson and Mr FitzSimons.

We request that you make a public apology to our client and her husband and withdraw the false allegations against them.

Yours faithfully

**GILLIS DELANEY LAWYERS**

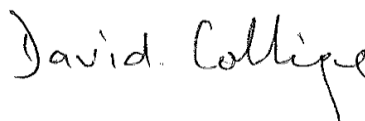


**Anthony Jefferies**

Partner

Email: [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)

Direct Line: +61 2 9394 1132



**David Collinge**

Special Counsel

Email: [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)

Direct Line: +61 2 9394 1114

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-89**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

**Saunders, Marlia**

---

**From:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>  
**Sent:** Thursday, 8 June 2023 8:18 PM  
**To:** Saunders, Marlia  
**Cc:** CausleyTodd, Amelia; Kia Daley; Phillip Beattie; Alessandra Steele; Anthony Jefferies; David Collinge; Nicola Sanchez; Monica Allen; O'Beirne, Conor  
**Subject:** Re: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [ABC-Legal.FID92109] [TGLAW-Legal.FID3782978]

Dear Ms Saunders

We refer to your email to us below in which you allege as follows:

The obvious inference is that the documents the subject of Harman undertakings were provided by, or with the knowledge or complicity of, Mr Lehrmann.

Your allegation is a serious allegation, and we are unaware as to any basis for you to make the allegation.

In the circumstances, we place you on notice that our client will rely upon your making of the allegation in support of his claim for aggravated damages in the proceedings as against your client.

Regards

Paul Svilans - Principal Mark O'Brien Legal  
[REDACTED]

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On 8 Jun 2023, at 7:02 pm, Saunders, Marlia <msaunders@tglaw.com.au> wrote:

Dear Mr Svilans

Mr Lehrmann chose to give an extended interview to the 7NEWS Spotlight program that aired on Sunday evening, apparently contrary to advice he had received from your firm.

In the course of the Spotlight program, a number of materials were referred to that appear to have been provided to the Seven Network in breach of Harman implied undertakings. The ACT DPP has confirmed as much: see my affidavit, CB504.

Other media organisations have also published the contents of documents that appear to have come into their possession as a consequence of breaches of Harman undertakings. Again, the ACT DPP shares that view.

The raft of media reports this week appears to have been orchestrated by Mr Lehrmann or on his behalf, apparently contrary to legal advice. As I depose in my affidavit, Mr Lehrmann said on Spotlight that he has "nothing to lose", that we should "beware" the man who has nothing to lose, and that there was "more to come".

The obvious inference is that the documents the subject of Harman undertakings were provided by, or with the knowledge or complicity of, Mr Lehrmann.

While enforcement of the implied undertaking is a matter for the ACT Supreme Court, which we are pursuing separately, the Federal Court is entitled to protect the integrity of its processes.

The apparent purpose of your client's current campaign is to cement a public narrative in the lead-up to the trial of this proceeding. That narrative has the inherent capacity to prejudice the fair trial of this proceeding, including by discouraging witnesses from giving evidence, lest they find themselves targeted in this campaign.

If your client has nothing to do with the relevant materials coming into the possession of the media organisations who have published their contents in recent days, he should have no difficulty in saying so on his oath in answer to the proposed interrogatories. If he has, then that is a very serious matter going to a potential abuse of the process of the Federal Court.

We are instructed to seek an order for leave to administer the proposed interrogatories at the hearing tomorrow morning.

Kind regards

**Marlia Saunders** | Partner

**Thomson Geer**

T +61 2 8248 5836 | M [REDACTED]

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au) | [tglaw.com.au](http://tglaw.com.au)

**Advice | Transactions | Disputes**

---

**From:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>

**Sent:** Thursday, 8 June 2023 6:23 PM

**To:** CausleyTodd, Amelia <acausleytodd@tglaw.com.au>; Kia Daley <[REDACTED]>; Phillip Beattie <[REDACTED]>; Alessandra Steele <[REDACTED]>; Anthony Jefferies <ajj@gdlaw.com.au>; David Collinge <dec@gdlaw.com.au>; Nicola Sanchez <nrs@gdlaw.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>

**Cc:** Saunders, Marlia <msaunders@tglaw.com.au>; O'Beirne, Conor <cobeirne@tglaw.com.au>

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [ABC-Legal.FID92109] [TGLAW-Legal.FID3782978]

Dear Ms Causley Todd

We refer to your email to us below.

We are concerned that you have chosen to send the affidavit of Ms Saunders to us at about 6pm this evening, together with the draft interrogatories.

In the circumstances, we advise that we only consent to you providing the court book to his Honour's Associate on the following basis:

1. That you include in the email to the Associate the following wording:

*"We advise that the Respondents' proposed interrogatories and the affidavit of Marlia Ruth Saunders contained within the court book were provided to the solicitors for the Applicant at about 6pm this evening";*

2. That you advise us, with particularity, by 7pm this evening what issue in these proceedings the Respondents' proposed interrogatories go to.

Regards

**Paul Svilans**

Principal | Mark O'Brien Legal

&lt;image001.png&gt;

Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9830 | M [REDACTED]

E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)W [www.markobrienlegal.com.au](http://www.markobrienlegal.com.au)

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**From:** CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>
**Sent:** Thursday, June 8, 2023 5:57 PM
**To:** Kia Daley [REDACTED]; Phillip Beattie [REDACTED]; Alessandra Steele [REDACTED]; Anthony Jefferies <[ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)>; David Collinge <[dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)>; Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>; Monica Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>; Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>
**Cc:** Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>; O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>
**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [ABC-Legal.FID92109] [TGLAW-Legal.FID3782978]

Dear Colleagues

We **attach** a copy of the electronic court book prepared for his Honour.

We draw your attention to the Respondents' proposed interrogatories and the affidavit of Marlia Ruth Saunders, affirmed 8 June 2023, that the Respondents in Proceedings No. NSD103/2023 intend to rely upon at tomorrow's case management hearing.

Can you please urgently confirm that you are content for the electronic court book to be provided to his Honour's Associate under cover of the following email:

Dear Associate

With apologies for the delay, please see **attached** the parties' joint electronic court book.

Kind regards

Kind regards

**Amelia CausleyTodd** | Associate**Thomson Geer**

T +61 2 8248 3455 | M [REDACTED]

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au) | [tglaw.com.au](http://tglaw.com.au)**Advice | Transactions | Disputes**


---

**From:** Kia Daley [REDACTED]
**Sent:** Thursday, 8 June 2023 12:45 PM
**To:** CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>; Phillip Beattie <[REDACTED]>; Alessandra Steele [REDACTED]; Anthony Jefferies <[ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)>; David Collinge <[dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)>; Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>; [Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au); [Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)
**Cc:** Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>; O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023);

Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [ [TGLAW-Legal.FID3782978] [ABC-Legal.FID92109]

Dear Amelia

Thank you for your offer below to prepare the joint court book. We apologise for the delay.

For the ABC's part, we request that the following documents be included in the Court Book in a relevant separate section for the *Lehrmann v ABC* proceedings:

1. Statement of Claim filed 5 April 2023
2. Defence filed 18 May 2023
3. Reply filed 2 June 2023
4. Letter from ABC Legal to MOBL dated 15 May 2023
5. Letter from MOBL to ABC Legal dated 2 June 2023
6. Letter from ABC Legal to MOBL dated 2 June 2023
7. Letter from MOBL to ABC Legal dated 7 June 2023
8. Letter from ABC Legal to MOBL dated 8 June 2023

Copies of the documents are **attached**.

Kind regards,

Kia Daley  
Senior Lawyer, Disputes & Litigation  
<image003.jpg>  
P **02 8333 5836**  
E [REDACTED]  
A **700 Harris Street Ultimo NSW 2007**

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---

**From:** CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>

**Sent:** Wednesday, June 7, 2023 3:44 PM

**To:** Phillip Beattie <[REDACTED]>; Alessandra Steele <[REDACTED]>

Kia Daley <[REDACTED]>; Anthony Jefferies <[ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)>; David Collinge <[dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)>; Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>;

[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au); [Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)

**Cc:** Marlia Saunders - External <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>; O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [ [TGLAW-Legal.FID3782978]

Dear Colleagues

We are content to prepare the electronic court book internally in accordance with his Honour's instructions.

Could the parties please provide any further documents to be included in the court book by **10am 8 June 2023**.

We will circulate a copy of the electronic court book prior to providing it to his Honour's Associate.

Kind regards

**Amelia CausleyTodd** | Associate

**Thomson Geer**

T +61 2 8248 3455 | M [REDACTED]

Level 14, 60 Martin Place, Sydney NSW 2000 Australia

[acausleytodd@tqlaw.com.au](mailto:acausleytodd@tqlaw.com.au) | [tqlaw.com.au](http://tqlaw.com.au)

Advice | Transactions | Disputes

---

**From:** Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>

**Sent:** Wednesday, 7 June 2023 2:46 PM

**To:** Phillip Beattie <[REDACTED]>; Alessandra Steele <[REDACTED]>;  
Kia Daley <[REDACTED]> O'Beirne, Conor <[cobeirne@tqlaw.com.au](mailto:cobeirne@tqlaw.com.au)>; Saunders, Marlia  
<[msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)>; [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au); [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au); Nicola Sanchez  
<[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>

**Cc:** Monica Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023);  
Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [

Dear Colleagues

We refer to the email from the Associate to Lee J below.

In relation to the request that the parties provide a joint electronic court book containing materials upon which the parties intend to rely, from the applicant's perspective, he only wishes the documents as itemised in the draft index attached to be included in the court book (copies of the documents are also attached).

We advise we are prepared to retain Law in Order to prepare the joint court book on the following basis:

1. That by 5pm today you provide to us copies of your clients' respective documents that you may wish to be included in the court book, and that you respectively update and return the draft index by the same time;
2. That you agree to pay for the costs of Law in Order equally by reference to the number of parties involved in the exercise.

In the event that you do not provide the documents and index to us by 5pm today, we request that you prepare the court book and include in it our client's documents as attached, in which case we agree to proportionally pay the costs of a third party provider, such as Law in Order, to prepare the Court Book on the basis as indicated in paragraph b) above.

Regards

**Paul Svilans**

Principal | Mark O'Brien Legal

<image001.png>

Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9830 | M [REDACTED]

E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

W [www.markobrienlegal.com.au](http://www.markobrienlegal.com.au)

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**From:** Associate LeeJ <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)>  
**Sent:** Wednesday, June 7, 2023 12:26 PM  
**To:** Phillip Beattie [REDACTED]; Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>; Monica Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>;  
Alessandra Steele [REDACTED]; Kia Daley [REDACTED]; O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>; Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>;  
[ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au); [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au); Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>  
**Subject:** Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL]

**OFFICIAL**

Dear Practitioners

I refer to the above-mentioned matters. I confirm that the case management hearing listed to commence **at 9.30am on Friday, 9 June 2023** will proceed **in person in Sydney**.

Could the parties please provide the names of counsel who will appear at the hearing.

Further, his Honour has requested that the parties provide a joint electronic court book containing materials upon which the parties intend to rely (including pleadings and any other relevant court documents), with such court book to be prepared in accordance with Format 2 of the eBooks Practice Note (GPN-eBOOKS). His Honour would be grateful to receive a copy of the joint court book **by 5pm on Thursday, 8 June 2023**.

