

Subpoena Number: 2023/S/0039

Sections 18(c), 26(1) and 26(3) of the *Inquiries Act 1991*

**SUBPOENA TO PROVIDE A WRITTEN STATEMENT**

To: Lisa Wilkinson

Of: C/- Gillis Delaney Lawyers  
Level 40, 161 Castlereagh Street  
Sydney NSW 2000

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)<sup>1</sup> dated 1 February 2023 require you to give a written statement to the Board of Inquiry pursuant to sections 18(c), 26(1)(b) and 26(3)(b) of the *Inquiries Act 1991* in regard to your knowledge of the matters set out in the Schedule annexed hereto.

YOU MUST COMPLY WITH THIS REQUIREMENT BY:

Giving a written statement signed and witnessed in accordance with section 7 of the *Oaths and Affirmations Act 1984* (ACT) to the Board of Inquiry on or before **5:00 pm AEST on 8 May 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

A copy of the written statement must also be provided electronically by email at [BOI.Notices@inquiry.act.gov.au](mailto:BOI.Notices@inquiry.act.gov.au) with the subject line "Requirement for Written Statement".

If you believe that you have a reasonable excuse for not complying with this notice, you will need to satisfy me of this by the above date.

**Failure to comply with this notice without lawful excuse is a Contempt of Board and you may be dealt with accordingly.**

Date: 1 May 2023



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Walter Sofronoff KC  
**Chairperson**  
Board of Inquiry

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<sup>1</sup> The terms of reference of the Board of Inquiry, contained in NI2023-49 dated 1 February 2023 are set out as **Annexure A** to this subpoena.

## Notes

### Informal service

1. Even if this notice has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the notice and its requirements.

### Where the addressee is a corporation or agency

2. If this notice is addressed to a corporation or agency, the corporation or agency must comply with the notice by its appropriate person or proper officer.

### Objections

3. If you object to a document or thing produced in response to this notice being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry about your objection and the grounds of your objection either orally on the return date for this notice or in writing before or after the return date.

### Production of copy instead of original

4. If the notice requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
5. The copy of the document may be—
  - (a) a photocopy; or
  - (b) in PDF format; or
  - (c) in any other electronic form that the issuing party has indicated will be acceptable.

### Contempt of Board of Inquiry

6. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
7. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
8. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

**Protections**

9. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).
10. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

**ANNEXURE A**  
**Terms of Reference**

1. The Board will inquire into:
  - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
    - (i) in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
    - (ii) in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
    - (iii) in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
    - (iv) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
  - (b) If any police officers so acted, their reasons and motives for their actions.
  - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in:
    - (i) making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann; and
    - (ii) his conduct of the preparation of the proceedings for hearings; and
    - (iii) his conduct of the proceedings.
  - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
  - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
  - (f) Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in

the matter of *R v Lehrmann*.

(g) Any matter reasonably incidental to any of the above matters.

2. The Board will report to the Chief Minister by ~~30 June 2023~~ 31 July 2023.

**Subpoena 2023/S/0039**

**Schedule of Questions for Statement**

**Ms Lisa Wilkinson**

**Background and Professional History**

1. What is your current occupation?
2. In chronological order, outline your tertiary qualifications, if any, including when and where you obtained them.
3. In chronological order, outline your diploma qualifications, if any, including when and where you obtained them.

**Attach** a copy of your up-to-date curriculum vitae.

**Contact with Mr Shane Drumgold SC up to and including 15 June 2022**

4. Detail your contact, or the contact made on your behalf by your legal representatives, with Mr Shane Drumgold SC leading up to and including the meeting with the DPP on 15 June 2022. In your answer, include:
  - (a) who initiated contact and when;
  - (b) how contact was initiated;
  - (c) the purpose of the contact (if known by you); and
  - (d) what was discussed during the contact.

**Attach** the correspondence if the contact was by text message, social media, email, letter or any record of the correspondence if a file note or diary note was taken of the contact.

**Speeches given after 15 June 2022**

5. In chronological order, outline any speeches you have publicly delivered, touching upon your dealings, contact, and/or work with, or in relation to, Ms Higgins or the matter of *R v Lehrmann*, following the meeting with the DPP on 15 June 2022. In your answer, include:
  - (a) the context for how you came to give the speech;
  - (b) when you gave the speech;
  - (c) what advice you sought and received, if any, from Mr Drumgold SC regarding

the making of the speech; and

(d) any other background you believe is necessary and relevant.

**Attach** a copy of each speech referred to in your answer above.

**Contact with Mr Shane Drumgold SC from 15 June 2022**

6. Detail your contact, or the contact made on your behalf by your legal representatives, with Mr Shane Drumgold SC after the meeting with the DPP on 15 June 2022 to the date of this subpoena. In your answer, include:

- (a) who initiated contact and when;
- (b) how contact was initiated;
- (c) the purpose of the contact (if known by you); and
- (d) what was discussed during the contact.

**Attach** the correspondence if the contact was by text message, social media, email, letter or any record of the correspondence if a file note or diary note was taken of the contact.

**Concerns regarding any breach of duty, failure to act in accordance with a duty, or failure to act in accordance with relevant statutory framework**

- 7. Do you believe Mr Drumgold SC breached any duties or failed to act in accordance with his duties as a prosecutor in the matter of *R v Lehrmann*? If so, provide details and **attach** any relevant evidence.
- 8. Do you believe that any police officer breached any duties or failed to act in accordance with their duties in the investigation of Ms Higgins' complaint or the matter of *R v Lehrmann*? If so, provide details and **attach** any relevant evidence.
- 9. Do you believe that the Victim of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to Ms Higgins during the police investigation into her complaint and the matter of *R v Lehrmann*? If so, provide details and **attach** any relevant evidence.

**Other**

- 10. Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry.

### **Transcript of Logies speech**

Thank you so much to the judges for this enormous honour, especially knowing the calibre of our fellow nominees all of whom we are extremely humbled to be counted alongside.

After 40 years in journalism this interview, and this story is by far the most important work I have ever done. And I knew it from that very first phone call I had early last year with a young woman, whose name, she told me, was Brittany Higgins.

Four incredibly intense and sleepless weeks of investigation later when our story went to air, the entire country knew the name Brittany Higgins.

As Brittany warned me BEFORE we went to air, her story would be seen by many of the most powerful people in this country, not as a human problem, but as a political problem.

Brittany, was a political problem.

And governments tend to like political problems to go away. But Brittany never did.

