

Australian #MeToo saga continues with Liberal senator's defamation action upheld

Cheryl Crisp
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The outcome of a defamation case earlier this month shed highly revealing light on the long-running saga sparked by the claims of former Liberal Party staffer Brittany Higgins that her work colleague Bruce Lehrmann raped her in the parliamentary offices of then Coalition government Minister of Defence Linda Reynolds in 2019.

Reynolds is a right-wing figure, who has played a key role in a military build-up centring on Australia's integration into the US-led drive to war against China. She initiated the defamation action over claims made against her in the media by Higgins.

The contention challenged in court was that a conspiracy had existed, emanating from Reynolds' office, to cover up the rape allegations. Higgins asserted she was pressured not to press charges, was unsupported and silenced, with threats of losing her job.

The rape allegations, court case, and conspiracy accusations have been front page news for much of the past nearly five years. The media storm was sustained by the central role of the then Albanese Labor opposition, a role which continued once Labor took office in May 2022. Labor helped to keep the spotlight on the Higgins saga, in league with the #MeToo milieu and virtually all sections of the media.

In finding for Reynolds, Justice Paul Tottle, of the Western Australian Supreme Court, ordered Higgins to pay more than \$340,000 in damages and interest and 80 percent of Reynolds' predicted \$1 million court costs. Just days prior to the trial's commencement, Tottle rejected "as unreasonable" an offer of a \$200,000 payment by Higgins with a statement of mutual regret by both women.

The judge's trial findings raise not just the role of Labor in the promotion of the rape and cover-up allegations in and outside parliament, but the \$2.4 million compensation payout to Higgins, one of the first acts of the newly elected Albanese Labor government in 2022.

Tottle, who took nearly a year to deliver his verdict, determined that Higgins defamed Reynolds and made "objectively untrue and misleading" statements "on 26 occasions" to media outlets and in social media posts around the time of a 2021 interview with Network Ten's "The Project." The allegations of a cover-up by Reynolds' office were repeated in parliament by Labor Senators Gallagher and

Wong, two of the five most senior ministers in the Labor government.

From the outset, Higgins' allegations were not pursued primarily through legal channels but were carefully choreographed as a media event.

Higgins' allegations of the 2019 rape were reported to police at the time, then withdrawn two weeks later. In 2021, Higgins and David Sharaz, a supporter and associate of the Labor Party with whom she was in a relationship, reprised the allegations in an interview with "The Project" host Lisa Wilkinson.

A media campaign was covertly organised by the group, meant to align with Question Time in parliament, where Sharaz assured Higgins and Wilkinson that "friendly" Labor MPs would "pepper questions" at the government "to keep the case alive." The interview was broadcast on February 15, 2021, during which Lehrmann was effectively identified. This was two weeks prior to Higgins lodging a new formal police complaint.

The then Labor Party opposition uncritically backed Higgins' rape allegations, her claims of a cover-up by Liberal government MPs, and the trial-by-media of Lehrmann.

On February 16, 2021, the day after the interview aired, then opposition leader Anthony Albanese and Shadow cabinet minister Tanya Plibersek wrote in a joint statement: "Brittany Higgins has shown true courage. Ms Higgins' account of her rape in the Defence Minister's office is sickening. We admire Ms Higgins' bravery in coming forward, and hope she is now getting the genuine support and justice she is entitled to and the police investigation proceeds swiftly."

Between March and August 2021, when Lehrmann was finally charged, then Prime Minister Scott Morrison, with the support of the Labor opposition and the Greens, organised an inquiry by Sex Discrimination Commissioner Kate Jenkins into "workplace culture at Parliament House" and issued an apology on the floor of parliament to Higgins for the rape. In doing so, Morrison effectively destroyed any chance of Lehrmann receiving a fair trial, as the prime minister of the day had all but declared that the allegations were true.

Coinciding with saturation media coverage, a #MeToo organised March4Justice rally was held outside Parliament House, where Higgins spoke, declaring she had been raped by a

colleague inside Parliament House. Not reported at the time, it transpired she had agreed to a \$325,000 book deal on the affair with Wilkinson's husband, author Peter FitzSimons, later admitting that many chapters were written before any charges or investigations began.

