

Expert Report of Fred Schepisi

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

1. I have been instructed by Nicholas Pullen and Jeremy Marel of HWL Ebsworth Lawyers (HWLE), solicitors for Mr. Rush, to provide an expert opinion in these proceedings.
2. I have been provided with a letter of instruction dated 31 August 2018. A copy of that letter is **Annexure A**. I have read the letter of instruction and the documents which were enclosed with it. One of the documents enclosed with the letter was the 'Expert Evidence Practice Note GPN-EXPT'. I have read and understood that Practice Note, and agree to comply with it in giving evidence in these proceedings.
3. I have also read Mr. Rush's Statement of Claim. I understand that my expert evidence is relevant to the question whether the articles which were published by the Respondents in November and December 2017 are likely to cause Mr. Rush financial loss in the future. I believe I am qualified to give that evidence based on my own personal knowledge of Mr. Rush and my specialised knowledge of the acting and entertainment industry of which I have been a part for over 40 years.

Background

4. A copy of my Curriculum Vitae is **Annexure B**.
5. I am a film director, producer, and screen-writer.
6. My films include: *Libido (part)* 1974, *The Devil's Playground* (1976), *The Chant of Jimmie Blacksmith* (1978), *Barbarosa* (1981), *Iceman* (1983), *Plenty* (1985), *Roxanne* (1987), *Evil Angels* (1988), *The Russia House* (1989), *Mr. Baseball* (1992), *Six Degrees of Separation* (1993), *IQ* (1994), *Fierce Creatures* (1997), *Last Orders* (2001), *It Runs in the Family* (2003), *The Eye of the Storm* (2011), *Words And Pictures* (2013), and currently developing *Travels with Gauguin*, *King Of Grapes*, *Burnt Piano* and *Last Man*.
7. *The Devil's Playground* won the Australian Film Institute (AFI) Award for Best Film in 1976. I also won the AFI Award for Best Direction and the AFI Award for Best Screenplay for *The Devil's Playground*. I am one of seven people who have won more than one AFI Award for Best Direction - I won for *The Devil's Playground* in 1976 and for *Evil Angels* in 1989. I was also nominated for the AFI Award for Best Direction for *The Chant of Jimmie Blacksmith* in 1978 and *The Eye of the Storm* in 2011.
8. *The Russia House* was nominated for the Golden Bear Award (the award for best film) at the Berlin International Film Festival.
9. I also directed and produced the HBO TV film *Empire Falls* (2005), which starred Paul Newman, Joanna Woodward, Ed Harris, Helen Hunt, and Philip Seymour Hoffman. *Empire Falls* won a Golden Globe for Best Miniseries or Television Film, and was nominated for a Primetime Emmy Award for Outstanding Miniseries. I was myself nominated for a Directors Guild of America Award for Best Director of a TV Film and for

a Primetime Emmy Award for Outstanding Director for a Miniseries, Movie or Dramatic Special.

Experience with and knowledge of Mr. Rush

10. I have read the assumptions at Schedule 1 of HWLE's letter of instruction, and have assumed those facts in preparing this report. In addition, I rely upon my own personal knowledge of Mr. Rush.

Report of Richard Marks

11. I have read the report of Richard Marks, dated 26 July 2018.
12. I have been asked to address the following questions:
- (a) ***Do you agree with the opinion expressed by Mr Marks at paragraph 10(a) of his report) - on pages 2 and 3?***
13. I find some of Mr. Marks' opinions regarding how films come into being somewhat out of date. This is an area that is constantly evolving, particularly with the emergence of new delivery systems that started with pay TV and cable and has evolved to streaming services. It is true the larger studio productions are developed in the way Mr. Marks states. But the rest of the productions, from cable to streamers to outright independents, are created many different ways - for example, writers creating or adapting material 'on spec' which are then taken up by independent producers and or directors; or directors having ideas or finding material from novels or plays and then commissioning writers to script them or scripting them themselves, then involving producers; or producers doing likewise. In whatever case, they then put them out for financing with one of the mini major studios, streaming services, cable companies or TV networks. They only go to the major studios for high concept movies of action or comedy, franchise movies, or remakes of well known material from plays or novels.
14. This is an area I know well as I'm right in the middle of this process at all times and even I have trouble keeping up with the constant changes. Mr. Marks is correct when he says that casting is a major component in getting the movie or TV series made but even that may well be changing. The newer companies are more attracted to acting ability than star power, at least at the moment. An actor with the standing and abilities of Mr. Rush is in higher demand these days for leading roles because of it, as opposed to just character roles in major studio productions.
15. Mr. Marks' descriptions of two types of agreements is not the same anymore. In my experience, major stars or great actors will rarely test for a part. Lesser or less well known actors might. I expect that an actor like Mr. Rush would not need to read or test for a new role, because his talent is already so well known.
- (a) ***Do you agree with the opinion expressed by Mr Marks at paragraph 10(b) of his report) - on pages 3 and 4? In particular:***
- (i) ***Do you agree with Mr Marks' comment (on page 3) that: "As a general rule...actors' roles and remuneration over the course of their career are speculative, uncertain, and unpredictable especially because they are dependent on offers from third parties***

which ebb, flow and/or dry up based upon the producers' perceptions of the actor and the marketplace"? If not, why not?