And the truth is this honour belongs to Brittany.

It belongs to a 26-year-old woman's unwavering courage, it belongs to a woman who said "enough".

It belongs to a woman who inspired more than a hundred thousand similarly pissed off, exhausted, fierce women - and MEN - to take to the streets right across this country to roar...in numbers too big to ignore.

Brittany, thank you for trusting me, thank you for trusting this wonderful team - producer Angus Llewelyn, and editor Darryl Brown - thank you for trusting The Project, our bosses, Beverly McGarvey, Chris Bendall, Sarah Thornton, Peter Meakin & Craig Campbell...

...thank you for helping to change the national conversation...

...and on behalf of all the generations of women to come, thank you Brittany, for NEVER giving up.



## SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

**Case Title:** R v Lehrmann (No 3)

**Citation:** [2022] ACTSC 145

**Hearing Dates:** 20 – 21 June 2022

**Decision Date:** 21 June 2022

**Before:** McCallum CJ

**Decision:** (1) Vacate the trial date of 27 June 2022;  
(2) Stand the matter over for mention before McCallum CJ on 23 June 2022 at 9:30am.

**Catchwords:** CRIMINAL PROCEDURE – Stay of proceedings – Application for temporary stay of criminal proceedings– Significant pre-trial publicity – Whether of such a nature as to prevent a fair trial – Where application for temporary stay has been previously refused – Whether there has been a significant change in circumstances – Where pre-trial publicity concerns the character of the complainant – Whether steps able to be taken by the trial judge in the conduct of the trial to relieve against its unfair consequences - Where pre-trial publicity is of such intensity and proximity to trial, and had such capacity to obliterate distinction between untested allegation and a fact accepted by jury, that prejudice cannot be remedied

CRIME – Accused facing trial for sexual intercourse without consent – Significant pre-trial publicity and commentary including speech by witness on live television endorsing the complainant’s credibility and claimed status as a victim – Whether possible to empanel an impartial jury – Whether prejudice able to be addressed by directions by the trial judge

**Legislation Cited:** *Court Procedures Rules 2006* (ACT), r 4750(3)  
*Crimes Act 1900* (ACT), s 54(1)

**Cases Cited:** *R v Lehrmann (No 2)* [2022] ACTSC 92

**Parties:** The Queen (Crown)  
Bruce Lehrmann (Accused)

**Representation:** **Counsel**  
S Drumgold SC, S Jerome (Crown)  
S Whybrow, K Musgrove, B Jullienne (Accused)

**Solicitors**  
ACT Director of Public Prosecutions (Crown)  
Kamy Saeedi Law (Accused)

**File Number(s):** SCC 264 of 2021

**McCallum CJ:**

1. The accused in these proceedings is charged with an offence of engaging in sexual intercourse without consent, contrary to s 54(1) of the *Crimes Act 1900* (ACT). The allegation is of a kind not unfamiliar to the courts, save for the fact that the place where the offence is alleged to have occurred is on the couch in the office of a Senator in Australian Parliament House.
2. The case has, accordingly, attracted a level of attention in the media and among prominent Australian personalities that, while not unprecedented (even within my own judicial experience), is certainly extreme. Extensive media reporting of allegations of criminal conduct is not a mischief in itself. On the contrary, it is appropriate to recognise that the media play an important role in drawing attention to allegations of criminal or other misconduct and any shortcomings in the treatment of such allegations.
3. What is a potential mischief is the capacity for media reporting of such issues to spread in such a way as to interfere with the fair and proper determination of any related matter before the Court. That danger is particularly acute in the case of pending criminal proceedings.
4. It is trite, but apparently requires restatement at this point in this case, that the constitutional process for determining whether a person is guilty or not guilty of a serious criminal offence is for the allegation to be tested in a trial conducted in open court according to law.
5. The requirement to conduct a trial according to law is one of rich and variable content according to the circumstances of the case. But the overriding principle, one that is fundamental to the very notion of a criminal trial, and so cannot be dispensed with, is the requirement that the trial be fair.
6. The entitlement to a fair trial is one enjoyed by the Crown and the accused alike. However, because the consequence of a finding of guilt is to enliven the authority of the State to punish, including by detaining a person in prison, it is rightly recognised that a trial that was unfair to the accused was no trial at all and must be held again.
7. Earlier this year, the accused in the present matter applied to have his trial either permanently or temporarily stayed because he said he could not possibly have a fair trial in light of the extensive media reporting and public commentary by prominent personalities about the complainant's allegations.
8. At that time, and in light of the evidence then brought forward, I was not persuaded of the impossibility of a fair trial then some two months away.

9. Yesterday, the accused brought forward a further application, made orally outside normal sitting hours, for a temporary stay of his trial, which is currently due to commence next Monday. His right to bring the application is circumscribed by r 4750(3) of the *Court Procedures Rules 2006* (ACT) which provides that, the previous application having been dismissed, a further application may be made only if:
  - (a) There has been a significant change of circumstances; and
  - (b) The application is limited to the change of circumstances.
10. That limitation does not, however, require the Court to disregard what has gone before.
11. The first application was determined in a written judgment made publicly available only in redacted form. I limited the publication of my reasons in that way because recent jurisprudence, including decisions of the High Court, commends a cautious approach to the publication of the matters alleged to have compromised the court's capacity to ensure that the trial of an accused person will be fair, lest a court's judgment itself should contribute to the prejudice.
12. In light of the events that have given rise to the present application, and the circumstances in which it is brought, I consider it appropriate to give an unexpurgated version of the basis for the accused's contention that recent publicity has temporarily prejudiced his right to a fair trial.
13. It is appropriate to place the relevant facts in their chronological context. The offence with which the accused is charged is alleged to have been committed in the early hours of 23 March 2019. The complainant made a statement to police shortly thereafter, on 1 April 2019. However, following the announcement of a federal election, the complainant informed police that, in light of her workplace demands, she did not wish to proceed further with the complaint. The Crown case at trial will be that the decision not to proceed with the complaint at that time was prompted by the complainant's consideration of her duties to her employer in the delicate period leading up to the federal election.
14. In early January 2021, almost two years having passed, the complainant decided that she wished to proceed with the complaint. To that end she considered it appropriate to resign from her employment, then with Michaelia Cash, and proffered her resignation. The Crown case will be that, with a view to forestalling the mudslinging she anticipated would flow from that decision, she also decided to go public with her allegation against the accused and, separately, with her concerns as to the manner in which her initial complaint had been handled within Parliament House.