Yours faithfully

**Aoife Hogan** | Associate to the Hon. Justice M B J Lee  
Federal Court of Australia | Law Courts Building, Queens Square, Sydney NSW 2000  
**t:** +61 2 8099 8371 | **e:** [Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)

#####  
#####  
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#####  
#####

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## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-90**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

**Saunders, Marlia**

---

**From:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>  
**Sent:** Friday, 9 June 2023 9:01 AM  
**To:** Saunders, Marlia; CausleyTodd, Amelia  
**Cc:** Monica Allen; O'Beirne, Conor; ajj@gdlaw.com.au; dec@gdlaw.com.au; Nicola Sanchez  
**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023)

Dear Colleagues

We refer to the following submission contained in the Respondents' submissions as provided to the Associate to Lee J yesterday evening:

*In the respondents' submission, the obvious inference from the matters referred to above is that the documents the subject of the implied undertaking were provided by or with the knowledge or complicity of Lehrmann.*

The making of the allegation by the Respondents was improper and unjustifiable, and our client will therefore rely upon the making of the allegation in support of his claim for aggravated damages in the proceedings.

Regards

**Paul Svilans**

Principal | Mark O'Brien Legal

**MARK O'BRIEN LEGAL** Level 19, 68 Pitt Street, Sydney NSW 2000 Australia  
 T +61 2 9216 9830 | M [REDACTED]  
 E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)  
 W [www.markobrienlegal.com.au](http://www.markobrienlegal.com.au)  
 ABN 86 002 421 123

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---

**From:** Saunders, Marlia <msaunders@tglaw.com.au>  
**Sent:** Thursday, June 8, 2023 10:34 PM  
**To:** Associate LeeJ <Associate.LeeJ@fedcourt.gov.au>; CausleyTodd, Amelia <acausleytodd@tglaw.com.au>  
**Cc:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>; Alessandra Steele [REDACTED] Kia Daley [REDACTED] O'Beirne, Conor <cobeirne@tglaw.com.au>; ajj@gdlaw.com.au; dec@gdlaw.com.au; Nicola Sanchez <nrs@gdlaw.com.au>; Phillip Beattie [REDACTED]  
**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL] [TGLAW-Legal.FID3782978]

Dear Associate

The sealed submissions are now **attached**.

Kind regards

**Marlia Saunders** | Partner

**Thomson Geer**

T +61 2 8248 5836 | M [REDACTED]

Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
 msaunders@tglaw.com.au | tglaw.com.au

**Advice | Transactions | Disputes**

**From:** Saunders, Marlia

**Sent:** Thursday, 8 June 2023 10:15 PM

**To:** 'Associate LeeJ' <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)>; CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>

**Cc:** 'Paul Svilans' <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>; 'Monica Allen' <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>;

'Alessandra Steele' [REDACTED] 'Kia Daley' [REDACTED] O'Beirne, Conor  
 <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>; 'ajj@gdlaw.com.au' <[ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)>; 'dec@gdlaw.com.au' <[dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)>;

'Nicola Sanchez' <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>; 'Phillip Beattie' [REDACTED]

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL] [TGLAW-Legal.FID3782978]

Dear Associate

In relation to proceedings NSD103/2023, we **attach** the Respondents' submissions for tomorrow's hearing.

We note that these have been filed this evening, but we have not yet received a sealed version back from the Court. We will attend to circulating the sealed version once it is received.

Kind regards

**Marlia Saunders** | Partner

**Thomson Geer**

T +61 2 8248 5836 | M [REDACTED]

Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
 msaunders@tglaw.com.au | tglaw.com.au

**Advice | Transactions | Disputes**

**From:** Associate LeeJ <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)>

**Sent:** Thursday, 8 June 2023 8:53 PM

**To:** CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>

**Cc:** Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>; Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>; Monica Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>; Alessandra Steele [REDACTED]; Kia Daley [REDACTED]

O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>; [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au); [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au);

Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>; Phillip Beattie [REDACTED]

**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [TGLAW-Legal.FID3782978] [SEC=OFFICIAL]

**OFFICIAL**

Dear Ms CausleyTodd

Thank you for your email. I confirm receipt of the court book.

Yours sincerely

**Michael Punch** | Associate to the Hon. Justice M B J Lee

Federal Court of Australia | Law Courts Building, Queens Square, Sydney NSW 2000

t: +61 2 8099 8371 | e: [Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)

**From:** CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)>

**Sent:** Thursday, 8 June 2023 7:26 PM

**To:** Associate LeeJ <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)>

**Cc:** Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>; Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>; Monica

Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>; Alessandra Steele [REDACTED]; Kia Daley [REDACTED] O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>; [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au); [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au); Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>; Phillip Beattie [REDACTED]  
**Subject:** Re: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL] [TGLAW-Legal.FID3782978]

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associate

We received a bounce back email due to the size of the attachment in our below email.

Please see below our email regarding the electronic court book for tomorrow's case management hearing.

Kind regards

**Amelia CausleyTodd** | Associate  
**Thomson Geer**

T +61 2 8248 3455 | M [REDACTED]  
 Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au) | [tglaw.com.au](http://tglaw.com.au)

**Advice | Transactions | Disputes**

Sent from my mobile device

> On 8 Jun 2023, at 6:59 pm, CausleyTodd, Amelia <[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)> wrote:  
 >  
 > Dear Associate  
 >  
 > With apologies for the delay, please see attached the parties' joint electronic court book. The court book is also available for download at this link<<https://www.dropbox.com/s/y5s6cefe99axb2e/Electronic%20court%20book%20-%20CMH%209%20June%202023%20final.pdf?dl=0>>.  
 >  
 > We advise that the Respondents' proposed interrogatories and the affidavit of Marlia Ruth Saunders contained within the court book were provided to the solicitors for the Applicant at about 6pm this evening.  
 >  
 > Kind regards  
 >  
 > Amelia CausleyTodd | Associate  
 > Thomson Geer  
 > T +61 2 8248 3455 | M [REDACTED]  
 > Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
 > [acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au)<<mailto:acausleytodd@tglaw.com.au>> | [tglaw.com.au](http://tglaw.com.au)<<http://tglaw.com.au>>  
 > Advice | Transactions | Disputes  
 >  
 > From: Saunders, Marlia <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)>  
 > Sent: Thursday, 8 June 2023 5:45 PM  
 > To: Associate LeeJ <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)>; Phillip Beattie [REDACTED]; Paul Svilans <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)>; Monica Allen <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)>; Alessandra Steele [REDACTED]; Kia Daley [REDACTED]; O'Beirne, Conor <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)>; [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au); [dec@gdlaw.com.au](mailto:dec@gdlaw.com.au); Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)>  
 > Subject: RE: Bruce Lehrmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehrmann v The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL] [TGLAW-Legal.FID3782978]  
 >  
 > Dear Associate  
 >  
 > We advise that the parties are currently finalising the joint electronic court book and will provide it to you as soon as possible.  
 >  
 > We apologise for the delay.

>  
 > Kind regards  
 >  
 > Marlia Saunders | Partner  
 > Thomson Geer  
 > T +61 2 8248 5836 | M [REDACTED]  
 > Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
 > [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)<<mailto:msaunders@tglaw.com.au>> | [tglaw.com.au](http://tglaw.com.au)<<http://tglaw.com.au>>  
 > Advice | Transactions | Disputes  
 >  
 > From: Associate LeeJ <[Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)<<mailto:Associate.LeeJ@fedcourt.gov.au>>>  
 > Sent: Wednesday, 7 June 2023 12:26 PM  
 > To: Phillip Beattie [REDACTED]; Paul Svilans  
 <[Paul.Svilans@markobrienlegal.com.au](mailto:Paul.Svilans@markobrienlegal.com.au)<<mailto:Paul.Svilans@markobrienlegal.com.au>>>; Monica Allen  
 <[Monica.Allen@markobrienlegal.com.au](mailto:Monica.Allen@markobrienlegal.com.au)<<mailto:Monica.Allen@markobrienlegal.com.au>>>; Alessandra Steele  
 [REDACTED][\[REDACTED\]@tglaw.com.au](mailto:[REDACTED]@tglaw.com.au)>>; Kia Daley  
 [REDACTED]; O'Beirne, Conor  
 <[cobeirne@tglaw.com.au](mailto:cobeirne@tglaw.com.au)<<mailto:cobeirne@tglaw.com.au>>>; Saunders, Marlia  
 <[msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)<<mailto:msaunders@tglaw.com.au>>>; [ajj@gdlaw.com.au](mailto:ajj@gdlaw.com.au)<<mailto:ajj@gdlaw.com.au>>;  
[dec@gdlaw.com.au](mailto:dec@gdlaw.com.au)<<mailto:dec@gdlaw.com.au>>; Nicola Sanchez <[nrs@gdlaw.com.au](mailto:nrs@gdlaw.com.au)<<mailto:nrs@gdlaw.com.au>>>>  
 > Subject: Bruce Lehmann v Network Ten Pty Limited ACN 052 515 250 & Anor (NSD103/2023); Bruce Lehmann v  
 The Australian Broadcasting Corporation (NSD316/2023) [SEC=OFFICIAL]  
 >  
 > OFFICIAL  
 >  
 > Dear Practitioners  
 >  
 > I refer to the above-mentioned matters. I confirm that the case management hearing listed to commence at 9.30am  
 on Friday, 9 June 2023 will proceed in person in Sydney.  
 >  
 > Could the parties please provide the names of counsel who will appear at the hearing.  
 >  
 > Further, his Honour has requested that the parties provide a joint electronic court book containing materials upon  
 which the parties intend to rely (including pleadings and any other relevant court documents), with such court book to  
 be prepared in accordance with Format 2 of the eBooks Practice Note (GPN-eBOOKS). His Honour would be grateful  
 to receive a copy of the joint court book by 5pm on Thursday, 8 June 2023.  
 >  
 > Yours faithfully  
 >  
 > Aoife Hogan | Associate to the Hon. Justice M B J Lee  
 > Federal Court of Australia | Law Courts Building, Queens Square, Sydney NSW 2000  
 > t: +61 2 8099 8371 | e: [Associate.LeeJ@fedcourt.gov.au](mailto:Associate.LeeJ@fedcourt.gov.au)<<mailto:Associate.LeeJ@fedcourt.gov.au>>  
 >  
 > <Electronic court book - CMH 9 June 2023 [final.zip](#)>

#####  
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 #####

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-91**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

9 June 2023

Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoena to Produce issued to Seven Network (Operations) Limited  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to the subpoena to produce issued to Seven Network (Operations) Limited dated 5 June 2023 (**Subpoena**) and to the documents produced to Justice Lee in response to the Subpoena on 9 June 2023 (**Produced Material**).

We adopt the defined terms in the Subpoena.

As you would be aware, category 2 of the Schedule of documents in the Subpoena requires production of "One copy of all communications or documents and materials evidencing communications between Mr Bruce Lehrmann and officers, employees or contractors of Seven in relation to the Lehrmann Spotlight Programme."