16. Mr. Marks' comment might be generally true, but I do not think it applies to Mr. Rush specifically. Mr. Rush enjoys a special position as an elite actor. He has won almost every acting award there is and is widely recognised for his exceptional talents and creativity. Mr. Rush is also highly sought after because of the contributions he makes not just as an actor but as a generous collaborator on every production. His skills and ideas on script and casting are well known and well regarded. In my opinion he is one of the finest and most creative actors Australia has produced. His fame and reputation has spread worldwide. He is widely recognised and loved by the international public because of movies as diverse as *Elizabeth*, *Shakespeare in Love*, *The King's Speech* and the *Pirates of the Caribbean* franchise. It is that diversity of skill and box office popularity that has directors and producers scrambling to get Mr. Rush in their productions.
17. I think it is true there are fewer actors of Mr. Rush's age (in their 60's) who are still getting regular work as leads or featured players, but for those actors who are in that special category, as Mr. Rush is, age is no impediment to getting work. For example, look at Christopher Plummer - another 'go to first' actor who is still getting major roles at age 88. Other examples are Harrison Ford (age 76), Clint Eastwood (age 88), Anthony Hopkins, Jeremy Irons, Tommy Lee Jones, Sylvester Stallone, De Niro, Pacino, Keaton etc.
18. In my opinion an actor like Mr. Rush is always going to be in regular work - more and more as the lead and at very least as the featured actor.
- (i) ***If you agree with that "general rule", do you think it applies in the case of Mr Rush specifically? Please answer that question in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).***
19. As above.
- (i) ***Do you agree with Mr Marks' comment (on page 3) that "the number of roles offered [to] actors decreases when they are perceived as 'old'"? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that the number and quality of the roles offered to Mr Rush would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).***

20. Again, it might be true that there are less roles offered to older actors than to younger actors, but that is changing rapidly as audiences age and the streaming services and cable make it easier for them to see movies or series that cater to their sensibilities. For example, look at the acceptance of Lily Tomlin and Jane Fonda and Robert Redford in recent highly popular productions. And again, I do not think that applies to Mr. Rush. ~~His skill and popularity is growing, not diminishing, and the way he takes care of his fitness and health ensures he'll be 'up for it', as they say, for a very long time.~~ He is still more in demand because he can be 'the star' in the right role or add prestige to a production in a featured character part or even a guest-starring role. Plus he is, as I have said, capable of such diversity. You only have to see his latest roles as Einstein or Giocametti, or as the star of *The Book Thief*, to see that diversity on display.

21. I also disagree with Mr. Marks' comment that roles for older characters are generally played by younger actors with make-up and prosthetics. That would only happen if an actor's character, if he doesn't start out too young, was aging throughout the course of the film, and the film-makers wanted to use the same actor throughout that aging process. However, even then, it is not often favoured because it is costly to do both in time and money and rarely looks anywhere near convincing. It is more common to cast different actors to play younger and older versions of the same character. For example, in the US TV series *Genius*, Johnny Flynn was cast as a young Albert Einstein and Mr. Rush was cast as the older Einstein. In *Shine*, Alex Rafalowicz played David Helfgott as a child, Noah Taylor played him as an adolescent, and Mr. Rush played the older David Helfgott.

(i) Do you agree with Mr Marks' comments (on page 4) in relation to the importance of "cast insurance"?

22. I disagree with those comments. In my experience, actors would on every film be required to undergo a medical test. But provided the actor did not have a particular health problem, an actor's age by itself would not be a relevant factor in casting.

(i) Do you agree with Mr Marks' comments (on page 4) that "the number and quality of roles in terms of remuneration generally decrease with age, in general the number and quality of roles and remuneration would be less for an actor between the ages 67 and 77 than for an actor between the ages of 57 and 67 and further decreasing for an actor between the ages of 77 and 87, etc"? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that Mr Rush's remuneration would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).

23. Mr. Marks' comments might be true of lesser actors, but in my opinion they are not true of special actors like Mr. Rush. When an actor like Mr. Rush has won so many awards, and had such a prestigious career, there are different rules. Film-makers pay a premium to cast him. Even more these days, because of the quality he brings to a

production plus his ever growing reputation in the eyes of the audience and therefore, in the eyes of financiers.