15. To that end, the complainant participated in a preliminary interview with Ms Lisa Wilkinson, a well-known journalist, on 27 January 2021. On 2 February 2021, Ms Wilkinson recorded an interview with the complainant which, in due course, became the basis for a program hosted by her. On 4 February 2021, the complainant contacted police to communicate her resumed interest in proceeding with a criminal complaint. On 15 February 2021, the program prepared by Ms Wilkinson was broadcast on The Project.
16. Some days after that, the complainant participated in a recorded interview with police (that is, after the airing of the program on The Project). As noted by Mr Whybrow, who appears for the accused, had those events occurred in reverse order, it is possible that the commencement of criminal proceedings would have intervened, with the result that the interview could not have been published without attracting the risk of contempt proceedings against the journalists. In any event, in due course, on 5 August 2021 the accused was summonsed to appear in Court in September 2021 to face the present charge.
17. The circumstances which gave rise to the first stay application and the reasons for refusing that application are published in *R v Lehmann* (No 2) [2022] ACTSC 92. As already indicated, that judgment is presently available only in redacted form.
18. The changed circumstances giving rise to the further application are as follows. Last Sunday, 19 June 2022, the Australian television industry held what until the interference of the COVID-19 pandemic were its annual awards for excellence in Australian television, known as The Logie Awards. The name of those awards evidently comes from the name of John Logie Baird, a Scottish electrical engineer and inventor credited with demonstrating the world's first live working television (that is not a matter in evidence in the proceedings, but comes from my own research).
19. Ms Wilkinson received a silver Logie for her interview broadcast on The Project. This was not entirely unexpected by her, nor did the award come at a time when she was unaware of the pending trial of the accused. Indeed, Ms Wilkinson may be taken to be aware that she is to be called as a Crown witness in the trial.
20. That is the inference that can be drawn from the content of a file note in evidence before me which records that, on 15 June 2022, some days before the Logie awards, Ms Wilkinson participated in a conference with the Director of Public Prosecutions and those appearing with him and instructing him in the trial to discuss the evidence she would give.

21. Ms Wilkinson's anticipated evidence concerns her interviews with the complainant and may be admissible in the trial as evidence of complaint. A note of the meeting tendered by the accused, without objection on the present application, concludes as follows:

"At conclusion Lisa was asked if she had any questions:

- I am nominated for a Gold Logie for the Brittany Higgins interview
- I don't think I will get it because it is managed by a rival network
- I have, however, prepared a speech in case
- Lisa read the first line and stopped by the director who said
  - o We are not speech editors
  - o We have no power to approve or prohibit any public comment that is the role of the court
  - o Can advise, however, that defence can reinstitute a stay application in the event of publicity"

22. Notwithstanding that clear and appropriate warning, upon receiving the award, Ms Wilkinson gave a speech in which she openly referred to and praised the complainant in the present trial. Unsurprisingly, the award and the content of the speech have been the subject of extensive further commentary.

23. The recent commentary includes remarks made on the popular morning radio program, "Jonesy and Amanda". The relevant segment from that program in evidence on the present application opened as follows:

"Amanda: But there were some really lovely moments last night. One of which was the award that Lisa Wilkinson and The Project picked up for the story they did on Brittany Higgins. They just – it was a phone call that came to Lisa. She answered Brittany Higgins' phone call. Brittany had – the back story here, I'm sure you remember, was raped in Parliament House."

24. The transcript attributes to "Jonesy" his assent to that recollection. He later refers to the fact that, "...the whole story was dreadful. Absolutely dreadful", adding, "[j]ust the very fact that she had to have a meeting in the very room that she was raped with her superiors and then her career was virtually finished." And so on.
25. In case it is not clear, my purpose in quoting those remarks is the fact that each of the radio presenters assumed the guilt of the accused. The evidence before me on the present application also includes other social commentary including a copy of the complainant's own post effectively repeating remarks made by Ms Wilkinson in her speech. In other words, as was put in argument before me this morning, the combination of the speech and the posts amounted to Ms Wilkinson endorsing the credibility of the complainant who, in turn, celebrated Ms Wilkinson's endorsement of the complainant's credibility.

26. Then, this morning, there was a further spate of comments on social media reacting to the fact of the application made yesterday. Two were anodyne: one under the assumed tag "Sociable Socialist" remarks that, "[p]eople in the public sphere need to refrain from making comments about this case." I can only agree and thought I had made that tolerably clear to a broader audience on a number of occasions during these proceedings.
27. The other appearing under what I understand to be his real name, "Jeremy Gans" is sensibly confined to a bland but accurate specification of the circumstance in which the present application is brought. But today's comments otherwise almost universally assume the guilt of the accused and speculate, without any foundation, that his motives for bringing the application are improper.
28. I do not, of course, make the mistake of assuming that individual comments on social media reflect the views or mindset of the broader public, still less, of the likely pool of ACT jurors. But they do exemplify possible responses to the recent publicity. When the same assumption of guilt as is being made widely on social media is made and widely broadcast by popular breakfast radio hosts such as Amanda Keller and Brendan Jones, it may safely be inferred that the impact of the recent publicity is large and that its full impact cannot be known.
29. What can be known is that, somewhere in this debate, the distinction between an untested allegation and the fact of guilt has been lost. The Crown accepted that the Logie awards acceptance speech was unfortunate for that reason. He also accepted that Ms Wilkinson's status as a respected journalist is such as to lend credence to the representation of the complainant as a woman of courage whose story must be believed.
30. The prejudice of such representations so widely reported so close to the date of empanelment of the jury cannot be overstated. The trial of the allegation against the accused has occurred, not in the constitutionally established forum in which it must, as a matter of law, but in the media. The law of contempt, which has as its object the protection of the integrity of the court but which, incidentally, operates to protect freedom of speech and freedom of the press, has proved ineffective in this case. The public at large has been given to believe that guilt is established. The importance of the rule of law has been set at nil.
31. The Crown submitted that the vaccine for the vice of pre-judgment is to empower the jury by giving appropriate directions reminding them that they are uniquely placed to

determine the case and directing them to disregard the views of others, who will not have heard all of the evidence.