We note that no communications or documents evidencing communications between Mr Lehrmann and Seven, or any of its officers, employees or contractors, have been produced.

It appears that your client's production in response to the Subpoena is incomplete. For example, given that logistical arrangements would have been made between your client and Mr Lehrmann in relation to filming (for example, outside the ACT Board of Inquiry in Canberra and driving to and from Canberra), we expect that there are documents including, but not limited to, emails, text messages and instant messages, that fall within category 2 of the Schedule of documents in the Subpoena which do not appear in the Produced Material. This category of document is merely an example and not exhaustive of the types of documents we expected to be included in the Produced Material.

We request that your client immediately produce all material responsive to the Subpoena to the Associate to Justice Lee that has not yet been produced, and to let us know when any such further production has occurred.

We also put you on notice that we anticipate receiving instructions to apply for leave to issue a further subpoena to produce documents to your client for a copy of all communications or documents evidencing communications between officers, employees or contractors of Seven and any person representing or acting on behalf of Mr Lehrmann in relation to the Lehrmann Spotlight Programme.

We request that all material in relation to the Lehrmann Spotlight Program be retained for this purpose.



We note that we also made this request in our letter of 31 May 2023.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M

E msaunders@tglaw.com.au

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-92**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

**MARK  
O'BRIEN  
LEGAL**

ABN 86 002 421 123

Level 19, 68 Pitt Street  
Sydney NSW 2000  
AustraliaOur Ref: MOBL:657  
Your Ref: MS:5263490

9 June 2023

Ms Marlia Saunders  
Partner  
Thomson Geer Lawyers  
Level 14, 60 Martin Place  
SYDNEY NSW 2000By email: [msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)

Dear Ms Saunders

**Bruce Lehrmann v Network Ten Pty Limited & Anor  
Federal Court of Australia Proceedings No. NSD103/2023**

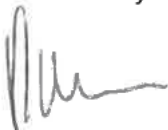
We refer to our letter to you of 16 May 2023.

In relation to the reference in that letter to the recording referred to therein being:

*"... in the possession of Mr Whybrow SC and the Applicant"*

we clarify that that possession was only in the legal sense, in that although Mr Whybrow SC (being Mr Lehrmann's Senior Counsel in the criminal proceedings) had physical possession of the recording, Mr Lehrmann did not. In that regard, we have confirmed with Mr Whybrow that at no stage did Mr Lehrmann have physical possession of the recording.

Yours faithfully

**Paul Svilans**

Principal

T +61 2 9216 9830

M [REDACTED]

31432

[www.markobrienlegal.com.au](http://www.markobrienlegal.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-93**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

13 June 2023

Ms Marlia Saunders  
Thomson Geer  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

**By Email:**  
**msaunders@tglaw.com.au**

Dear Ms Saunders

**Bruce Lehmann v Network Ten & Anor: Federal Court proceedings  
Seven Spotlight**

We refer to your letter dated 9 June 2023 and the Produced Material (as defined).

We are instructed that there are no written communications or records of communications to produce pursuant to the Subpoena.

We note the matters raised in the remainder of your letter.

Yours faithfully



**Justine Munsie**  
**Partner**

Direct Line: [REDACTED]

Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-94**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

14 June 2023

Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoena to Produce issued to Seven Network (Operations) Limited  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to your letter dated 13 June 2023.

We would be grateful if you could confirm, in respect of the Lehrmann Spotlight Program (as defined in the subpoena to produce issued to Seven Network (Operations) Limited dated 5 June 2023), whether your client communicated or negotiated with a person representing or acting on behalf of Mr Lehrmann and, if so, whether there are documents recording or evidencing those communications.

Given you have advised that there are no communications or records of communications between your client and Mr Lehrmann, logic and pragmatism suggests that Seven must have liaised with an intermediary on his behalf.

We would be grateful if you come back to us at your earliest convenience.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E msaunders@tglaw.com.au

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-95**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



16 June 2023

Mr David Collinge and Mr Anthony Jefferies  
Gillis Delaney  
Level 40, ANZ Tower  
161 Castlereagh Street  
SYDNEY NSW 2000

**By Email:**  
**dec@gdlaw.com.au**  
**ajj@gdlaw.com.au**

**Copy to**  
**msaunders@tglaw.com.au**

Dear Mr Collinge and Mr Jefferies

**Lisa Wilkinson**

As you are aware, we act for Seven Network.

We have obtained a copy of the affidavit of Marlia Saunders dated 8 June 2023 filed in the Federal Court defamation proceedings between Bruce Lehrmann, Network Ten and your client (**Proceedings**).

Ms Saunder's affidavit contains copies of letters from your firm addressed to employees of Seven. However, the addressees had not seen those letters until being made aware of copies of them in the affidavit. In the case of emails addressed to Mr Llewellyn, he does not monitor the email address used by your firm. In the case of your letter addressed to Sunrise, the email address used is not operational.

Having now reviewed your correspondence in Ms Saunder's affidavit, we are instructed to respond as follows:

### **Spotlight**

We refer to our letter dated 8 June to Thomson Geer, a copy of which also forms part of Ms Saunders' affidavit. As explained in our letter, Seven is not aware of having received audio recordings featuring your client, or other material, in breach of the implied undertaking. Contrary to the allegation made in your letter, the audio recording was not obtained by Seven from subpoenaed materials or otherwise from the criminal trial of Mr Lehrmann. Seven therefore rejects the various allegations made about its conduct, including that it amounts to contempt or is in breach of "obligations as journalists".

Extracts of the audio recording featuring your client were broadcast as part of the Spotlight program on Bruce Lehrmann and they speak for themselves. They form a crucial part of the timeline of allegations made by Brittany Higgins and first broadcast in an interview with your client on Network Ten. That interview, the reaction to it and the police investigation, criminal trial and Board of Inquiry which followed it, have dominated public and political debate since the broadcast. As a journalist, it is difficult to believe that your client would suggest that the background to those events is not a proper subject of investigation and public interest reporting.

We do not understand that your client denies having spoken the words attributed to her in the audio recording or the context in which they were spoken. We are aware that your client and her employer have apologised for certain things captured on the audio recordings but note that those matters were not raised in the Spotlight program. In any event, no specific comment is made during the Spotlight

program about your client’s “professionalism as a journalist” or which otherwise impugns your client. It is a matter of public record in the Proceedings that Mr Lerhmann claims Ms Wilkinson has defamed him, and caused him damage, including aggravated damage as a result of her conduct. Presumably, the audio recording will be discovered in the Proceedings in the ordinary course. In those circumstances, the Spotlight program does not raise any matter which would bring any improper pressure on your client in those proceedings.

Your correspondence also alleges that the Spotlight program impugned your client’s husband and refers to a message which does not exist. If you are able to provide details of those allegations, we will obtain instructions to respond. Please also confirm whether you act for Mr FitzSimons in that regard.

**Sunrise**

As is made clear in the broadcast and the tweet to which you refer, the Sunrise news item recounts “reports” that Brittany Higgins had sent your client an “angry letter” following the broadcast of her interview on Network Ten in 2021. The reports referred to were those made on the front page of The Australian on the same day (6 June), as depicted below and which remain online: [Brittany Higgins wrote an angry letter to Lisa Wilkinson about using footage from her Project interview for a second program | The Australian](#).

Seven understands from those reports that The Australian has obtained a copy of the letter if your client wishes to verify its contents against her records.

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found freedom before some of her but for many years it seemed like those unexplained deaths were revi

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# Higgins’ anger with Wilkinson

**EXCLUSIVE**

JANET ALBRECHTSEN  
STEPHEN RICE

Five days after Brittany Higgins’ rape-allegations interview aired on The Project she wrote an angry letter to host Lisa Wilkinson accusing her of putting together a second program based on footage not used in the first, without her knowledge or consent.

Ms Higgins wrote that she was “disturbed and disappointed” that after making it clear she did not want another program “you would have gone ahead and put one together anyway”.

In the letter from February 20, 2021, obtained by The Australian, Ms Higgins threatened that if Wilkinson “goes ahead and still airs this material knowing how strongly I am opposed to it, then I will be forced to issue my own media statement (and this email) making clear that I wrote to you and asked you not to do it due to

**INSIDE**

The torch has turned on Ten Network celebrity Lisa Wilkinson to reveal someone who appears hellbent on launching a #MeToo juggernaut.

JANET ALBRECHTSEN  
PI3



me fragile mental health, but you did it anyway”.

“I don’t think that helps either of us,” she said.

On Monday The Australian revealed Ms Higgins and Wilkinson war-gamed how to recruit prominent politicians and media figures who could help give momentum to their upcoming interview on Network 10’s The Project, as the TV host made suggestions to the former Liberal staffer about how to frame her story.

The more than five-hour session, which also involved Ms Higgins’ boyfriend David Sharaz and Wilkinson’s producer Angus Llewellyn, was recorded on January 27, 2021, a few days before they filmed the interview that was broadcast on February 15 revealing Ms Higgins’ claims that she had been raped in Parliament House.

In her letter to Wilkinson after the program aired, Ms Higgins said: “It’s so wonderful; to hear that this story has resonated with the Australian public and I’m personally so heartened by their support.”

However, the friendly tone soon disappeared.

“As I discussed earlier in the week with your producer Angus when I declined his approach for a second interview, I do not want to participate in any further media interviews at this stage,” Ms Higgins wrote.

“The pressure has been impossibly intense and there has

*Continued on Page 8*

**MORE REPORTS P8**

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Seven otherwise denies that the Sunrise news item made any false allegation about your client.

Yours faithfully

A handwritten signature in black ink, appearing to read "Justine Munsie", with a horizontal line extending to the right.

**Justine Munsie**  
**Partner**

Direct Line: [REDACTED]

Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-96**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



16 June 2023

Complaints Officer  
Seven Network Pty Limited  
PO Box 777  
PYRMONT NSW 2009

**7NEWS Spotlight 4 June 2023**  
**Complaint - Breaches of the Commercial TV Code**

Network Ten Pty Limited (**N10**) makes this complaint under the Commercial Television Industry Code of Practice 2015 (**Code**) in relation to the episode of the program *7NEWS Spotlight* titled “Trial and Error” that was broadcast on Channel Seven at 7pm on 4 June 2023 (**Program**). This complaint covers the nationwide broadcast of the Program by each Seven licensee and each affiliate licensee. In short, the Program breaches the provisions of the Code.

We are appalled that a protected audio recording of a meeting which took place over a time period of approximately five-hours between Ms Brittany Higgins, Mr David Sharaz, Mr Angus Llewellyn and Ms Lisa Wilkinson held on 27 January 2021 was deliberately edited and juxtaposed with other content to inaccurately portray Mr Llewellyn and Ms Wilkinson as unethical and irresponsible journalists who showed disregard for the seriousness of the allegations made by Ms Higgins and the potential impact of those allegations on Mr Lehrmann. The Seven network displayed a complete disregard for the Code and for standard journalistic practices.

**OVERVIEW OF COMPLAINT**

The Program contains excerpts of no more than 7 minutes in aggregate that have been selectively extracted from an audio recording of approximately 5 hours duration of a private and preparatory meeting between Ms Higgins, Mr Sharaz, Mr Llewellyn and Ms Wilkinson that occurred on 27 January 2021 (**Audio Recording**).