(a) Do you agree with the opinion expressed by Mr Marks at paragraph 10(c) of his report) - on pages 4 and 5. In particular, assuming that the Court finds in favour of Mr Rush, and finds that the matters complained of were defamatory and false, would you expect that Mr Rush's income, and the number and quality of offers of work, would return to the same or similar level as prior to the matters complained of? If not, why not?

24. No. I do not agree with Mr. Marks that Mr. Rush's prospects of receiving the same income and quality of work will be unchanged if the court finds in his favour. And I certainly don't think you can compare the example of Robert Downey Jnr's situation with Mr. Rush's. Mr. Downey Jnr was shunned by the studios, not necessarily the public, and not because of any disgrace about taking drugs. In my view it was more for the bad behaviour the drugs caused in him when he was supposed to be working. Obviously that costs productions considerable amounts of money. It does not carry the same stigma as does the accusations that Mr. Rush has had to face, which, even with vindication, will not disappear from Google and the like, especially in this #metoo age. Studios and producers and distributors are highly sensitive about casting or even being involved with anyone who is alleged to have engaged in sexual misconduct. Their concern is only about its affect on their box office. Kevin Spacey is an example. After he was accused of sexual misconduct in October 2017, his role in *All the Money in the World* was re-cast and his scenes were re-shot to replace him with Christopher Plummer (a man who is a quarter of a century older than Mr. Spacey). Mr. Spacey's latest film *Billionaire Boys Club* only made approximately US\$126.00 on its opening day in August 2018. It's the public's reaction like that they are afraid of. Mr Spacey hasn't been found guilty of anything in a court of law yet.
25. In my opinion, not even the most favourable possible outcome in court - that the allegations made against Mr. Rush are completely false - would return Mr. Rush to the position he was in prior to the articles being published. For the producers and distributors there is the fear the stigma will stick regardless. Even if Mr. Rush is cleared of all alleged misconduct, in the current environment, there might always be some doubt in the eyes of the public. They are likely to only remember the allegations because they find them far juicier than the verdict, and that is fuelled by social media and the internet constantly.
26. Furthermore, even with the most favourable outcome in court it is reasonable to assume there would be a delay of twelve to eighteen months before anyone would even start to think of considering Mr. Rush for film work of the level he has been used to.

September 18, 2018

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"A"

HWL
EBSWORTH

Our Ref: NWP:JIM:687924

31 August 2018

Mr Fred Scheplst
[REDACTED]

Private & Confidential

Email: [REDACTED]

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Dear Sir,

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

1. As you know, we act for the Applicant, Geoffrey Rush, in Federal Court of Australia proceedings NSD2179/2017 (the Proceedings).
2. The purpose of this letter is to request that you please provide us with an expert opinion in relation to Mr Rush's claim for economic loss in the Proceedings. In this letter, we have set out the requirements for giving expert evidence in the Federal Court as well as the specific questions we would like you to answer.
3. We have also *enclosed with this letter:
 - (a) At 'Schedule 1', the assumptions on which you should found your opinion; and
 - (b) At 'Schedule 2', the relevant documents which you should have regard to in forming your opinion.

Background

4. Mr Rush sues, in the Proceedings:
 - (a) Nationwide News Pty Limited, as the First Respondent; and
 - (b) Jonathan Moran, as the Second Respondent;

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Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

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in respect of a poster and two front page articles published by the Respondents on 30 November and 1 December 2017 ("the matters complained of") which he alleges were defamatory of him.

5. We have *enclosed, at Tab 1 of Schedule 2, a copy of Mr Rush's Statement of Claim filed on 8 December 2017.
6. You will see that, at paragraphs 12(l) to (o) of the Statement of Claim, on page 11, Mr Rush brings a claim for "special damages". In brief, if a plaintiff in a defamation matter can prove that the matters complained of caused actual financial loss, he or she is entitled to claim special damages.
7. Thank you for agreeing to provide us and Mr Rush with an expert opinion, in support of his claim for special damages.
8. Please note that:
 - (a) The Court has on 9 August 2018 ordered that Mr Rush is to serve any further expert evidence by 4.00pm on 14 September 2018; and
 - (b) The Proceedings are listed for a final hearing to commence on 22 October 2018 and with a 14 day estimate (so from Monday 22 October to Thursday 8 November inclusive). You will be required to attend to give evidence at that hearing.