32. No doubt that can be done in many cases. The present case is different because the author of the impugned remarks will be a key witness in the trial. The central issue in the trial, it is now clear, will be the credibility of the complainant and whether her allegation of sexual assault can be believed. It is not uncommon in such matters for the defence to explore in cross-examination the way in which a complaint unfolded as the central basis for making submissions to the jury as to whether the complaint should be believed.
33. The irony in all of this is that the important debate as to whether there are shortcomings in the way in which the courts are able to deliver justice in sexual assault cases, to complainants and accused persons alike, has evolved into a form of discussion which, at this moment in time, is the single biggest impediment to achieving just that.
34. The delay of the present trial will not serve the interests of anyone. Contrary to popular assumption, it does not serve the interests of the accused, for whom the prospect of conviction and sentence must weigh heavily as an immobilising force in his life. He has said through his lawyer in the present application that he has no interest in delaying the trial but he wants it to be a fair trial, and I accept that that is the case.
35. Nor does delay serve the interests of the Crown or the complainant. Delay has a corrosive effect on evidence. It is expensive. No doubt significant costs funded both publicly and privately have been incurred in preparation to date in the present trial, including in the bringing of the present application.
36. Delay of the trial at this stage wastes the valuable resources of the Court, not least among which in the horrifying prospect that a judge of the Court should find herself idle for four weeks during the time set aside for this trial at the expense of other accused persons. A new jury panel would have to be summoned if the trial is delayed.
37. Unfortunately, however, the recent publicity does, in my view, change the landscape because of its immediacy, its intensity and its capacity to obliterate the important distinction between an allegation that remains untested at law and one that has been accepted by a jury giving a true verdict according to the evidence in accordance with their respective oaths or affirmations.
38. I am not satisfied that any directions to the jury panel prior to empanelment or, in due course, to the jury can adequately address that prejudice. For those reasons, regrettably and with gritted teeth, I have concluded that the trial date of 27 June towards which the parties have been carefully steering must be vacated.



39. I make the following orders:

- (1) Vacate the trial date of 27 June 2022;
- (2) Stand the matter over for mention before McCallum CJ on 23 June 2022 at 9:30am.

I certify that the preceding thirty-nine [39] numbered paragraphs are a true copy of the Reasons for Judgment of her Honour Chief Justice McCallum

Associate:

Date: 22 June 2022

22 June 2022

The Hon. Chief Justice McCallum  
Chief Justice of the Australian Capital Territory

By email to: [REDACTED]@courts.act.gov.au

Copies to:

Office of the Director of Public Prosecutions  
Reserve Bank Building  
20-22 London Circuit  
CANBERRA CITY ACT 2601

Kamy Saeedi Law  
1/1 University Avenue  
CANBERRA CITY ACT 2601

**Attention: Mr Shane Drumgold SC**

**Attention: Kamy Saeedi**

Dear Chief Justice

**R v Bruce Lehrmann, Supreme Court of the Australian Capital Territory  
Proceedings No. SCC 264 of 2021**

I refer to your Honour's decision to vacate the trial in the above proceedings: [2022] ACTSC 145.

I am writing on behalf of Network Ten Pty Limited and Ms Wilkinson.

We take our legal obligations very seriously, including those in respect of sub judice contempt. In particular, Ms Wilkinson takes her obligations as a prospective witness with the utmost seriousness.

We did not intend at any time to interfere with the trial of Mr Lehrmann. Neither Ms Wilkinson nor the Network Ten Senior Legal Counsel present at the conference with the DPP on 15 June 2022 understood that they had been cautioned that Ms Wilkinson giving an acceptance speech at the Logie Awards could result in an application being made to the Court to vacate the trial date. Had they understood that a specific warning had been given, Ms Wilkinson would not have given the speech.

We profoundly regret that the trial has had to be vacated. We did not foresee the volume and damaging nature of the media and social media commentary that followed from Ms Wilkinson's acceptance speech. We apologise for this, and will take steps to ensure that such matters are taken into account in the future.

I have also directed that all future commentary on our platforms and by our journalists concerning Mr Lehrmann, Ms Higgins and this proceeding is to be strictly limited to general news reporting, such as reporting of the proceedings as they are conducted in open court, until the conclusion of the trial.

If your Honour wishes, we will arrange for Senior Counsel to appear before the Court to convey each of the above matters personally.

Yours sincerely



**Beverley McGarvey**  
Chief Content Officer and Executive Vice President

**From:** Saunders, Marlia <[REDACTED]@tglaw.com.au>  
**Sent:** Thursday, 1 December 2022 6:24 PM  
**To:** Drumgold, Shane  
**Subject:** R v Lehrmann - Lisa Wilkinson [TGLAW-Legal.FID3626446]

Dear Mr Drumgold

I refer to our telephone discussion on 24 October 2022 regarding my client, Lisa Wilkinson. On that occasion, we discussed your intention to make a public statement following the resolution of the Lehrmann proceedings to the effect that no contempt of court was committed by Ms Wilkinson and the ODPP has no intention of pursuing contempt charges against her.

You may be aware that, since that conversation, Ms Wilkinson has left her role on *The Project* due to the unwarranted media attention she has received in connection with these proceedings.

I note that you will be making a media statement tomorrow at 10am. Without speculating as to what will be said by you during that conference, I request that consideration be given to you also making a statement in relation to Ms Wilkinson during the conference. Ms Wilkinson is very concerned that the injustice she has experienced be addressed at the earliest opportunity.

Thank you in advance for your consideration of this request. If you would like to discuss this further, please let me know.

Kind regards

**Marlia Saunders** | Partner  
**THOMSON GEER**

[REDACTED]  
Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
[REDACTED]@tglaw.com.au | [tglaw.com.au](http://tglaw.com.au)

**Advice | Transactions | Disputes**

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**From:** Saunders, Marlia <[REDACTED]@tglaw.com.au>  
**Sent:** Tuesday, 6 December 2022 1:59 PM  
**To:** Drumgold, Shane  
**Subject:** RE: R v Lehrmann - Lisa Wilkinson [TGLAW-Legal.FID3680207]

Dear Mr Drumgold

Can you please let me know when is a convenient time for a brief discussion regarding my email below?