After nearly five years, the charges still haven't been tested in a criminal court. After a criminal trial began, there were delays caused by a prejudicial speech Wilkinson delivered on national television at the Logies awards praising Higgins. The trial was later halted due to juror misconduct, and the jury was discharged. Any prospect of a retrial was jettisoned over concerns about Higgins's health. The charges have now been dropped.

In August, Justice Michael Lee, in Lehrmann's failed defamation case against "The Project," found that Lehrmann had "on the balance of probabilities" sexually assaulted Higgins in Senator Reynolds' parliamentary office. The defamation case, being a civil matter, requires a lower burden of proof than in a criminal court, where the prosecution must prove guilt beyond a reasonable doubt.

Reynolds, in April, initiated legal action against the Federal government for breaching its fiduciary duty and the law firm that acted on its behalf, HWL Ebsworth, for negligence in relation to the December 2022 decision to grant Higgins the \$2.4 million payout. The compensation was paid to Higgins before her allegations were tested in court, and under conditions where it was "a no contest" proceeding.

The payout hearing was overseen by then Attorney-General Mark Dreyfus and Finance Minister Katy Gallagher and decided in less than a day. The payout was awarded to Higgins in part due to her allegations that she was bullied and intimidated by Reynolds and others in her office and the Morrison government. More than half of the \$2.4m compensation was in respect of her loss of earning capacity, as well as legal costs, medical expenses, domestic assistance and "\$400,000 for hurt, distress and humiliation suffered by Ms Higgins."

While finding against Lehrman in his defamation action, Justice Michael Lee nevertheless stated that Higgins' claims of a cover-up were "objectively short on facts but long on speculation and internal inconsistencies." That is essentially the same finding as made by Justice Paul Tottle in Reynolds' successful defamation case against Higgins.

The findings of both courts call into question the basis of the payout to Higgins by the Labor government of \$2.4 million.

According to Reynolds, Attorney-General Dreyfus and the Commonwealth's lawyers had, without her consent, taken over her defence of Higgins' claim, failed to get instructions from her, failed to test Higgins' allegations, denied her and other opponents the right to attend the hearing, and settled the claim on Reynolds' behalf without her consent or giving her proper or accurate information about the settlement terms.

This has been a cynical attempt by the #MeToo milieu,

supported by the Labor government, the Greens and the media, to use the sexual assault allegations as a further attack on legal and democratic rights. The presentation of the allegations as fact, not to be questioned before the charges were investigated or tested, was evident in the conduct of the ACT Department of Public Prosecution (DPP) in taking the case to court. Leaks by police revealed doubts about Higgins' evidence and reliability, yet the case proceeded to trial notwithstanding.

The debacle that surrounded the court hearings and their media reporting was the outcome of the evisceration of the presumption of innocence until proven guilty, the right to a fair trial and the right to silence.

The furore created around the sexual assault allegations and Labor's embrace of the Higgins case was not motivated by a genuine concern for working-class women or victims of sexual violence. Instead, Labor, then in opposition, seized on the case as an opportunity to differentiate itself from the Morrison Liberal government on an essentially right-wing basis and to whip up its upper-middle class base using the language of identity politics.

The unsubstantiated claims of a conspiracy against Higgins served to shield the real conspiracies that were underway against the population, which Labor supported and participated in.

That included the drive to end all public health safety measures amid the COVID-19 crisis. Labor joined hands with the Coalition government to "reopen" the economy, in a pro-business offensive that has resulted in the preventable deaths of tens of thousands of people, the majority of them vulnerable and working class.

At the same time, Labor, then in opposition and now in government, has partnered with the Coalition in supporting the AUKUS agreement with the US and the UK, as part of the far broader preparations for a US-led war against China.

The agreement, signed by Morrison with the approval of Labor and kept secret from both parliament and the electorate, involves spending \$368 billion on nuclear submarines. This required a massive increase to the military budget, which is to be paid for through the diversion of funds from health, education, and welfare, further worsening the living and working conditions of the working class overall.

The outcome of the Reynolds case and the five years of the Higgins saga again underscore the reactionary role of identity politics, both in its attack on core democratic rights and its diversion from the fundamental class issues, including war and austerity.



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