Federal Court Rules 2011 (Cth)

9. In addition to the Statement of Claim, we have also *enclosed, at Tab 4 of Schedule 2, a copy of Rules 23.11, 23.12 and 23.13 of the *Federal Court Rules 2011 (Cth)*.
10. Rule 23.11 of the *Federal Court Rules 2011 (Cth)* provides that a party may call an expert to give expert evidence at a trial only if the party has delivered an expert report that complies with Rule 23.13 to all other parties.
11. Rule 23.12 of the *Federal Court Rules 2011 (Cth)* obliges us to provide you with a copy of the relevant Federal Court Practice Note in relation to expert witnesses. As such, we have *enclosed, at Tab 3 of Schedule 2, a copy of Expert Evidence Practice Note "GPN-EXPT" (the Practice Note). Please familiarise yourself with the content of the Practice Note.
12. Rule 23.13 of the *Federal Court Rules 2011 (Cth)* provides:
 - (1) An expert report must:
 - (i) be signed by the expert who prepared the report; and
 - (ii) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and
 - (iii) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and

- (iv) *Identify the questions that the expert was asked to address; and*
- (v) *set out separately each of the factual findings or assumptions on which the expert's opinion is based; and*
- (vi) *set out separately from the factual findings or assumptions each of the expert's opinions; and*
- (vii) *set out the reasons for each of the expert's opinions; and*
- (viii) *comply with the Practice Note.*

13. The requirement at Rule 23.13(c) - that your expert report contain particulars of the training, study or experience by which you have acquired specialised knowledge - is consistent with sections 76 and 79 of the *Evidence Act 1995* (NSW). We have also *enclosed, at Tab 5 of Schedule 2, a copy of those sections. Section 76 ("*The Opinion Rule*") provides that evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed. However, section 79(1) provides an exception to the opinion rule. It provides that:

If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

14. Schedule 1 of the *Federal Court Rules 2011* (Cth) contains the following definitions:
- (a) The term "expert" means "a person who has specialised knowledge based on the person's training, study or experience".
 - (b) The term "expert evidence" means "the evidence of an expert that is based wholly or substantially on the expert's specialised knowledge".
 - (c) The term "expert report" means "a written report that contains the opinion of any expert on any question in issue in the proceeding based wholly or substantially on that expert's specialised knowledge, including any report in which an expert comments on the report of any other expert".

Assumptions

15. Please assume the assumptions which are set out in Schedule 1 to this letter.

Respondents' Evidence

16. The Respondents rely upon the report of Mr Richard Marks, whose report of 26 July 2018 is *enclosed at Tab 2 of Schedule 2.

Questions

17. We would be grateful if you would please review Mr Marks' report and then provide us with your own report in which you address the following questions:

- (a) Do you agree with the opinion expressed by Mr Marks at paragraph 10(a) of his report) - on pages 2 and 3?
- (b) Do you agree with the opinion expressed by Mr Marks at paragraph 10(b) of his report) - on pages 3 and 4? In particular:
- (i) Do you agree with Mr Marks' comment (on page 3) that: "*As a general rule...actors' roles and remuneration over the course of their career are speculative, uncertain, and unpredictable especially because they are dependent on offers from third parties which ebb, flow and/or dry up based upon the producers' perceptions of the actor and the marketplace*"? If not, why not?
 - (ii) If you agree with that "*general rule*", do you think it applies in the case of Mr Rush specifically? Please answer that question in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).
 - (iii) Do you agree with Mr Marks' comment (on page 3) that "*the number of roles offered [to] actors decreases when they are perceived as 'old'*"? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that the number and quality of the roles offered to Mr Rush would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).
 - (iv) Do you agree with Mr Marks' comments (on page 4) in relation to the importance of "*cast insurance*"?
 - (v) Do you agree with Mr Marks' comments (on page 4) that "*the number and quality of roles in terms of remuneration generally decrease with age, in general the number and quality of roles and remuneration would be less for an actor between the ages 67 and 77 than for an actor between the ages of 57 and 67 and further decreasing for an actor between the ages of 77 and 87, etc*"? If so, do you think that is likely to be true in the case of Mr Rush specifically? In other words, assuming that the matters complained of had not been published in 2017, would you have expected at any rate that Mr Rush's remuneration would have decreased in the next 5 or 10 years? Please answer those questions in light of your own personal knowledge of Mr Rush's professional attributes, background and experience, and professional recognition (including the assumptions set out in Schedule 1, any other accolades and awards you are aware of Mr Rush receiving, and any other matters you think are relevant).

- (c) Do you agree with the opinion expressed by Mr Marks at paragraph 10(c) of his report) - on pages 4 and 5. In particular, assuming that the Court finds in favour of Mr Rush, and finds that the matters complained of were defamatory and false, would you expect that Mr Rush's income, and the number and quality of offers of work, would return to the same or similar level as prior to the matters complained of? If not, why not?

18. We would be grateful to receive your report as soon as possible prior to 14 September.
19. In the meantime, please feel free at any time to contact either Nicholas Pullen on 03 8644 3408 or Jeremy Marel on 02 9334 8705.