Kind regards

**Marlia Saunders** | Partner  
**THOMSON GEER**

[REDACTED]  
Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
[REDACTED]@tglaw.com.au | [tglaw.com.au](http://tglaw.com.au)

[Advice](#) | [Transactions](#) | [Disputes](#)

**Please note that our offices will be closed from COB Friday 23 December 2022 and will reopen on Monday 9 January 2023. However, if you require urgent prepublication advice or urgent advice generally, please email [prepub@tglaw.com.au](mailto:prepub@tglaw.com.au). The prepub email address is being constantly monitored. If you need to speak with me, please call my mobile as set out above.**

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**From:** Saunders, Marlia  
**Sent:** Thursday, 1 December 2022 6:24 PM  
**To:** 'Drumgold, Shane' <[REDACTED]@act.gov.au>  
**Subject:** R v Lehrmann - Lisa Wilkinson [TGLAW-Legal.FID3626446]

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I refer to our telephone discussion on 24 October 2022 regarding my client, Lisa Wilkinson. On that occasion, we discussed your intention to make a public statement following the resolution of the Lehrmann proceedings to the effect that no contempt of court was committed by Ms Wilkinson and the ODPP has no intention of pursuing contempt charges against her.

You may be aware that, since that conversation, Ms Wilkinson has left her role on *The Project* due to the unwarranted media attention she has received in connection with these proceedings.

I note that you will be making a media statement tomorrow at 10am. Without speculating as to what will be said by you during that conference, I request that consideration be given to you also making a statement in relation to Ms Wilkinson during the conference. Ms Wilkinson is very concerned that the injustice she has experienced be addressed at the earliest opportunity.

Thank you in advance for your consideration of this request. If you would like to discuss this further, please let me know.

Kind regards

**Marlia Saunders** | Partner  
**THOMSON GEER**

[REDACTED]  
Level 14, 60 Martin Place, Sydney NSW 2000 Australia  
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[Advice](#) | [Transactions](#) | [Disputes](#)

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**From:** Saunders, Marlia <[REDACTED]@tglaw.com.au>  
**Sent:** Tuesday, 13 December 2022 9:20 AM  
**To:** Drumgold, Shane  
**Subject:** R v Lehrmann - Lisa Wilkinson [TGLAW-Legal.FID3680207]  
**Attachments:** Lisa Wilkinson - Letter to Mr Shane Drumgold SC - December 2022.pdf

Dear Mr Drumgold

Please see our correspondence **attached**.

Kind regards

**Marlia Saunders** | Partner  
**THOMSON GEER**

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[Advice](#) | [Transactions](#) | [Disputes](#)

**Please note that our offices will be closed from COB Friday 23 December 2022 and will reopen on Monday 9 January 2023. However, if you require urgent prepublication advice or urgent advice generally, please email [prepub@tglaw.com.au](mailto:prepub@tglaw.com.au). The prepub email address is being constantly monitored. If you need to speak with me, please call my mobile as set out above.**

Our ref MS:5142487

13 December 2022

Mr Shane Drumgold SC  
Office of the Director of Public Prosecutions  
Reserve Bank Building  
20-22 London Circuit  
CANBERRA CITY ACT 2601

Dear Mr Drumgold SC

**R v Bruce Lehrmann, Supreme Court of the Australian Capital Territory  
Proceedings No. SCC 264 of 2021**

As you are aware, we act for Lisa Wilkinson.

As we have previously conveyed to you on a number of occasions, our client continues to be extremely concerned about the targeted, widespread and ongoing media reports which have criticised her role in the three month delay of the trial in the above proceedings in connection with the Logie Awards speech she gave on 19 June 2022. In this regard, we refer to our phone calls with you on 22 June 2022 and 24 October 2022 and our emails to you on 2 December 2022 and 6 December 2022.

As you have acknowledged during our two phone calls referred to above, Ms Wilkinson was never warned by you, during your meeting on 15 June 2022 or otherwise, not to give a Logies speech. As also confirmed by Network Ten Senior Litigation Counsel Tasha Smithies, who was in that meeting, your only advice was that Ms Wilkinson could not mention the trial as that could give rise to a stay.

The reason Ms Wilkinson voluntarily raised the issue of the Logies speech with you during your meeting was because she was concerned to ensure that she did not do anything that may jeopardise the approaching trial. Following the meeting, Ms Wilkinson took care to ensure that she did not mention the trial, the accused, the charges or even Parliament House in the speech that she gave.

Despite this, her Honour Chief Justice McCallum found on the basis of a note of the 15 June 2022 meeting (which was tendered in Court without notice to Ms Wilkinson): "*Notwithstanding that clear and appropriate warning, upon receiving the award, Ms Wilkinson gave a speech in which she openly referred to and praised the complainant in the present trial*". This finding has gone on to be reported as fact by the media that Ms Wilkinson was specifically warned by you not to give a speech but that she went ahead and gave the speech anyway.

In our phone call on 22 June 2022, you said that you felt the need to correct reports that there was a positive direction by you not to give a speech and that you felt Ms Wilkinson had been poorly treated. You said you would give some thought as to how you could deal with it in open court the following day. However, you did not say anything in Court that next day, and the record has still not been corrected since that time. This omission has provided a basis for our client's ethics as a journalist to be strongly and repeatedly criticised.

At the height of the publicity in the weeks immediately after the Logies, and more recently during the trial itself, there have been calls by influential journalists for Ms Wilkinson to be imprisoned for contempt of court. As a direct result of the ongoing criticism both in mainstream media and on social media, Ms Wilkinson has chosen to permanently stand down from her role hosting *The Project*.

Ms Wilkinson feels that she has been treated unfairly by the Office of the Director of Public Prosecutions in that:

1. you have not corrected the record in relation to what occurred during the 15 June 2022 meeting by clarifying that there was no positive direction from you to Ms Wilkinson not to give a speech; and
2. you have not publicly confirmed that you do not consider Ms Wilkinson's conduct amounted to contempt of court and that you will not be pursuing any contempt charges against her.

Ms Wilkinson has continued to honour her commitment to the Court not to speak publicly about the trial, nor about this issue. Now that the prosecution has been withdrawn, there is no reason to prevent these matters being addressed by you. It is imperative that this occurs given that the media reports about Ms Wilkinson have not subsided.

Ms Wilkinson respectfully requests that you release a public statement that clarifies the true situation and corrects the public record so that her name and reputation on this issue can be restored. Ms Wilkinson would like the opportunity to review and approve the statement before it is released.

We would be happy to discuss this request with you further if required. We look forward to hearing from you at your earliest convenience.