N10 has maintained the confidentiality of the Audio Recording with disclosure by N10 (and its personnel) being limited to production of the Audio Recording to the ACT Supreme Court in response to an AFP warrant and a subpoena issued by Bruce Lehrmann in criminal proceedings. The Audio Recording was not tendered in evidence in the criminal proceedings against Mr Lehrmann. Accordingly, the Audio Recording is protected by the implied undertaking that protects materials that are produced to the court under compulsion. Given the nature and content of the Audio Recording, the disclosure of the Audio Recording to Seven and its subsequent use was clearly restricted by these rules.

Absent the protections restricting the disclosure and use of the Audio Recording, in the ordinary course of proper journalistic practice, the Audio Recording would be used in the context of the Program by extracting the many segments containing serious allegations made by Ms Higgins against Mr Lehrmann that stand in stark contradiction to the account of events that was presented in the Program. The Audio Recording contains substantial allegations that directly contradict the position put by the Program. However, Seven did not make journalistic use of the many hours of coverage of the serious allegations levelled against Mr Lehrmann that are contained in the Audio Recording and are directly relevant to the subject matter of the Program. Instead, Seven has extracted peripheral comments, de-contextualised, with the apparent purposes of discrediting those involved in the Audio Recording and the serious allegations that have been made by Ms Higgins.



Seven has selectively edited and compiled trivial parts of the Audio Recording to create a number of false inferences.

1. That Mr Llewellyn and Ms Wilkinson coerced or manipulated Ms Higgins.
2. That Mr Llewellyn and Ms Wilkinson conducted the entire interview with Ms Higgins flippantly over lunch, while providing her with a significant amount of alcohol.
3. That Mr Llewellyn and Ms Wilkinson made no serious attempts to question or verify the account of Ms Higgins.
4. That the initial meeting was the only time that Mr Llewellyn and Ms Wilkinson tested (albeit, not seriously) the allegations made by Ms Higgins.
5. That Mr Llewellyn and Ms Wilkinson had had no genuine desire to accurately or fairly tell Ms Higgins story.
6. That Mr Llewellyn and Ms Wilkinson did not make requests for comment (including of Mr Lehrmann) at a reasonable time before the broadcast of Ms Higgins' story.

Also contrary to proper journalistic practice, Seven failed to contact Mr Llewellyn, Ms Wilkinson and N10 for comment, exacerbating the unfair and unbalanced nature of the Program. Had Mr Llewellyn, Ms Wilkinson and N10 been contacted in the course of production of the Program, much needed context and balance could have been provided so that Seven would have had the opportunity to both alter its partial, selective and often misleading narration of events and to identify clear inaccuracies in some of its reporting, which we detail below.

The Program unfairly impugns Ms Wilkinson and Mr Llewellyn as unprofessional and reckless journalists by the selective editing of material within the Program and the omission of critical information from court evidence, transcripts and other publicly accessible documents which were readily available before the date of broadcast of the Program.

Without limitation, the Program fails to comply with the Codes that require that the Program:

- present factual material accurately and ensure viewpoints included in the Program are not misrepresented [Code 3.3.1]; and
- present news fairly and impartially [Code 3.4.1(a)].

These breaches are outlined in more detail below.

## FACTUAL INACCURACIES

- 3.3.1 *In broadcasting a news or Current Affairs Program, a Licensee must **present factual material accurately** and ensure viewpoints included in the Program are not misrepresented. [emphasis added]*

### Inaccurate presentation of meeting with Brittany Higgins and David Sharaz

The purpose of the meeting that is covered by the Audio Recording was for Mr Llewellyn and Ms Wilkinson to learn of Ms Higgins' allegations of a sexual assault in Parliament House and to form a preliminary view of the credibility of the allegations, which are detailed with great specificity in the Audio Recording.



The meeting continued for approximately five hours. During the first session of over two and a half hours, Ms Higgins outlined her serious allegations to Mr Llewellyn and Ms Wilkinson in substantial detail. Following that lengthy session, the meeting participants broke for lunch, an eminently reasonable action given the lengthy duration of the first session and the gravity of the matters under discussion. More casual and peripheral discussions took place over lunch, including on matters unrelated to the proposed interview. After lunch, the formal session re-commenced with no further food or drinks consumed during the course of the interview.

While this context is demonstrably clear from the Audio Recording, through the selected extraction and compilation of isolated comments made over lunch, the Program implies that Mr Llewellyn and Ms Wilkinson conducted the entire interview with Ms Higgins flippantly over lunch, while providing her with a significant amount of alcohol.

Examples of selective and de-contextualised statements are:

- [8:05] “Perfect time for the food/ Literally/ That was just the pre-show entertainment...So who’s wine was that?...One for each hand. That’s your gin and tonic. Now, nachos?”
- [8:27] “Those spring rolls are actually pretty good”.
- [11:15] “Sorry I’m working on how to get this pork on the chip at the moment./ I’m glad you’re going after the important stuff at the moment.”
- [21:52] “Okay, why don’t we have some lunch”.

These brief extracts are combined with unrelated footage of food and drink, with overly exaggerated audio of glasses and plates clinking.

Seven reinforces this misleading messaging by using unrelated footage of food and drink in conjunction with other audio excerpts from the Audio Recording, despite those discussions taking place when no food or drinks were under consumption, including at 10:54, 11:10, 13:15, 14:18, 14:33 and 17:57.

The inevitable impression created for viewers is inaccurate and misleading. In the use of selective editing and re-enactments, the Program portrays a very serious and sensitive meeting as a trivial event affected by alcohol. By way of example at 13:20, an image of a recording device is used displaying a 10 minute 50 second time code that carries the misleading inference that alcohol was under consumption from the start of the meeting.

Further, the Program suggests, falsely, that the initial meeting was the only time that Mr Llewellyn and Ms Wilkinson tested the allegations made by Ms Higgins. The detailed investigations and fact checking that took place in N10’s preparation for, and production of, the interview with Ms Higgins that was broadcast by N10 on *The Project* on 15 February 2021 is detailed in the defences filed by N10 and Ms Wilkinson in the defamation proceedings commenced by Mr Lehrmann in the Federal Court of Australia, which have been published on the Court’s website since March 2023<sup>1</sup> and so are available publicly and therefore to Seven.

The inaccurate presentation of the meeting that occurred between Mr Llewellyn, Ms Wilkinson, Ms Higgins and Mr Sharaz breaches Code 3.3.1.

### Basic factual errors

There are a number of basic factual errors in the Program including the following.

1. At 1.14.30, there is a statement that Ms Higgins did not disclose the alleged sexual assault to Fiona Brown during her first meeting with her on the Tuesday following the incident and did not raise it until “a follow up discussion with Brown a week later”. This is contrary to the evidence adduced during *R v Lehrmann*, where Ms Higgins gave evidence that she disclosed the assault during the initial meeting

<sup>1</sup> See <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/lehrmann>.



with Ms Brown, and Ms Brown gave evidence that Ms Higgins said during a meeting two days later that she recalled Mr Lehrmann being on top of her.

2. At 1:13:54, there is a statement that Ms Higgins and Mr Lehrmann shared a coffee together on the Monday following the alleged rape in Parliament House with the apparent purpose of undermining Ms Higgins' account. Ms Higgins' evidence in her AFP interview and during the ACT Supreme Court criminal proceedings *R v Lehrmann* is that Mr Lehrmann bought her a coffee that day and that she thought it was strange that he didn't feel ashamed. Ms Higgins specifically said at T610.33-34: "We didn't have it together but I remember he purchased a coffee for me."
3. At 20:36, an excerpt of the Audio Recording is used in which Mr Llewellyn says: "We would go to him and we would go to Minister's office, if we're making accusations, we have to give everyone a reasonable chance to reply. And reasonable can be pretty iffy, as long as it's not five minutes before broadcast. And if it's ten minutes, we should be okay." The Program omits the facts, as detailed in N10's filed defence, that requests for comment were actually sent on the Friday afternoon for comment by 10am Monday, nor that responses that were received to requests for comment were included in *The Project* episode, as is noted in court documents.<sup>2</sup>
4. At 1:17:57, the Program includes a grab of a discussion when Ms Higgins' story might be broadcast and implies that Ms Wilkinson would be briefing politicians with questions. This never happened.

These factual inaccuracies constitute a breach of Code 3.3.1.

## MISREPRESENTED VIEWPOINTS

3.3.1 *In broadcasting a news or Current Affairs Program, a Licensee must present factual material accurately and **ensure viewpoints included in the Program are not misrepresented.***  
[emphasis added]

### False depiction of coercion or manipulation of Ms Higgins

The Program creates the false impression that Mr Llewellyn and Ms Wilkinson coerced or manipulated Ms Higgins during her interview, including to the extent that they told Ms Higgins what to say, as a result of selective editing of:

- the audio recording of the five-hour meeting;
- the separate formal on-camera interview of Ms Higgins;
- Mr Lehrmann's AFP interview; and
- CCTV from Parliament House.

Specific instances include the use of the following comments:

1. [13:00] "The answer you really need to think about is: why didn't you press charges? I have every confidence that you will answer that very eloquently, but it's one you just need to really think about...Speak about the culture, you know. I don't want to put words in your mouth but if you can enunciate the fact that this place is all about suppression of people's natural sense of justice because you see around you the way that this place works, that will help."
2. [15:07] "But you're calling out the culture, which is not just the Liberal party, it's a Parliament House culture which is, you're taking steps forward to making it a safer place."

<sup>2</sup> In particular, see page 23, paragraphs [22]-[31] of Annexure B, Particulars of Qualified Privilege:

[https://www.fedcourt.gov.au/data/assets/pdf\\_file/0004/107455/NSD103-2023-Defence-Network-Ten-redacted.pdf](https://www.fedcourt.gov.au/data/assets/pdf_file/0004/107455/NSD103-2023-Defence-Network-Ten-redacted.pdf)





3. [15:28] "Which for God's sake, it's not just miners and builders who have to worry about workplace safety, everyone has to. And it's not a safe place."
4. [15:47] "We must get that point across because the whole thing of what an incredibly safe place it is to rape someone, I mean, that looks like intent."
5. [17:05] "They kind of can't touch you. Because you're taking back ownership of your story and what happened to you to make sure that it can't happen to others."

Each of these statements have been extracted from their context and edited together to create the suggestion that Ms Higgins was coerced or manipulated in the course of giving her account of affairs. To the contrary, on each of those occasions, Mr Llewellyn and Ms Wilkinson respectively were responding to comments that had already been made by Ms Higgins and engaging with her on points she had already raised in the preceding hours, including the culture of secrecy at Parliament House and that she felt powerless at the time to pursue her complaint.

Despite this, each of these de-contextualised comments is sharply juxtaposed with an excerpt of Ms Higgins' interview for *The Project* that apparently "matches" the relevant alleged suggestion by Mr Llewellyn and Ms Wilkinson. While the voice of Ms Wilkinson is played at 13:27 and 14:00, there is footage of an actor using similar hand gestures to those of Ms Higgins (at 13:53) to reinforce the point.