Yours faithfully,



Nicholas Pullen
Partner
HWL Ebsworth Lawyers



Jeremy Marel
Associate
HWL Ebsworth Lawyers



"Schedule 1" - Assumptions

In preparing your report, please assume the following facts:

1. Mr Rush was born on 6 July 1951, and so is currently 67 years old.
2. Mr Rush has been acting since the early 1970's, when he appeared in 21 productions for the Queensland Theatre Company (QTC) between 1971 and 1974.
3. Since that time, Mr Rush has acted in movies, in theatre, and on television - both in Australia and overseas. He rose to particular international acclaim after winning the Academy Award for Best Actor in 1996 for his role in the movie *Shine* in 1996, and then winning the Academy Award for Best Supporting Actor for his role in the movie *Shakespeare in Love* in 1998.

4. In particular:

Film / television

5. Mr Rush has been in various well-known films and television programs - including:
 - (a) 1979-1981 - *Consumer Capers* (TV series) - playing Jim Boy;
 - (b) 1981:
 - (i) *Hoodwink*;
 - (ii) *Menotti* (TV series);
 - (c) 1987 - *Twelfth Night* (an Australian film) - playing Sir Andrew Aguecheek;
 - (d) 1996:
 - (i) *Shine* - playing David Helfgott¹;
 - (ii) *Mercury* (TV series) - playing Bill Wyatt;
 - (iii) *Children of the Revolution* - an Australian film in which Mr Rush played Zachary Welch and which also starred Judy Davis, Sam Neill, F. Murray Abraham, Richard Roxburgh, and Rachel Griffiths;
 - (e) 1997:
 - (i) *Frontier* (TV miniseries);

¹ For which he won the Academy Award for Best Actor; an Australian Film Institute Award for Best Actor in a Leading Role; a BAFTA Award for Best Actor in a Leading Role; a Boston Society of Film Critics Award for Best Actor; a Broadcast Film Critics Association Award for Best Actor; a Films Critics Circle of Australia Award for Best Actor; a Florida Film Critics Circle Award for Best Actor; a Golden Globe for Best Actor (Motion Picture Drama); a London Film Critics Circle Award for Best Actor; a Los Angeles Film Critics Circle Award for Best Actor; a New York Film Critics Circle Award for Best Actor; a Satellite Award for Best Actor (Motion Picture Drama); a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Leading Role); a Society of Texas Film Critics Award for Best Actor. He was also nominated for various other awards internationally.

- (ii) *Oscar and Luolinda* - as the narrator;
- (f) 1998:
 - (i) *A Little Bit of Soul* - an Australian film in which Mr Rush played Godfrey Usher and which also starred David Wenham and Heather Mitchell - for which Mr Rush was nominated for an Australian Film Institute Award for Best Actor in a Supporting Role;
 - (ii) *Elizabeth* - a British film in which Mr Rush played Sir Francis Walsingham and which also starred Cate Blanchett, Christopher Eccleston, Joseph Fiennes, Richard Attenborough and Daniel Craig - for which Mr Rush won a BAFTA Award for Best Actor in a Supporting Role;
 - (iii) *Les Misérables* - in which Mr Rush played Javert and starred alongside Liam Neeson, Uma Thurman and Claire Danes;
 - (iv) *Shakespeare in Love* - in which Mr Rush played Phillip Henslowe and which also starred Gwyneth Paltrow, Joseph Fiennes, Colin Firth, Ben Affleck and Judi Dench - for which Mr Rush won a Screen Actors Guild Award (for Outstanding Performance by a Cast in a Motion Picture); and for which he was nominated for various other awards including an Academy Award for Best Supporting Actor, a BAFTA Award for Best Supporting Actor, a Golden Globe Award for Best Supporting Actor (Motion Picture), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Supporting Role);
- (g) 1999:
 - (i) *Mystery Men* - playing Casanova Frankenstein;
 - (ii) *House on Haunted Hill* - playing Stephen H. Price;
- (h) 2000:
 - (i) *Quills* - in which Mr Rush played Marquis de Sade and starred alongside Kate Winslet, Joaquin Phoenix and Michael Caine - for which Mr Rush won various awards including a Florida Film Critics Circle Award for Best Actor, a Kansas City Film Critics Circle Award for Best Actor, a Las Vegas Film Circle Award for Best Actor, a Phoenix Film Critics Society Award for Best Actor, and a Satellite Award for Best Actor (Motion Picture Drama); and for which he was nominated for various other awards including an Academy Award for Best Actor, a BAFTA Award for Best Supporting Actor, a Golden Globe Award for Best Actor (Motion Picture Drama), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Leading Role).
 - (ii) *The Magic Pudding*;
- (i) 2001:

- (i) *The Tailor of Panama* - in which Mr Rush played Harold 'Harry' Pendel and starred alongside Pierce Brosnan, Jamie Lee Curtis, Brendan Gleeson and Daniel Radcliffe;
 - (ii) *Lantana* - in which Mr Rush played John Knox and which also starred Anthony LaPaglia, Kerry Armstrong and Vince Colosimo;
- (j) 2002:
- (i) *Frida* - in which Mr Rush played Leon Trotsky and which also starred Salma Hayek;
 - (ii) *The Banger Sisters*;
- (k) 2003:
- (i) *Pirates of the Caribbean: The Curse of the Black Pearl* - in which Mr Rush played Captain Hector Barbossa and which also starred Johnny Depp, Orlando Bloom and Kiera Knightley;
 - (ii) *Swimming Upstream*;
 - (iii) *Ned Kelly* - in which Mr Rush played Superintendent Francis Hare and which also starred Heath Ledger, Naomi Watts and Orlando Bloom;
 - (iv) *Finding Nemo* - playing the voice of Nigel;
 - (v) *Intolerable Cruelty*;
 - (vi) *Harvie Krumpet* - narrating;
- (l) 2004 - *The Life and Death of Peter Sellers* - playing Peter Sellers - for which he won a Primetime Emmy Award for Outstanding Lead Actor in a Miniseries or Movie, a Golden Globe Award for Best Actor (Miniseries or Television Film), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Miniseries or Television Movie); and for which he was nominated for various other awards;
- (m) 2005 - *Munich* - which also starred Eric Bana and Daniel Craig;
- (n) 2006:
- (i) *Pirates of the Caribbean: Dead Man's Chest* - playing Captain Hector Barbossa;
 - (ii) *Candy* - playing Casper - for which he won a Film Critics Circle of Australia Award for Best Actor in a Supporting Role and was nominated for an Australian Film Institute Award for Best Actor in a Supporting Role;
- (o) 2007:

- (l) *Pirates of the Caribbean: At World's End* - playing Captain Hector Barbossa;
 - (ll) *Elizabeth: The Golden Age* - playing Sir Francis Walsingham;
- (p) **2009** - *Bran Nue Dae* - playing Father Benedictus;
- (q) **2010:**
- (i) *Legends of the Guardians: The Owls of Ga'Hoole* - playing the voice of Ezyryb & Lyze of Kiel - for which he was nominated for an Annie Award for Best Voice Acting in an Animated Feature Production;
 - (ii) *The King's Speech* - in which Mr Rush played Lionel Logue and starred alongside Colin Firth, Helena Bonham Carter, Guy Pearce, Derek Jacobi and Michael Gambon - for which Mr Rush won various awards including a BAFTA Award for Best Actor in a Supporting Role, British Independent Film Award for Best Supporting Actor, and Screen Actors Guild Award (for Outstanding Performance by a Cast in a Motion Picture); and was nominated for various other awards including an Academy Award for Best Supporting Actor, a Golden Globe Award for Best Supporting Actor (Motion Picture), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Supporting Role);
 - (iii) *Lowdown*;
 - (iv) *The Warrior's Way*;
- (r) **2011:**
- (i) *Pirates of the Caribbean: On Stranger Tides* - playing Captain Hector Barbossa - for which he was nominated with a People's Choice Award for Favourite Ensemble Movie Cast;
 - (ii) *Green Lantern* - playing the voice of Tomar-Re;
 - (iii) *The Eye of the Storm* - playing Basil Hunter - for which he was nominated for an AACTA Award for Best Actor in a Leading Role, a Film Critics Circle of Australia Award for Best Actor, and an Inside Film Award for Best Actor;
- (s) **2013:**
- (i) *The Best Offer*;
 - (ii) *The Book Thief* - in which Mr Rush played Hans Hubermann and starred alongside Emily Watson - for which he was nominated for an AACTA International Award for Best Supporting Actor;
- (t) **2014** - *Unity* - narrating;

- (u) **2015:**
 - (i) *The Daughter*;
 - (ii) *Minions* - narrating;
 - (iii) *Holding the Man*;
- (v) **2016** - *Gods of Egypt* - in which Mr Rush played Ra and which also starred Gerard Butler and Nikolaj Coster-Waldau;
- (w) **2017:**
 - (i) *The Final Portrait* - playing Alberto Giacometti;
 - (ii) *Genius* - playing Albert Einstein - for which he was nominated for a Golden Globe Award for Best Actor (Miniseries or Television Film), a Primetime Emmy Award (for Outstanding Actor in a Limited Series or Movie), and a Screen Actors Guild Award (for Outstanding Performance by a Male Actor in a Miniseries or Television Movie);
 - (iii) *Pirates of the Caribbean: Dead Men Tell No Tales* - playing Captain Hector Barbossa.