Yours faithfully  
**THOMSON GEER**



**Marlia Saunders**  
Partner



**Submission to The Honourable Walter Sofronoff KC****On behalf of Lisa Wilkinson AM**Introduction

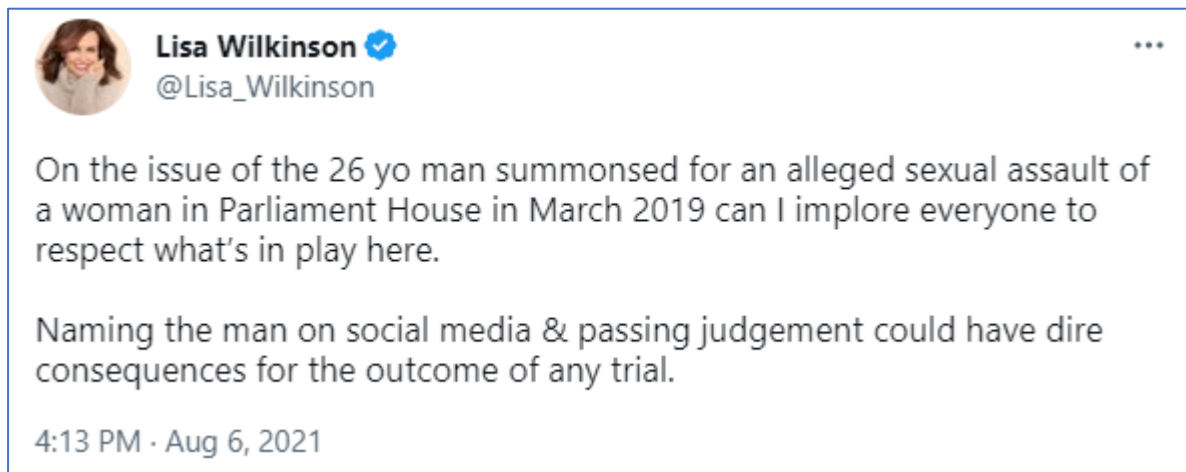
1. This submission is made on behalf of journalist Lisa Wilkinson AM in relation to the Board of Inquiry – Criminal Justice System, established under the *Inquiries Act* 1991.
2. Specifically, this submission addresses the conduct of the Director of Public Prosecutions Shane Drumgold in the prosecution of Bruce Lehrmann, falling within terms of reference (c) and (g).
3. The submission addresses the role of the media in relation to the trial (and the delay of the trial) in particular:
  - a. the failure of the Director of Public Prosecutions to specifically warn Ms Wilkinson, or Ten Senior Legal Counsel, Ms Tasha Smithies, during a meeting on 15 June 2022 ahead of Ms Wilkinson’s proposed public comments, that Ms Wilkinson should not to give a Logies speech should she and *The Project* be awarded a Logie for her interview with Ms Brittany Higgins at the ceremony on 19 June 2022;
  - b. the refusal by the Director of Public Prosecutions to review the proposed public comments (in the event that the Logie was awarded) when he was afforded the opportunity to do so on 15 June 2022, and his failure to specifically warn Ms Wilkinson, or Ten Senior Legal Counsel, about the danger of making any public comments;
  - c. the failure by the Director of Public Prosecutions to inform the trial judge McCallum CJ of any perceived concerns in respect of the Logie nomination for the interview with Brittany Higgins, the possible award of the Logie to Ms Wilkinson on 19 June 2022 and the proposed public comments she tried to provide him, prior to that award being made on 19 June 2022;



- d. thereafter his failure to accurately inform the trial judge McCallum CJ of the truth of his conversation on 15 June 2022 with Ms Wilkinson – that there was no specific warning given to Ms Wilkinson not to give a Logies speech; and
- e. thereafter his repeated failures (despite numerous requests on behalf of Ms Wilkinson) to correct the mistake of fact he caused McCallum CJ to proceed under in vacating the trial – despite subsequently acknowledging to Ms Wilkinson’s then-legal-team that the mistake was not Ms Wilkinson’s – resulting in consistent and continued misreporting of his conversation with Ms Wilkinson, and significant harm to her reputation as a responsible journalist who deeply respects the judicial process.

### Factual Background

4. On 15 February 2021 Network Ten Broadcast an interview between Ms Brittany Higgins and Lisa Wilkinson in which it was alleged by Ms Higgins that she had been raped in Parliament House on 23 March 2019 (**Broadcast**). The alleged perpetrator was not named in the Broadcast.
5. Having spoken to police in March and April 2019, Ms Higgins made contact with the AFP in February or March 2021, who subsequently further investigated the allegations.
6. Bruce Lehrmann was summonsed on 6 August 2021 to appear before the Supreme Court of the Australian Capital Territory. In an indication of Ms Wilkinson’s strong ongoing desire that justice be served in any proceedings and a fair trial be held for all parties, later that day Ms Wilkinson posted the following tweet:



7. At no time before the discontinuance of the criminal prosecution in December 2022 – or since – did Ms Wilkinson publicly name Mr Lehrmann in connection with the allegations by Ms Higgins.
8. From 15 February 2021 and thereafter, there were many media reports about the allegations made by Ms Higgins, and there were Women’s Marches around the country attended by over 100,000 people on 15 February 2021 and other public events where Ms Higgins spoke or was referred to. After Bruce Lehrmann was identified as the accused in August 2021, he was the subject of substantial media commentary.
9. On 8 February 2022 then Prime Minister Scott Morrison apologised to Brittany Higgins on the floor of Parliament including the following words:

*“I am sorry. We are sorry. I am sorry to Ms Higgins for the terrible things that took place here.*

*“The place that should have been a place for safety and contribution, turned out to be a nightmare.*

*“I am sorry for far more than that. All of those who came before Ms Higgins. And enjoyed the same, but she had the courage to speak, and so here we are.”*

10. On 16 March 2022, largely in response to the Prime Minister’s words, Mr Lehrmann’s lawyers notified their intention to seek a permanent stay of the criminal proceedings or alternatively orders preventing publications about Ms Higgins’ allegation including the removal of material from the internet.
11. On 29 April 2022 McCallum CJ refused the application for a stay and refused to make any suppression or other related orders in the matter.
12. On or about 4 May 2022, Ms Wilkinson was informed that she and *The Project* team had been nominated for a Logie award in relation to the Broadcast in the category of Outstanding TV Journalism.
13. On or about 20 May 2022, Ms Wilkinson was informed that she was to be subpoenaed as a potential witness in the trial of *R v Lehmann*, by Ms Erin Priestly, Senior Prosecutor, Office of the DPP (ACT).