This misleading presentation of viewpoints breaches Code 3.3.1 of the Code.

#### **Failure to seek comment**

None of Mr Llewellyn, Ms Wilkinson and N10 were contacted for comment in relation to the Program. Their points of view are not included in the Program. This is a breach of the Code as it significantly contributes to the unfair and unbalanced nature of the Program, particularly in light of Mr Lehrmann's opening sentence: "Let's light some fires."

Seven foreclose the opportunity to avoid misrepresentation of viewpoints by failing to seek comment from Mr Llewellyn, Ms Wilkinson and N10.

Seven's failure to seek comment resulted in misrepresentation of viewpoints in breach of Code 3.3.1.

#### **UNFAIR AND PARTIAL NEWS REPORTING**

- 3.4.1 *In broadcasting a news Program, a Licensee must:*
- a) *present news fairly and impartially;*

N10 relies on the material outlined above as evidence of Seven's breach of Code 3.4.1(a).

#### **SUMMARY**

The Program is misleading and contains significant and material factual inaccuracies. It was broadcast by Seven without due consideration for the truth and/or as a calculated attempt to unjustifiably harm the reputations of N10 and its journalists.

The purported viewpoints of Ms Wilkinson and Mr Llewellyn, to the extent they were included, were misrepresented. No attempt was made to contact either of them for comment.

In short, the broadcast of the Program by the Seven network was both a breach of our industry's Code and a breach of faith with the audiences and the Australian public generally, who were served an inaccurate and unfair representation of facts and viewpoints.



We await Seven's prompt response

Tasha Smithies  
Senior Litigation Counsel  
**Network Ten Pty Limited**

#### CONTACT DETAILS

Ms Tasha Smithies  
Senior Litigation Counsel  
Network Ten Pty Limited  
1 Saunders St, PYRMONT NSW 2009  
Ph: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-97**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

**PRIVATE & NOT FOR PUBLICATION**

30 June 2023

Ms Tasha Smithies  
Senior Litigation Counsel  
Network Ten Pty Limited  
1 Saunders Street  
PYRMONT NSW 2009

**By Email:**  


Dear Ms Smithies

**Seven Spotlight – Bruce Lehrmann interview  
Commercial Television Code of Practice**

We refer to your letter of complaint dated 16 June 2023 regarding Seven's interview with Bruce Lehrmann broadcast on its Spotlight program on 4 June 2023 (**Program**).

Seven understands that your complaint alleges that the Program fails to comply with the following requirements of the Commercial Television Code of Practice (**Code**):

- (a) Clause 3.3.1 - present factual material accurately and ensure viewpoints included in the Program are not misrepresented; and
- (b) Clause 3.4.1(a) - present news fairly and impartially.

We appreciate your feedback regarding the Program and have discussed it with the Program producers. However, we do not agree that the Program fails to comply with the Code as alleged.

Network Ten's complaint is largely based on the inclusion in the Program of excerpts of an audio recording of a meeting (described as a "Pre Interview") between representatives of Network Ten, Brittany Higgins and David Sharaz prior to the recording of an interview with Ms Higgins for broadcast (**Audio Recording**).

Your letter asserts that the Audio Recording is protected by the implied undertaking and that the disclosure of the Audio Recording to Seven and its subsequent use was clearly restricted by the protections of the implied undertaking. Your assertion is based on the premise that the Audio Recording used by Seven originated from production under the warrant or the subpoena issued to Network Ten. As Seven has previously made clear to your solicitors in the Lehrmann defamation proceedings, together with those acting for Ms Wilkinson, Seven is not aware of having received the Audio Recording in breach of the implied undertaking; it was not obtained by Seven from subpoenaed materials or otherwise from the criminal trial of Mr Lehrmann. There is accordingly no basis for Network Ten's suggestion that Seven has used the material in breach of any law.

**Code 3.3.1 of the Code - present factual material accurately**

Seven's Spotlight program is a Current Affairs Program as defined in the Code. The subject of the Program is undoubtedly one of major public interest.

### **Presentation of the Pre Interview meeting**

Seven denies that its use of the Audio Recording within the Program led to any factual material being presented inaccurately or the inclusion of any misrepresented viewpoints in the Program.

The Program conveys to viewers for the first time the sight and sound of Mr Lehrmann providing his response to the allegations made against him by Ms Higgins during her interview on Network Ten's The Project, and the criminal charges and trial which followed. The allegations attracted widespread national and international attention, as did the public support of Ms Higgins offered by Ms Wilkinson at the Women's March 4 Justice, her Logies speech and elsewhere, to which reference is made in the Program. As Ms Wilkinson herself put it, as seen in the Program, "The entire country knew the name Brittany Higgins". The focus of the Program was to provide Mr Lehrmann's response to those well-known matters, and in those circumstances, there was no need for Seven to seek comment from or include the views of, Ms Wilkinson or Mr Llewellyn, regarding the inclusion of their voices in the Program. No part of the Code requires that such comment be sought.

Extracts of the Audio Recording were broadcast as part of the Program and they speak for themselves. The Program states explicitly that the meeting recorded on the Audio Recording lasted for five hours. Viewers are clearly aware that only a small portion of the Audio Recording is included in the Program and that there are hours of audio not included. There is no suggestion, implied or express, that the extracts of the Audio Recording used in the Program are a representative sample of the conversations they contain. Rather, the Audio Recordings are used to convey, in their own words, parts of the conversation between Ms Wilkinson, Mr Llewellyn, Ms Higgins and Mr Sharaz as they met to discuss the potential interview. The Program makes clear, using her own words, Ms Wilkinson's view of the meeting when she says, "We're not just here for a gossip".

Whilst Ms Higgins' allegations have been widely reported, the circumstances surrounding her first making the allegations have not. The first part of the Program accurately reveals aspects of those circumstances for its viewers. For example, extracts of the Audio Recording are juxtaposed with extracts of the Project interview, Mr Lehrmann's interview with the Australian Federal Police and CCTV footage from the incident in question. In doing so, viewers are exposed to aspects of the incident which are additional to the description of Ms Higgins in the Project interview. The inclusion of those different perspectives can hardly be described as inaccurate or even unfair.

To the extent that the Program contains parts of the conversation where those at the Pre Interview meeting are laughing, eating, drinking and speaking light heartedly on occasion, those parts are factually accurate. Similarly, to the extent that the Program contains parts of the conversation where concepts discussed by Ms Wilkinson were also relayed by Ms Higgins in her interview on the Project, those parts are also accurate. The use of the Audio Recordings does not convey that the meeting participants were affected by alcohol or that the meeting was the only means by which Network Ten tested the allegations made by Brittany Higgins. In fact, no comment is made during the Program about the conduct of any person at the meeting or which otherwise impugns them. The only time that Mr Lehrmann is directed specifically to what is said at the meeting is the question of whether or not he had been a member of the Liberal Party and had political aspirations. Notably, the Code states that:

3.4.2 Nothing in this Section 3 requires a Licensee to allocate equal time to different points of view, or to include every aspect of a person's viewpoint, nor does it preclude a critical examination of or comment on a controversial issue as part of a fair report on a matter of public interest.

3.4.3 Current Affairs Programs are not required to be impartial and may take a particular stance on issues.

### **Alleged factual errors**

In response to each of the "basic factual errors" identified in your letter:

1. **Disclosure to Fiona Brown:** the evidence given during the criminal proceedings by Ms Higgins differed from that given by Fiona Brown. Subsequent to those criminal proceedings, Ms Brown has provided an interview in which she confirms that Ms Higgins did not disclose any alleged sexual assault in their first meeting following the incident in Senator Reynold's office: <https://www.theaustralian.com.au/nation/fiona-brown-brittany-higgins-former-manager-reveals-betrayal-and-backstabbing-in-bruce-lehrmann-rape-claim-saga/news-story/a514baa19634e1f4375a925c2aff9736>. In those circumstances, there is nothing inaccurate with the statement made in the Program. If your complaint relates to the difference between a disclosure made at a subsequent meeting between Ms Brown and Ms Higgins which occurred either two days or seven days after their initial meeting, then that difference is not a material inaccuracy in breach of the Code.
2. **Sharing a coffee with Mr Lehrmann:** The Program accurately states that Ms Higgins and Mr Lehrmann "shared a coffee together" on the Monday after the incident. Your letter confirms that it was Ms Higgins' evidence at the criminal trial that Mr Lehrmann purchased a coffee for her, although she stated she did not drink it with him. Any distinction between buying coffees at the same time and with whom the coffees were then consumed is not material.
3. **Mr Llewellyn's views:** The Program accurately conveys the words used by Mr Llewellyn in which he gives his view about offering a reasonable opportunity to Mr Lehrmann to reply to the allegations. He says that it should be done "at the right time" in order to prevent an application being made to restrain the story, and notes that what is "reasonable" is "pretty iffy". Mr Llewellyn jokes that five minutes is not sufficient but 10 minutes "should be ok". The Program includes the laughter in the meeting following this joke. The Program does not suggest that Network Ten in fact gave Mr Lehrmann only 10 minutes notice of the allegations to be made in the Project interview; it said nothing on that topic at all.
4. **Ms Wilkinson briefing politicians:** Once more, the Program accurately conveys the words used by Ms Wilkinson and we do not understand her to deny having made them. Ms Wilkinson is heard in the Audio Recording responding to a question from Mr Sharaz about politicians who she knows who could fire questions at Question Time. In response, Ms Wilkinson names "Albo" and Tanya Plibersek but there is nothing else said to imply that Ms Wilkinson would be doing any such briefing herself. Instead, the Program includes Mr Sharaz's statement to suggest that he and Ms Higgins would be doing the briefing. This is an accurate account of what happened according to recent media reports of the interactions between Mr Sharaz and Senator Katy Gallagher, for example.

#### **Clause 3.3.1 of the Code - ensure viewpoints included in the Program are not misrepresented**

Your letter complains that the Program created a false impression of Ms Wilkinson and Mr Llewellyn's conduct during their meeting with Ms Higgins. Seven denies creating such an impression and notes that the complaint in this regard does not nominate any material in the Program which comprises presentation in the Program of the viewpoints of Ms Wilkinson or Mr Llewellyn.

The extracts set out on page 5 of your letter are not Ms Wilkinson's viewpoints; they are simply part of her conversation with Ms Higgins and include encouragement given by Ms Wilkinson to Ms Higgins in the telling of her story.

Your letter further suggests that the fact that Seven did not seek comment from Network Ten, Ms Wilkinson or Mr Llewellyn as to "their points of view" prior to broadcast of the Program somehow amounts to a failure to ensure that viewpoints included in the program are not misrepresented. However, apart from referring to Mr Lehrmann's invitation in the Program to "light some fires" (which is clearly not a viewpoint), your letter does not identify:

- (a) Any viewpoints included in the program;
- (b) Any misrepresentation of such viewpoints;

- (c) An acknowledgement of the operation of clauses 3.4.2 or 3.4.3 of the Code.

**Clause 3.4.1(a) - present news fairly and impartially**

As noted above, Spotlight is not a news program and the Program did not constitute the presentation of "news". Clause 3.4.1 (a) does not impose an obligation on Current Affairs programs as is confirmed by clause 3.4.3 of the Code.