Theatre

6. In addition to the 21 QTC productions referred to at paragraph 2 above, Mr Rush has also been in various other stage productions - including:
- (a) The Fool in *King Lear* (QTC);
 - (b) Co-Director of *A Midsummer's Night Dream* (QTC);
 - (c) *Clowneroonies*;
 - (d) *Dave in On Our Selection* (Jane St Theatre);
 - (e) Vladimir in *Waiting for Godot* (Jane St Theatre);
 - (f) *The Revengers Tragedy* (South Australian Theatre Company (SATC));
 - (g) *No End of Blame* (SATC);
 - (h) Various plays for the Lighthouse Company;
 - (i) Various plays for the Magpie Theatre for Young People;
 - (j) Co-Director of *Cabaret Scandals of '85* (Belvoir);
 - (k) Director of *Pearls Before Swine* (Belvoir);
 - (l) *Benefactors* (STCSA);

- (m) *On Parliament's Hill* (Belvoir);
- (n) *Shepherd on the Rocks* (STCSA);
- (o) *The Winter's Tale* (STCSA);
- (p) Director of *Merry Wives Of Windsor* (QTC);
- (q) Director of *The Popular Mechanicals* (Belvoir);
- (r) *Tristram Shandy* (Melbourne Theatre Company (MTC));
- (s) *The Fool in King Lear* (STCSA);
- (t) *The Importance Of Being Earnest* (MTC);
- (u) *Troilus and Cressida* (Grin and Tonic Theatre Company - Queensland);
- (v) *Les Enfants du Paradis* (Belvoir);
- (w) *The Diary of A Madman* (Belvoir);
- (x) Director of *The Wolf's Banquet* (Belvoir);
- (y) *Marat-Sade* (STCSA);
- (z) *The Comedy Of Errors* (STCSA);
- (aa) *The Importance of Being Earnest* (Sydney Theatre Company (STC));
- (bb) *The Government Inspector* (STC);
- (cc) *Popular Mechanicals 2* (Belvoir);
- (dd) *Uncle Vanya* (STC);
- (ee) Director of *FROGS* (Belvoir) ;
- (ff) *Oleanna* (STC);
- (gg) Horatio in *Hamlet* (Belvoir);
- (hh) *The Alchemist* (Belvoir);
- (ii) *The Marriage of Figaro* (QTC);
- (jj) *Small Poppies* (Belvoir);
- (kk) *Life x 3* (MTC);
- (ll) King Berenger in *Exit the King* (Malthouse Theatre and Belvoir, then Broadway);
- (mm) Man in Chair in *The Drowsy Chaperone* (MTC);

- (nn) *The Diary of a Madman* (Belvoir);
- (oo) Lady Bracknell in *The Importance of Being Earnest* (MTC);
- (pp) Pseudolus in *A Funny Thing Happened On the Way to the Forum* (MTC);
- (qq) King Lear (STC);

Awards

7. In addition to the awards which have been referred to at paragraph 5 above, Mr Rush has also been honoured with the following awards:
- (a) He is one of 23 people who has won the 'Triple Crown' of Acting: an Academy Award, a Primetime Emmy Award, and a Tony Award;
 - (b) He has won one Academy Award for Best Actor out of four nominations;
 - (c) He has won three British Academy Film Awards out of five nominations;
 - (d) He has won two Golden Globe Awards out of six nominations;
 - (e) He has been awarded four Screen Actors Guild Awards;
 - (f) He has won three AFI Awards;
 - (g) He has won two Helpmann awards;
 - (h) He was the first actor to win the Academy Award, BAFTA Award, Critics' Choice Movie Award, Golden Globe Award, and Screen Actors Guild Award for a single performance in a film, for *Shine* in 1996;
 - (i) He was awarded the Sidney Myer Award in 1993;
 - (j) In 2004 he received the Charles Chauvel Award;
 - (k) In 2009 he received the AFI Raymond Longford Award;
 - (l) He is the founding President of the Australian Academy of Cinema and Television Arts which honours achievements (performance and technical in 49 categories) for Australian screen excellence. It was formerly (1958 – 2011) the Australian Film Institute;
 - (m) He is the Patron of the Melbourne International Film Festival, the Empire Theatre Foundation for Young Artists in Toowoomba and the Spina Bifida Foundation of Victoria. He is also an Ambassador of the Melbourne Symphony Orchestra and UNICEF;
 - (n) In 2012 he was named Australian of the Year for services to the arts and community;

- (o) In 2013 he was honoured for 4 months in a career retrospective multi-media exhibition *The Extraordinary Shapes of Geoffrey Rush* at the Victoria Arts Centre;
- (p) On Australia Day in 2014 he was awarded a Companion of the Order of Australia for eminent service to the arts as a theatre performer, motion picture actor, role model and mentor for aspiring artists, and through support for, and promoting of, the Australian Arts Industry;
- (q) In 2017 he was honoured with the Berlinale Camera award at the Berlin Film Festival.