14. On or about 2 June 2022, the trial in *R v Lehrmann* was set down for a hearing to commence on 27 June 2022 before McCallum CJ.
15. On 15 June 2022 Ms Wilkinson took part in a Teams meeting at the Network Ten offices in Pyrmont, Sydney, requested by the ACT Director Of Public Prosecutions, Mr Shane Drumgold, to prepare her as a witness. Ms Wilkinson attended that meeting with Ten's Senior Legal Counsel, Ms Tasha Smithies. The meeting took more than two hours.
16. At the meeting's conclusion, Mr Drumgold asked Ms Wilkinson if she had any questions. Ms Wilkinson asked him some logistical questions about her attendance as a witness. She then raised the issue of the upcoming Logie awards (on Sunday 19 June). She explained that, in the event that she won, she did not want to say anything that would in any way obstruct or legally compromise the upcoming criminal trial. She informed Mr Drumgold that she had already written a carefully prepared speech, which, mindful of the existing legal sensitivities, she had brought with her to the meeting in a form reviewed by the Network Ten Legal Department.
17. Mr Drumgold informed Ms Wilkinson that if she was to give a speech, she could not mention the trial. Ms Wilkinson immediately responded that she was aware that she could not – and would not – mention the trial. She then informed Mr Drumgold how seriously she took her legal obligations and informed him that her proposed speech did not mention the trial, the accused, the charges, or Parliament House, as this was where the alleged crime was reported to have taken place.
18. Ms Wilkinson offered to read the prepared speech to Mr Drumgold to ensure that there was no problem with it from his perspective, but Mr Drumgold interrupted Ms Wilkinson shortly after she quoted part of the proposed speech: "*The truth is, this honour, belongs to Brittany. It belongs to a 26 year-old woman's unwavering courage. It belongs to a woman who said, 'Enough'.*" Mr Drumgold then said, he did not want to hear any more. He said if he was to listen to the whole speech, he may be accused at a later date of possibly endorsing it which could cause problems, and that he was not a speechwriter. Ms Wilkinson told Mr Drumgold she was not seeking his guidance as a speechwriter, but only as to whether anything in the speech could in any way cause issues with the upcoming trial. Mr Drumgold did not wish to engage any further on the matter of the speech.

19. Mr Drumgold did not warn Ms Wilkinson not to give a speech if *The Project* interview won, nor was Ms Wilkinson informed that she could not refer to Brittany Higgins in the speech. No one in that meeting, or subsequently, gave her any such warning.
20. On 19 June 2022 Ms Wilkinson and *The Project*'s interview with Ms Higgins won the Logie award for Most Outstanding News Coverage and Ms Wilkinson gave a short speech, the transcript of which is Annexure A. This is the same speech Ms Wilkinson had with her in the meeting with Mr Drumgold on 15 June 2022 – the only change being the removal of a date.
21. On 21 June 2022 McCallum CJ published a judgment in *R v Lehrmann* that including the following:

*19. Ms Wilkinson received a silver Logie for her interview broadcast on The Project. This was not entirely unexpected by her, nor did the award come at a time when she was unaware of the pending trial of the accused. Indeed, Ms Wilkinson may be taken to be aware that she is to be called as a Crown witness in the trial.*

*20. That is the inference that can be drawn from the content of a file note in evidence before me which records that, on 15 June 2022, some days before the Logie awards, Ms Wilkinson participated in a conference with the Director of Public Prosecutions and those appearing with him and instructing him in the trial to discuss the evidence she would give.*

*21. Ms Wilkinson's anticipated evidence concerns her interviews with the complainant and may be admissible in the trial as evidence of complaint. A note of the meeting tendered by the accused, without objection on the present application, concludes as follows:*

*"At conclusion Lisa was asked if she had any questions:*

*- I am nominated for a Gold Logie for the Brittany Higgins interview*

*- I don't think I will get it because it is managed by a rival network*

*- I have, however, prepared a speech in case*

*- Lisa read the first line and stopped by the director who said*

*o We are not speech editors*

*o We have no power to approve or prohibit any public comment that is the role of the court*

*o Can advise, however, that defence can reinstitute a stay application in the event of publicity”*

22. *Notwithstanding that clear and appropriate warning, upon receiving the award, Ms Wilkinson gave a speech in which she openly referred to and praised the complainant in the present trial. Unsurprisingly, the award and the content of the speech have been the subject of extensive further commentary.*

23. *The recent commentary includes remarks made on the popular morning radio program, “Jonesy and Amanda”. The relevant segment from that program in evidence on the present application opened as follows:*

*“Amanda: But there were some really lovely moments last night. One of which was the award that Lisa Wilkinson and The Project picked up for the story they did on Brittany Higgins. They just – it was a phone call that came to Lisa. She answered Brittany Higgins’ phone call. Brittany had – the back story here, I’m sure you remember, was raped in Parliament House.”*

24. *The transcript attributes to “Jonesy” his assent to that recollection. He later refers to the fact that, “...the whole story was dreadful. Absolutely dreadful”, adding, “[j]ust the very fact that she had to have a meeting in the very room that she was raped with her superiors and then her career was virtually finished.” And so on.*

25. *In case it is not clear, my purpose in quoting those remarks is the fact that each of the radio presenters assumed the guilt of the accused. The evidence before me on the present application also includes other social commentary including a copy of the complainant’s own post effectively repeating remarks made by Ms Wilkinson in her speech. In other words, as was put in argument before me this morning, the combination of the speech and the posts amounted to Ms Wilkinson endorsing the credibility of the complainant who, in turn, celebrated Ms Wilkinson’s endorsement of the complainant’s credibility.*

22. Mr Drumgold's notes referred to in the Reasons for Judgment concerning the 15 June 2022 meeting are not accurate:
- a. The notes purport to chronicle Ms Wilkinson saying, "*I am nominated for a Gold Logie for the Brittany Higgins interview.*" Ms Wilkinson was never nominated for a "*Gold Logie*" – the most prestigious award of the night – and did not say those words in the 15 June 2022 meeting. She was nominated for a Logie for journalism.
  - b. To the best of Ms Wilkinson's recollection, Mr Drumgold did not state that "*publicity*" could cause a stay. Further, had Mr Drumgold advised of that possible stay, Ms Wilkinson believes that Ten's legal counsel, upon hearing those words, would have advised her not to give the speech.
  - c. McCallum CJ's assessment that Ms Wilkinson was given a "*clear and appropriate warning*" was factually inaccurate, having regard to the above. Had Ms Wilkinson been clearly and appropriately warned by Mr Drumgold on 15 June 2022 not to give a speech, she – a journalist of 40 years' experience, with no record of ever flouting the law, who had made it clear she wanted to be certain not to transgress in this legally delicate area, and who had her Network Ten lawyer beside her throughout – would never have given one.
  - d. Ms Wilkinson had no control over the subsequent comments by other media commentators, nor did she have any involvement or influence in social media posts by Ms Higgins.
23. Ms Wilkinson was not, to her knowledge, afforded the opportunity to make any submissions to McCallum CJ about what occurred during the meeting on 15 June 2022 prior to that judgment being published. The findings made by the Court about Ms Wilkinson's conduct are regrettable given they were based on an incorrect factual basis, Ms Wilkinson was denied natural justice and those comments caused Ms Wilkinson substantial professional and personal harm.
24. On Tuesday 21 June 2022 McCallum CJ remarked that Ms Wilkinson's "*impact on the criminal proceedings*" could have been remedied by use "*of the magical word 'alleged'*".