In the circumstances, Seven does not consider that there has been any breach of the Code as alleged and we trust that the above comments address any concerns Network Ten may have about the Program. If you nevertheless are satisfied with this response, you may refer the complaint to the ACMA.

Yours sincerely,



**Sarah Kossew**  
Senior Legal Counsel

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-98**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

3 July 2023

Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoena to Produce issued to Seven Network (Operations) Limited  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to the subpoena to produce issued to Seven Network (Operations) Limited dated 5 June 2023 (**Subpoena**) and the documents produced to Justice Lee in response to the Subpoena on 9 June 2023 (**Produced Material**).

We adopt the defined terms in the Subpoena.

Category 1 of the Schedule of documents in the Subpoena requires production of "All raw footage (including but not limited to camera tapes) and audio recordings created or obtained for the Lehrmann Spotlight Program, including but not limited to rushes and outtakes."

The only Produced Material responsive to category 1 of the Schedule is the following:

- an .mp4 video entitled 'BRUCE IN CANBERRA\_H.264.mp4';
- an .mp4 video entitled 'BRUCE IV VIEWING COPY H.264.mp4';
- an .mp4 video entitled 'PARLIAMENT CCTV\_H.264.mp4';
- an .mp4 video entitled 'THE DOCK CCTV\_H.264.mp4'
- an .mp4 video entitled 'Unedited Interview with The Project\_H.264.mp4'
- an .mp3 file entitled 'Project Meeting.mp3';
- an .wma file entitled 'LGain24032021A.wma; and
- a .wav file entitled 'Security Audio.wav';

A comparison between the broadcast version of the footage plus promotional material versus the Produced Material clearly indicates that your client's production in response to the Subpoena is incomplete.

For instance, the following is a brief and necessarily incomplete list of footage broadcast in the Lehrmann Spotlight Program or its promotional material that was not included the Produced Material:

- Footage of journalist Liam Bartlett;
- Multiple camera angles of the interview between Liam Bartlett and Bruce Lehrmann, of which there were clearly several;
- Cutaway footage of Mr Lehrmann, including Mr Lehrmann standing in front of Parliament House, driving, playing golf, walking a dog, studying, looking at an ocean, watching television, walking on a street; walking through a building, and adjusting a tie in a hotel room; and
- Drone footage of a golf course.

We request that your client produce all material responsive to the Subpoena that has not yet been produced at the case management hearing before Justice Lee this Friday 7 July 2023 at 9.30am.

Please confirm at your earliest convenience that this will be attended to, failing which we intend to raise the matter with Justice Lee at the case management hearing.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-99**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

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Our ref MS:5263490

8 August 2023



Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - 7News Spotlight Program  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

As you know, we act for Network Ten Pty Limited in the above defamation proceedings brought by Bruce Lehrmann in the Federal Court of Australia.

Our client has recently become aware that Seven Network (Operations) Limited (**Seven**) intends to air a second interview with Mr Lehrmann on its 7News Spotlight Program on 13 August 2023 (**Second Lehrmann Spotlight Program**).

We anticipate receiving instructions to apply for leave to issue a subpoena to produce to Seven or the appropriate related entity for documents relating to the Second Lehrmann Spotlight Program including:

1. all raw footage (including but not limited to camera tapes) and audio recordings created or obtained in relation to the Second Lehrmann Spotlight Program, including but not limited to rushes, outtakes and different camera angles;
2. all communications or documents and materials recording or evidencing communications (including, but not limited to, emails, text messages, instant messages and notes of conversations) between:
  - a) officers, employees or contractors of Seven; and
  - b) Mr Lehrmann or any person representing or acting on behalf of or as an intermediary for Bruce Lehrmann,

in relation to the Second Lehrmann Spotlight Program;

3. any participation or interview agreement signed by or on behalf of Mr Lehrmann in relation to the Second Lehrmann Spotlight Program;
4. any statutory declaration or statement signed by Mr Lehrmann in relation to the Second Lehrmann Spotlight Program; and

5. any documents recording or evidencing payments made or anticipated to be made, or benefits provided or anticipated to be provided, to Mr Lehrmann or to anyone on his behalf or for his benefit, by Seven in relation to the Second Lehrmann Spotlight Program.

We request that all material in relation to the Lehrmann Spotlight Program be retained for this purpose.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-100**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

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Sydney NSW 2000 Australia

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Our ref MS:5263490  
Your ref MOBL657

9 August 2023

Paul Svilans and Monica Allen  
Mark O'Brien Legal  
Level 19  
68 Pitt Street  
SYDNEY NSW 2000

Dear Colleagues

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoenas to Produce  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to your client's list of documents affirmed and served on 2 August 2023.

In your email of 2 August 2023 attaching your client's list of documents, you appear to suggest that the order for discovery in this proceeding has the practical effect of dispensing with or modifying the implied Harman obligation over materials produced on subpoena in the criminal proceedings against your client in the ACT Supreme Court.

Further, we note that documents are recorded in Part 4 of your client's list that are in his control but apparently unable to be produced for inspection because they are subject to a non-publication order made on 24 November 2022 pursuant to section 111(2) of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT).

This letter addresses both of these matters.

**Implied *Harman* obligation**

While we accept that the implied obligation in respect of documents produced on subpoena in the ACT Supreme Court proceedings and directly relevant to the issues raised by the pleadings yields in part to the order for standard discovery in this proceeding, it remains otherwise intact. In that regard, your client remains bound by the implied undertaking in respect of the documents produced under compulsion in the ACT Supreme Court proceedings.<sup>1</sup>

It is not clear to us from the way that the documents have been described in your client's list of documents:

1. which documents are said to be subject to the Harman obligation arising from the ACT Supreme Court proceedings; or
2. how such documents are said to be relevant to the issues raised by the pleadings in this proceeding.

<sup>1</sup> *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd* [No 21] [No 21] [2023] WASC 169, [98]; *Hancock Prospecting v DFD Rhodes Pty Ltd (No 2)* [2023] WASCA 108, [79]-[97] (***Hancock Prospecting appeal decision***).

Please clarify these issues.

As is plain from the *Hancock Prospecting* appeal decision cited in your covering email, to the extent that your client intends to use any document in this proceeding that is subject to a Harman obligation arising from the ACT Supreme Court proceedings, he will need to apply for permission to use the document and in doing so he will be required to satisfy the Court that such use is in the interests of justice.

If your client intends to seek to rely on any such material in this proceeding, please provide us with notice of the relevant materials and the basis upon which you client seeks to rely on them so we can consider the matter further.

It may be that there will be no contest, and this process will appropriately minimise the issues in dispute.

We remain concerned about how material produced to the ACT Supreme Court under compulsion by our client and others, and subject to the implied Harman obligation, came into the possession of Channel Seven and other media organisations and was subsequently (and selectively) published in the public domain by those media organisations. We are advised that the AFP's investigations into the circumstances surrounding the provision of those subpoena documents are ongoing.

In the circumstances, we would not want there to be any misunderstanding that the implied obligation in respect of documents produced under compulsion in the ACT Supreme Court Proceedings has somehow been extinguished by the discovery of any such documents in this proceeding such that they can be used or deployed without the Court's permission or otherwise disseminated to others or published in the public domain with impunity. Any attempt to do so would be flatly inconsistent with the decision in *Hancock Prospecting* and, respectfully, gravely unethical.

#### **Non-publication orders of 24 November 2022**

Your client's list of documents claims a kind of privilege over material the subject of a non-publication order made on 24 November 2023.

We understand the orders of McCallum CJ made 24 November 2022 are:

1. pursuant to s 111(2) of the *Evidence (Miscellaneous Provisions) Act*, forbid publication of the content of the application in proceeding filed on 22 November 2022 and publication of the evidence intended to be given in support of the application;
2. direct pursuant to s 111(4) of the *Evidence (Miscellaneous Provisions) Act*, that everyone except court officers, legal representatives and the parties remain outside the courtroom for the hearing of the application in proceeding filed on 22 November 2022.

Respectfully, we regard your client's objection to inspection of this material as wrong.

The application and the supporting affidavit of Ms Fisher filed on 21 November 2022 are not appropriately the subject of a 'privilege' claim or any other kind of confidentiality as would preclude the ordinary discovery of that material.

There is no default definition of "publish" in s 111 of the *Evidence (Miscellaneous Provisions) Act*. The definition that is most often considered in the context of suppression orders is the one contained in s 81J. There, "publish" means: "communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information."

Read in its context, s 111 ought to be given the same, or at least a substantially similar meaning. That is, your client does not breach an order by the ordinary discovery of a document in circumstances where the implied undertaking operates to prevent its misuse.

We consider your interpretation of her Honour's orders is wrong. Please produce for inspection documents 75 and 76 of your client's discovery.



Failing this, we intend to raise this matter at the next direction hearing on 28 August 2023. Our client reserves its right to rely on this correspondence on the question of costs, including indemnity costs, should any applications need to be made about documents 75 and 76 of your client's discovery.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

Copy Anthony Jeffries, David Collinge and Nicola Sanchez  
Gillis Delaney Lawyers

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-101**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Our Ref: MOBL:694  
Your Ref: MS:5263490

10 August 2023

Marlia Saunders  
Partner  
Thomson Geer  
Level 14  
60 Martin Place  
SYDNEY NSW 2000

By email: [msaunders@tqlaw.com.au](mailto:msaunders@tqlaw.com.au)

Dear Ms Saunders

**Bruce Lehrmann v Network Ten Pty Limited & Anor**  
**Federal Court of Australia Proceedings No. NSD103/2023**

We refer to your letter to us of 9 August 2023 and, adopting your headings, respond as follows:

Implied Harman obligation

We appear to be in agreement regarding the effects of the implied Harman obligation.

As requested, we advise that the following documents as specified in Part 1 our client's List of Documents are subject to that obligation:

52 – 56, 66 - 72

You are not however entitled to the other information that you seek about the documents.

Otherwise, our client is aware of his obligations pursuant to the Harman implied undertaking, and we assume that you will be advising your client's employees as to their obligations in complying with the implied undertaking in relation to documents as discovered by our client in these proceedings.

We also assume that in making your reference to "...*gravely unethical*" conduct, you are not intending to suggest that either our firm, or any of our client's other legal advisers, would engage in such conduct, as the making of any such suggestion would constitute a disgraceful slur.

Non-publication orders of 24 November 2022

We disagree with your view that the definition of the word "published" in Section 81J of the Evidence (Miscellaneous Provisions) Act (**the Act**) is necessarily the same meaning that the word "publish" would be given in relation to section 111 of the Act. As you know, section 81J of the Act relates to family violence offence proceedings, and there is no reason to assume that the definition of a word utilised in a section of the Act dealing with such proceedings would also apply to a completely different section of the Act dealing with the making of non-publication orders.

In the circumstances, we do not accept that your interpretation of Section 111 is necessarily correct, and that our interpretation is therefore "wrong". As such, and in light of the specific terms of the non-publication orders made by McCallum J on 24 November 2022, we do not agree with your view that our client would not be at risk of being in breach of the orders by producing the documents to you for inspection.