The matters complained of

- 8. On 30 November 2017 and 1 December 2017, two front page articles ("the matters complained of") were published by *The Daily Telegraph* about Mr Rush, in which it was alleged that an actress had made a complaint against Mr Rush of "inappropriate behaviour" during the stage production of *King Lear* which ran from November 2015 to January 2016.
- 9. The matters complained of have damaged Mr Rush's reputation such that he has not received, and is unlikely in the foreseeable future to receive, the same number of offers of work as an actor.
- 10. As a result of the matters complained of, Mr Rush has been unable to work since publication of the matters complained of and is unlikely to be able to work for some time in the future.
- 11. Before publication of the matters complained of Mr Rush was expecting to continue his acting career for at least another 10 years.
- 12. The continuity of Mr Rush's career is predicated on the roles he enjoys in cinema as more of a 'character actor' than in a leading role. However, in theatre productions there is more likelihood to have a leading role.

"Schedule 2" - Documents

No.	Document	Date
1.	Mr Rush's Statement of Claim	8 December 2017
2.	Report of Richard Marks	26 July 2018
3.	Expert Evidence Practice Note "GPN-EXPT"	N/A
4.	Rules 23.11, 23.12 and 23.13 of the <i>Federal Court Rules 2011</i> (Cth)	N/A
5.	Sections 76 and 79 of the <i>Evidence Act 1995</i> (NSW)	N/A

" B "

Fred Schepisi Biography

Fred Schepisi (b. Melbourne, 1939) began his production career in the advertising world before joining Cinesound Productions (1964) then starting the Film House (1966) where for 20 plus years he directed both commercials and documentaries.

His first foray into feature films as a writer, producer, director was '*The Priest*' starring Robyn Nevin and Arthur Dignam, which was part of the portmanteau film *Libido* (1973).

His first full length feature film as writer, producer, director was the semi-autobiographical *The Devil's Playground* (1976) - starring Simon Burke, Nick Tate and Arthur Dignam - which won 6 AFI awards including Best Film, Best Screenplay.

Writer, producer, director of *The Chant of Jimmie Blacksmith* (1978) - starring Tommy Lewis and Freddy Reynolds - which was nominated for 12 AFI awards, winning 3.

Directed *Barbarosa* (1981), for Marble Arch released by Universal Pictures, starring Willie Nelson and Garey Busey.

Directed *Iceman* (1983) for Universal Pictures starring Timothy Hutton, John Lone and Lindsay Crouse.

Directed *Plenty* (1985) for R.K.O. distributed by 20th Century Fox, starring Meryl Streep, John Gielgud, Charles Dance, Sam Neill. Won Oscar nomination for Ms Streep.

Directed *Roxanne* (1987) for Columbia Pictures, starring Steve Martin, Daryl Hannah. Won WGA Best Screenplay for Steve Martin.

Co-wrote and directed *Evil Angels* (a.k.a. *A Cry in the Dark*, 1988) for Warner Brothers, EMI and Cannon Films, starring Meryl Streep and Sam Neill. Ms Streep won Cannes Best Actress award and was nominated for an Oscar. The film was nominated for 2 Golden Globe nominations for Best Screenplay and Best Director. It was also nominated for 8 AFI awards, winning three.

Produced and directed *Russia House* (1989) for Pathé and MGM, starring Sean Connery, Michelle Pfeiffer and Klaus Maria Brandauer.

Co-wrote, produced and directed *Mr. Baseball* (1991) for Universal Pictures, starring Tom Selleck, Ken Takakura and Aya Takanashi.

Produced and directed *Six Degrees of Separation* (1993) for MGM, New Regency, starring Stockard Channing, Donald Sutherland and Will Smith.

Co-produced and directed *IQ* (1994) for Paramount Pictures, starring Meg Ryan, Walter Matthau and Tim Robbins.

Directed new material and restructuring of *Fierce Creatures* (1996) for Universal Pictures, starring John Cleese, Jamie Lee Curtis, Kevin Kline and Michael Palin.

Wrote, produced and directed *Last Orders* (2001) for Scala Productions, starring Michael Caine, Bob Hoskins, Ray Winston, Tom Courtenay, David Hemmings and Helen Mirren.

Co-produced, directed *It Runs In The Family* (2002) for MGM, starring Michael Douglas, Kirk Douglas and Bernadette Peters.

Co-produced and directed *Empire Falls* (2004) for HBO, starring Paul Newman, Joanne Woodward, Ed Harris, Helen Hunt. *Empire Falls* had 10 Emmy nominations, and won Best Supporting Actor for Mr. Newman. It also won two Golden Globes for Best TV Film and Best Supporting Actor.

Co-produced and directed *The Eye Of The Storm* (2010) for Paper Bark Films, starring Geoffrey Rush, Charlotte Rampling, Judy Davis. The film was nominated for 10 AACTA awards and won 3.

Co-produced and directed *Words and Pictures* (2013) for Higher Learning Prods, starring Juliette Binoche and Clive Owen.

Currently (2018) co-writing and preparing *King Of Grapes*, and developing *Burnt Piano, Travels with Gauguin, Last Man*.

In 2004 Fred was awarded the Order of Australia for his service to the Australian film industry first as a mentor and then as a director, producer and screenwriter.