25. We respectfully submit that it is unclear where in Ms Wilkinson's speech Her Honour considered that word should have been included having regard to the absence of any reference to the accused, the trial or the charges.
26. On 21 June 2022 McCallum CJ vacated the trial and subsequently, on 23 June 2022, delayed it, to be commenced in October 2022.
27. On 22 June 2022, Marlia Saunders, solicitor from Thomson Geer Lawyers, then-acting for Ms Wilkinson, spoke to Mr Drumgold by telephone and he confirmed that he did not give any warning to Ms Wilkinson not to give a Logies speech in the meeting of 15 June and that McCallum CJ's statement to that effect was not correct. Mr Drumgold also told Ms Saunders that he would give some thought as to how he could try and correct the public record in the following days and might say something in open court. He further told Ms Saunders that he was of the view that the media had misreported what was said in evidence on the application to vacate the trial. Mr Drumgold did not correct the public record in open court or otherwise.
28. On 23 June 2022 Network Ten CEO Ms Beverley McGarvey wrote to McCallum CJ, noting:

*“Neither Ms Wilkinson nor the Network 10 senior legal counsel present at the conference with the DPP on 15 June 2022 understood that they had been cautioned that Ms Wilkinson giving an acceptance speech at the Logie Awards could result in an application being made to the court to vacate the trial date. Had they understood that a specific warning had been given, Ms Wilkinson would not have given the speech.”*

A full copy of that letter is Annexure B.

29. On 22 October 2022, whilst the jury in *R v Lehrmann* was deliberating, Ms Saunders contacted Mr Drumgold again, requesting that he finally consider how he might correct the public record as discussed in their conversation of 22 June 2022. Mr Drumgold told Ms Saunders he would seek to find a way to do that upon completion of the trial. Once again, Mr Drumgold did not correct the public record.
30. Upon completion of the trial Ms Saunders attempted to contact Mr Drumgold again by phone and was unable to speak to him. She sent him an email on 1 December 2022 in which

she again requested Mr Drumgold to make a statement in relation to Ms Wilkinson. A copy of that email is Annexure C.

31. On 6 December 2022 Ms Saunders emailed Mr Drumgold again asking to speak to him about Ms Wilkinson. A copy of that email is Annexure D.
32. On 13 December 2022 Ms Saunders sent a letter to Mr Drumgold. A copy of that letter is Annexure E.
33. On 15 December 2022 Ms Saunders attempted to speak to Mr Drumgold and was unsuccessful.
34. No response has been received by Ms Saunders from Mr Drumgold to any of the communications in December 2022.

#### Submissions

35. The allegations made by Ms Brittany Higgins were inherently a matter of public interest that attracted substantial media reporting. The alleged conduct was one of a number of examples of allegations of misconduct in Parliament House that had not been adequately handled by the government as evidenced in the 2021 Independent Review of Workplace Safety within Commonwealth Parliamentary Workplaces conducted by then-Sex Discrimination Commissioner, Ms Kate Jenkins, which is published at <<https://humanrights.gov.au/our-work/sex-discrimination/publications>>.
36. It was unfair to expect that Australia's media would not continue to report issues surrounding workplace safety for women in parliamentary workplaces after Mr Lehrmann was charged. The fact of his charge was also inherently a matter of public interest, as was the conduct of his trial.
37. When the Logie nominations were announced in May 2022, it was obvious that the subject matter of the nomination – the interview with Brittany Higgins – would attract further media attention and publicity. The speech given by Ms Wilkinson, which did not refer to the alleged crime, location, charges or the trial, frankly paled in comparison to other public material that had gone before and after. The most obvious being the Prime Minister had



publicly apologised to Ms Higgins for what she had endured – not for what she had “*allegedly*” endured.

38. The difficulties that arose in *R v Lehrmann* should not be blamed on media reporting on a matter of significant public interest, particularly when a previous application for a stay had been refused, as had an application for injunctions and suppression orders.
39. The inherent difficulties with a jury trial in a case that has already attracted significant publicity are well known. In relation to offences that do not attract the “*right*” to trial by jury imposed by s80 of the Australian Constitution, such cases are managed by dispensing with the jury and proceeding by judge alone – for example the recent murder trial in New South Wales *R v Dawson* (which was the subject of the highly popular, award winning Teacher’s Pet podcast before charges were laid). The fact that that could not occur in Mr Lehrmann’s case is not the media’s fault. Section 80 of the Constitution is an archaic provision that obviously fails to comprehend the potential impact of the internet on jurors – it should be the subject of review and recommendation by this Inquiry.
40. In any event, as a result of:
- a. the misleading impression Mr Drumgold created when informing McCallum CJ of the content of his conversation with Ms Wilkinson about the Logies speech;
  - b. the failure to afford procedural fairness to Ms Wilkinson;
  - c. thereafter Her Honour’s ruling which we respectfully submit made incorrect factual findings about Ms Wilkinson’s conduct; and
  - d. the repeated failure by Mr Drumgold SC to publicly correct the record about that meeting,

Ms Wilkinson has suffered serious and ongoing reputational harm.

41. In making this respectful submission to the Inquiry, Ms Wilkinson wishes to ensure that in the ongoing interests of strong public interest journalism – the backbone upon which a strong, fair and democratic society is based – investigative journalists across the country should not be misrepresented by legal officers in whom they have placed their trust, without

any opportunity to correct the public record when that trust is shown to have been misplaced.

42. The conduct of Mr Drumgold in failing to publicly correct the record in relation to a submission made by him in Court in the matter of *R v Lehrmann* arises from and is incidental to the general conduct of the prosecution. Ms Wilkinson requests that it be investigated and reported on as part of this Inquiry.

Sue Chrysanthou SC

11 April 2023