Our client therefore declines to produce the documents as requested, however he will consent to the making of an order by the Federal Court in these proceedings (or abide by any further order made by the ACT Supreme Court), in relation to production of the documents to the parties. In that regard, please provide to us any proposed orders so that we may give consideration as to the same.

Yours faithfully



**Paul Svilans**

Principal

T +61 2 9216 9830

M [REDACTED]

E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-102**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Rule 1.32

**Subpoena to produce documents**

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED (ACN 052 515 250)** and another named in the schedule  
 Respondents

To: The Proper Officer, Seven Network (Operations) Limited, 6-8 Central Avenue,  
 Eveleigh NSW 2015

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.**

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

**You should read all of the Notes set out in this subpoena.**

**You must complete the Declaration by Addressee (Subpoena Recipient) set out towards the end of this subpoena.**

The last date for service of this subpoena is **18 August 2023**. (See Note 1)

Date: *17 August 2023*

Signed by a Justice of the Federal Court of Australia



Issued at the request of the First Respondent, whose address for service is:

Place: Level 14, 60 Martin Place, Sydney NSW 2000

Email: msaunders@tglaw.com.au

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

Version 5 form approved 11/01/2023]

### Details of subpoena

You must comply with this subpoena by attending Court personally or by a lawyer to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents at **9.30am on 28 August 2023** before Justice Lee at the Federal Court of Australia, New South Wales District Registry, Level 21, Law Courts Building, 184 Phillip Street, Queens Square, Sydney NSW 2000.

### Schedule of documents

In this schedule:

**Second Lehrmann Spotlight Programme** means the 7News Spotlight programme containing an interview with Bruce Lehrmann broadcast on Channel Seven on 13 August 2023.

**Photographs** means any photographs, including of Ms Higgins, used in the Second Lehrmann Spotlight Programme.

**Recordings** means the following audio recordings used in the Second Lehrmann Spotlight Programme:

- (a) the audio recording of the interview between Samantha Maiden and Brittany Higgins;
- (b) the audio recordings of phone calls between Samantha Maiden and Brittany Higgins;
- (c) the audio recordings of voicemails received by Brittany Higgins from:
  - a. Amanda Collinge;
  - b. Barrie Cassidy;
  - c. Lydia (surname unknown, from *The New York Times*);
  - d. Michelle Gratton; and
  - e. Erin Molan.

**Related Body Corporate** has the same meaning as set out in section 50 of the *Corporations Act 2001* (Cth).

**Seven** means Seven Network (Operations) Limited and any Related Body Corporate of Seven Network (Operations) Limited involved in the commission, production or broadcast of the Second Lehrmann Spotlight Programme.

The documents and things you must produce are as follows:

1. One copy of all raw footage (including but not limited to camera tapes) and audio recordings created or obtained in relation to the Second Lehrmann Spotlight Programme, including but not limited to rushes, outtakes, different camera angles and the Recordings.
2. One copy of all communications or documents and materials recording or evidencing communications (including, but not limited to, emails, text messages, instant messages and notes of conversations) between:
  - a) officers, employees or contractors of Seven; and
  - b) Mr Lehrmann or any person representing or acting on behalf of or as an intermediary for Mr Lehrmann,in relation to the Second Lehrmann Spotlight Programme.
3. One copy of all communications or documents and materials recording or evidencing communications (including, but not limited to, emails, text messages, instant messages and notes of conversations) between:
  - a) officers, employees or contractors of Seven; and
  - b) Steven Whybrow SC,in relation to the Second Lehrmann Spotlight Programme.
4. One copy of all documents evidencing or recording communications (including, but not limited to, emails, text messages, instant messages and notes of conversations) with Seven in relation to any of the Recordings or Photographs.
5. One copy of all documents evidencing or recording the transfer to or receipt by Seven of any of the Recordings or Photographs.
6. One copy of any participation or interview agreement signed by or on behalf of Mr Lehrmann in relation to the Second Lehrmann Spotlight Programme.



7. One copy of any statutory declaration or statement signed by Mr Lehrmann in relation to the Second Lehrmann Spotlight Programme.
8. One copy of any documents recording or evidencing payments made or anticipated to be made, or benefits provided or anticipated to be provided, to Mr Lehrmann or to anyone on his behalf or for his benefit, by Seven in relation to the Second Lehrmann Spotlight Programme.

**Notes****Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

**Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

**Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

**Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

**Applications in relation to subpoena**

5. You have the right to apply to the Court:
  - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

**Loss or expense of compliance**

6. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court – arrest**

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

**Schedule**

No. NSD103 of 2023

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

**Respondents**

Second Respondent: Lisa Wilkinson

Date: 14 August 2023

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-103**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

25 August 2023

Ms Marlia Saunders  
Thomson Geer  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

By Email:  
msaunders@tglaw.com.au

Dear Ms Saunders

**Bruce Lehrmann v Network Ten & Anor: Federal Court proceedings  
Seven Spotlight**

We refer to your letter dated 22 August 2023, together with the second subpoena issued to Seven at the request of your clients and dated 14 August 2023.

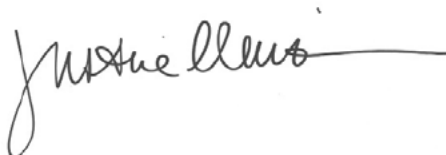
We will be producing material to the Court on Monday in response to the second subpoena.

The material to be produced will include vision of Mr Lehrmann filmed in slow motion walking towards a chair and which includes the vision annexed to your letter. There is no audio recorded with the vision. The file can also be accessed here: [Bruce Walks into the interview in Slow Motion - No audio](#)

There is no additional material to produce in response to your queries regarding the absence of audio. We are instructed that:

- (a) each time the audio disappears is the result of the camera being switched to shoot slow motion and no audio is then able to be recorded by the camera;
- (b) No audio was recorded whilst Mr Lehrmann was filmed watching the Project;
- (c) Items 10-16 in your letter relate to the auxiliary cameras and no audio is recorded except in the case of CAM A (item 13). Audio was recorded directly to Cam A and can be heard in Seven's copies of that file as played through VLC. Please let us know if you cannot hear the audio through VLC in which case we will provide you with a further copy of the file.

Yours faithfully



**Justine Munsie**

**Partner**

Direct Line: [REDACTED]

Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-104**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490

4 October 2023

Justine Munsie  
Partner  
Addisons  
Level 12  
60 Carrington Street  
SYDNEY NSW 2000

Dear Ms Munsie

**Bruce Lehrmann v Network Ten Pty Limited & Anor - Subpoena to Produce Documents  
Federal Court of Australia Proceedings No. NSD103 of 2023**

We refer to the subpoena addressed to your client dated 15 August 2023 (**Subpoena**).

We note that your client produced material in response to the Subpoena to the Court on 28 August 2023 (**Produced Material**).

Our preliminary review of the Produced Material suggests your client has not produced any documents in response to categories 2-8 of the Subpoena.

Please confirm whether your client has any material responsive to categories 2-8 of the Subpoena.

If your client does have material responsive to categories 2-8 of the Subpoena we will liaise with his Honour's Associate to arrange an additional listing in the matter so that your client may produce the outstanding documents to the Court.

We look forward to hearing from you.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E msaunders@tglaw.com.au

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-105**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



10 October 2023

Ms Marlia Saunders  
Thomson Geer  
Level 14, 60 Martin Place  
SYDNEY NSW 2000

**By Email:**  
**msaunders@tglaw.com.au**

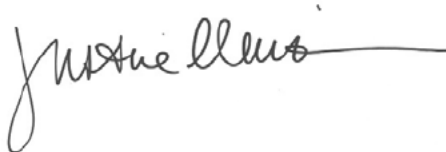
Dear Ms Saunders

**Bruce Lehrmann v Network Ten & Anor: Federal Court proceedings  
Seven Spotlight**

We refer to your letter dated 4 October 2023.

Seven has no further documents to produce in response to the subpoena dated 14 August 2023.

Yours faithfully



**Justine Munsie**  
**Partner**

Direct Line: [REDACTED]

Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-106**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000



**Commander, Investigations - ACT Policing**

/ GPO Box 401 Canberra ACT 2601

/ Telephone: [REDACTED]

/ Email: [REDACTED]

3 November 2023

Ms Marlia Saunders  
 Partner – Thomson Geer Lawyers  
 Level 14, 60 Martin Place  
 Sydney, NSW 2000 Australia  
 Via email: [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

Dear Ms Saunders,

**REGARDING YOUR COMPLAINT TO POLICE DATED 7 JUNE 2023**

I refer to your email of 7 June 2023 sent on behalf of your client, Network Ten Pty Limited (Network Ten), in relation to an alleged contempt of court.

I understand Network Ten is concerned that material obtained under an Australian Federal Police (AFP) search warrant and material produced under subpoena by Network Ten to the ACT Supreme Court in *R v Lehrmann (SCC 264 of 2022)*, appears to have been disclosed to the media on multiple occasions. The complaint alleges this disclosure is in breach of the implied undertaking (*Harman* undertaking) that applies to documents produced in proceedings under compulsion.

ACT Policing has carefully considered Network Ten's complaint. At this stage, there is no clear underlying criminal conduct which would give rise to a basis for the AFP to investigate the circumstances of the alleged contempt. As you may be aware, it is a matter for a presiding court to determine whether a particular contempt is civil or criminal in nature, and no proceedings have yet been commenced in relation to this matter.

Division 2.18.16 of the *Court Procedure Rules 2006 (ACT)* governs the process by which contempt proceedings are instituted. Rule 2501(2)(b) provides that an application can be brought by way of originating application. It is therefore open to your client as an interested party to commence proceedings for contempt.

Separately, the AFP has referred the disclosure of the above information to the National Anti-Corruption Commission who are leading an ongoing investigation regarding whether any AFP members may have been involved in this conduct.

If you have any questions or concerns, please do not hesitate to contact my office.

Yours sincerely

Andrew Bailey

**Commander, Investigations - ACT Policing**

/ GPO Box 401 Canberra ACT 2601

/ Telephone: [REDACTED]

/ Email: [REDACTED]

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-107**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd

Solicitor

Level 14, 60 Martin Place, Sydney NSW 2000

MS CHRYSANTHOU: Yes.

HIS HONOUR: But if we move to that, then - - -

5 MS CHRYSANTHOU: But that's - - -

HIS HONOUR: - - - no difficulty.

10 MS CHRYSANTHOU: Yes. I was just going to limit myself to the fact of the agreement, the fact that the broadcast was intended by him to - - -

HIS HONOUR: Well, you don't need - - -

15 MS CHRYSANTHOU: - - - put his position.

HIS HONOUR: We've got – you can tender the agreement.

MS CHRYSANTHOU: Yes.

20 HIS HONOUR: Okay. Well, we can cut to the chase, I think.

MS CHRYSANTHOU: Yes.

25 Well, the first broadcast, in addition to the matters I've already asked you about, also concerned, didn't it, these proceedings?---I believe so, yes.

30 And you went public, so to speak, to put your side of the story out there so that people could hear your version and you could attempt to vindicate your reputation somewhat?---That was a consideration, yes.

And it was part of the agreement, wasn't it, that you were paid for 12 months of accommodation by Channel 7?---That is – that's the only part of the – yes, that's what I get.

35 Yes. And you – and that occurred from June 2023 and it's to be paid until June 2024?---Well, yes, for – for filming in those places, yes.

40 What do you mean “for filming in those places”?---Well, there was a section of the first broadcast, I recall, that was filmed in the place I was in at the time.

Could you just please look at document 1035, at – sorry, 1135?---What volume, Ms Chrysanthou?

45 It is volume 14, please?---1135?

Sorry, 1035, sorry? Is that right? I think - - -?---Sorry, that's the wrong volume then.

No. It was 1135, sorry?---Yes.

I just want to check, does that invoice represent the payment of the consideration referred to in the agreement you entered into with Channel 7?---I don't know.

5

You don't know how much you were paid?---I've never seen that.

So you don't know how much was paid by Channel 7 for your accommodation for 12 months?---Network Seven handle the accommodation arrangements.

10

All right. I think the document was produced on subpoena by Network Seven, your Honour, so we will deal with that later. Now, also under that contract, I want to suggest to you – and I should show - - -

15

HIS HONOUR: I will mark it for identification now. That document can be MFI30.

**MFI #30 CONTRACT BETWEEN APPLICANT AND NETWORK SEVEN**

20

MS CHRYSANTHOU: Could you just turn to volume – are you in volume 11?---14 I've got.

25

Could you please turn to volume 11?---Yes.

That's the agreement I was just asking you about?---Sorry, just a tab number, if I could, Ms - - -

30

1052?---Yes.

In addition to giving the interviews, you also agreed to give all information, documents, film, video, photographs, items and assistance?---Yes.

35

Reasonably requested by Seven in relation to the above?---Yes.

And did you do so?---No, I just gave an interview.

40

HIS HONOUR: But, sorry, why is this relevant?

MS CHRYSANTHOU: Just, your Honour - - -

45

HIS HONOUR: We've got an objective theory of contract. We know what the contract says.

MS CHRYSANTHOU: Thank you, your Honour. Can I mark the contract for identification?

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-108**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

Level 14, 60 Martin Place  
Sydney NSW 2000 Australia

GPO Box 3909 Sydney NSW 2001

T +61 2 8248 5800  
F +61 2 8248 5899

Our ref MS:5263490  
Your ref MOBL657

31 March 2024

**URGENT**

Paul Svilans and Monica Allen  
Mark O'Brien Legal  
Level 19  
68 Pitt Street  
SYDNEY NSW 2000

Dear Colleagues

**Bruce Lehrmann v Network Ten Pty Limited & Anor – Fresh evidence  
Federal Court of Australia Proceedings No. NSD 103 of 2023**

We refer to:

1. your letter dated 16 May 2023 which confirmed that various documents produced in the ACT Supreme Court criminal proceedings were in the possession of Mr Whybrow SC and the Applicant, but by reason of the implied Harman undertaking, could not be accessed for the purposes of these proceedings;
2. the two 7News Spotlight programs broadcast on 4 June 2023 and 13 August 2023 which featured interviews with your client, and extracts of materials that were produced in the ACT Supreme Court criminal proceedings but which had not been tendered and which therefore remained subject to the implied Harman undertaking;
3. our letter dated 5 June 2023 in which we requested whether your client, or anyone on his behalf, provided a copy of material subject to the implied Harman undertaking to a journalist;
4. your letter dated 5 June 2023 in which you advised that you were instructed the answer to our query was "no";
5. your letter dated 9 June 2023 in which you clarified your letter of 16 May 2023;
6. your letter dated 10 August 2023 in which you stated "our client is aware of his obligations pursuant to the Harman implied undertaking"; and
7. your client's evidence at the trial about the 7News Spotlight programs at T523:

In addition to giving the interviews, you also agreed to give all information, documents, film, video, photographs, items and assistance?---Yes.

Reasonably requested by Seven in relation to the above?---Yes.

And did you do so?---No, I just gave an interview.

**Fresh and compelling evidence**

On Thursday 28 March 2024, we were notified of the potential existence of new evidence contradicting the matters set out above.



The fresh evidence comprises two affidavits of Taylor Auerbach and exhibits, sworn on 30 and 31 March 2024 respectively (collectively, the **Auerbach Evidence**) and provided to us, as we understand it, very shortly after they were sworn.

The Auerbach Evidence was provided to us on the condition that it will only be used by our client and our firm for the purposes of this proceeding.

The Auerbach Evidence is relevantly to the effect that your client provided materials to the 7News Spotlight program, including (a) more than 2,000 pages of messages exchanged between Ms Higgins and Mr Dillaway, and (b) a number of messages exchanged between Ms Higgins and Mr FitzSimons.

As to (a), the messages were extracted by the Australian Federal Police (**AFP**) from Ms Higgins' mobile phone and were included in the AFP eBrief which is dated 30 March 2022. The metadata for the document provided to Mr Auerbach shows it was also dated 30 March 2022. Only 17 pages were tendered in your client's criminal trial in the ACT Supreme Court (exhibit H). The balance, comprising more than 2,000 pages, were not tendered and appear clearly to have come from the AFP eBrief and been subject to a Harman undertaking not to be used for any purpose other than the criminal proceedings.

As to (b), the messages were also extracted from Ms Higgins' mobile phone and included in the AFP eBrief, and were also produced by Mr FitzSimons in response to a subpoena served on him by your client in the ACT Supreme Court proceedings. These messages were never tendered in those proceedings. They too appear clearly to have been subject to a Harman undertaking.

The Auerbach Evidence also identifies a raft of benefits allegedly received by your client from the Seven Network in connection with the interviews that he gave to 7News Spotlight, being benefits that were not identified by him when he was cross-examined at trial (see T522-3). Further, the Auerbach Evidence includes documents that it appears ought to have been produced by the Seven Network in response to subpoenas served on it in advance of the trial. Had those documents been produced, they would have been available to the Respondents for the purpose of cross-examining your client and making submissions, including in respect of abuse of process and mitigation of damages.

Given the urgency of this matter, our client has today issued an application to reopen its case for the purpose of adducing the Auerbach Evidence, and will seek an urgent hearing before the trial judge for the hearing of the application.

We **attach** a copy of the application and supporting affidavit, by way of service.

We have not filed a copy of the Auerbach Evidence in support of the interlocutory application, and do not intend to do so unless and until we are directed to do so by the trial judge, so as not to embarrass his Honour in circumstances where judgment has been reserved and the delivery of judgment is impending.

We consider that the Auerbach Evidence:

1. constitutes fresh evidence, in that we were unaware of it at the time of the trial and it could not have been obtained with reasonable diligence; and
2. if accepted, constitutes evidence capable of reflecting adversely, in a material way, on your client's credit in the proceeding and as supporting, in a material way, the submissions made by the Respondents to the effect that your client has engaged in conduct constituting an exceptional abuse of process that would disentitle him to any relief, even if the Respondents' defences were to fail.

Please confirm by **12pm on Monday 1 April 2024** that you accept that the Auerbach Evidence meets these criteria and whether your client consents to our client's application: see eg *Inspector-General in Bankruptcy v Bradshaw* [2006] FCA 22; *Smith v NSW Bar Association* (1992) 176 CLR 256.

We anticipate that, if our client's application is successful, a date would need to be identified for the adducing of further evidence, which we expect would be confined to calling Mr Auerbach to give evidence and be cross-examined, and the tendering of documents directed at establishing your client's breach of his Harman undertaking and the false evidence he gave at trial.

Yours sincerely



**Marlia Saunders**

Partner

T +61 2 8248 5836

M [REDACTED]

E [msaunders@tglaw.com.au](mailto:msaunders@tglaw.com.au)

Copy Anthony Jeffries, David Collinge and Nicola Sanchez  
Gillis Delaney Lawyers

## Annexure Certificate

No. NSD103 of 2023

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

**BRUCE LEHRMANN**

Applicant

**NETWORK TEN PTY LIMITED & ANOR**

Respondent

This is annexure marked "**MRS-109**" referred to in the affidavit of MARLIA RUTH SAUNDERS affirmed on 1 April 2024 before me:

---

Signature of Amelia CausleyTodd  
Solicitor  
Level 14, 60 Martin Place, Sydney NSW 2000

**Saunders, Marlia**

---

**From:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>  
**Sent:** Monday, 1 April 2024 12:44 PM  
**To:** CausleyTodd, Amelia; ajj@gdlaw.com.au  
**Cc:** Saunders, Marlia; O'Beirne, Conor; Meixner, Sophie; Currie, Natasya; 'dec@gdlaw.com.au'; nrs@gdlaw.com.au; Monica Allen  
**Subject:** RE: Bruce Lehrmann v Network Ten Pty Limited & Anor (NSD103/2023)  
**Attachments:** Notice to Produce to the First Respondent dated 1 April 2024 (006).pdf; Notice to Produce to the Second Respondent dated 1 April 2024\_1 (003).pdf

Dear Colleagues

We refer to the letter from the solicitors for the first respondent dated 31 March 2024 and advise that our client opposes the application referred to therein.

In the event the application is successful, we are instructed to call upon the attached Notices to Produce as addressed to and served upon each of the respondents.

Regards

**Paul Svilans**

Principal | Mark O'Brien Legal

**MARK O'BRIEN LEGAL** Level 10, 16-18 O'Connell Street, Sydney NSW 2000 Australia  
 T +61 2 9216 9830 | M [REDACTED]  
 E [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)  
 ABN 86 002 421 123 W [www.markobrienlegal.com.au](http://www.markobrienlegal.com.au)

**Please be advised that as of 18 March 2024 our address will be Level 10, 16-18 O'Connell Street, Sydney NSW 2000**

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---

**From:** CausleyTodd, Amelia <acausleytodd@tglaw.com.au>  
**Sent:** Sunday, March 31, 2024 2:20 PM  
**To:** Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Monica Allen <Monica.Allen@markobrienlegal.com.au>  
**Cc:** Saunders, Marlia <msaunders@tglaw.com.au>; O'Beirne, Conor <cobeirne@tglaw.com.au>; Meixner, Sophie <smeixner@tglaw.com.au>; Currie, Natasya <ncurrie@tglaw.com.au>; ajj@gdlaw.com.au; 'dec@gdlaw.com.au' <dec@gdlaw.com.au>; nrs@gdlaw.com.au  
**Subject:** Bruce Lehrmann v Network Ten Pty Limited & Anor (NSD103/2023) – Fresh evidence [TGLAW-Legal.FID3782978]

[Confidential]

Dear Colleagues

Please see our **urgent** correspondence **attached**.

Due to its large file size, the affidavit of Marlia Ruth Saunders affirmed 31 March 2024 can be found on ShareFile [here](#).

Kind regards

**Amelia CausleyTodd** | Associate  
**Thomson Geer**

T +61 2 8248 3455 | M [REDACTED]  
Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
[acausleytodd@tglaw.com.au](mailto:acausleytodd@tglaw.com.au) | [tglaw.com.au](http://tglaw.com.au)

**Advice | Transactions | Disputes**

#####  
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