

Preliminary searches

Category	Description of search	Number of responsive documents
Notice to Produce		
2	All emails sent between 1 August 2020 and 27 July 2022 (the Relevant Period) to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Danielle Scott or Emma Roberts or which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or "Emma" or "ERS" or "Em". 	608 responsive documents - 1,361 documents including families.
	All text and WhatsApp messages sent in the Relevant Period to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Peter Bartlett or Dean Levitan. 	2,684 (including attachments).
3	All emails sent in the Relevant Period to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Danielle Scott or Emma Roberts or Person 17 or which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or "Emma" or "ERS" or "Em" or "[Person 17's name]" or "Person 17" or "P17" or "P 17"; and iii. which contain "BR" or "BRS" or "Ben" or "RS" or "litigation" or "case" or "proceeding**". 	734 responsive documents - 1,502 documents including families.
4	All emails sent in the Relevant Period to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Peter Barlett or Dean Levitan; and iii. which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or Danielle Scott's email addresses. 	418 responsive documents - 1,113 documents including families.
Total number of text and WhatsApp messages, and email documents (including their families) responsive to categories 2 – 4 of the Notice to Produce (adjusted to account for documents that respond to multiple categories):		4,246.
ME Subpoenas		
1 & 2	All emails sent in the Relevant Period sent to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Danielle Scott or Emma Roberts or which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or "Emma" or "ERS" or "Em". 	608 responsive documents - 1,361 documents including families.
	All text and WhatsApp messages sent in the Relevant Period to or from: <ul style="list-style-type: none"> i. Nick McKenzie; and ii. Peter Bartlett or Dean Levitan. 	2,684 (including attachments).
3	All emails sent in the Relevant Period to or from: <ul style="list-style-type: none"> i. Danielle Scott or Emma Roberts or Person 17 or which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or "Emma" or "ERS" or "Em" or "[Person 17's name]" or "Person 17" or "P17" or "P 17"; and ii. which contain "phone" or "transcript" or "note**" or "interview" or "**conference" or "meeting" or "call**" or "discuss**" or "report" or "discussion" or "conversation" or "talk" or "chat" or "spoke to" or "spoke with" or "spoken with" or "spoken to" or "chat" or "reached out". 	7,454 documents - 12,359 documents including families.
	All text and WhatsApp message sent in the Relevant Period between: <ul style="list-style-type: none"> i. Peter Bartlett and Person 17; ii. Peter Bartlett and Emma Roberts; iii. Peter Bartlett and Danielle Scott; iv. Dean Levitan and Person 17; v. Dean Levitan and Emma Roberts; and 	620 (including attachments).

	vi. Dean Levitan and Danielle Scott	
4	<p>All emails or documents sent in the Relevant Period to or from:</p> <ul style="list-style-type: none"> i. Danielle Scott or Emma Roberts or Person 17 or which contain "Danielle" or "Daniele" or "DS" or "Kennedy" or "DK" or "Emma" or "ERS" or "Em" or "[Person 17's name]" or "Person 17" or "P17" or "P 17"; and ii. which contain "NM" or "Nick" or "McKenzie"; and iii. which contain "phone" or "transcript" or "note*" or "interview" or "*conference" or "meeting" or "call*" or "discuss*" or "report" or "discussion" or "conversation" or "talk" or "chat" or "spoke to" or "spoke with" or "spoken with" or "spoken to" or "chat" or "reached out". 	3,400 documents - 6,890 documents including families.
Total number of text and WhatsApp messages, and email documents (including their families) responsive to categories 1 – 4 of the ME Subpoenas (adjusted to account for documents that respond to multiple categories):		15,721.
Total number of documents (email documents including their families, text messages and WhatsApp messages) responsive to categories 2 – 4 of the Notice to Produce and/or categories 1 – 4 of the ME Subpoenas (adjusted to account for documents that respond to multiple categories):		15,741.

Mia Uzunovski

From: Monica Allen <monica.allen@blackbaylawyers.com>
Sent: Thursday 17 April 2025 03:59 PM
To: Beverley Newbold
Cc: Victoria-Jane Otavski; Beverley Newbold; Michelle Nguyen; James Beaton
Subject: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: 20.04.17 - Notice to Produce to Nick McKenzie .pdf

Dear Colleagues

Please find **attached** by way of service a Notice to Produce to Nick McKenzie.

Kind regards

Monica Allen

Special Counsel



P 02 8005 3077
M 0432 977 939

monica.allen@blackbaylawyers.com

www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.

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Notice to Produce

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To the Second Respondent

The Appellant requires you to produce the following documents or things before the Court on
23 April 2025 at 9.30am:

1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which you received information from Emma Roberts or Danielle Scott in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and any employee or partner of Minter Ellison in relation to information obtained from or said to be derived from Danielle Scott or Emma Roberts in the period between 1 August 2020 and 27 July 2022.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you, or any person acting on your behalf, and any of the following persons in relation to the Appellant:

a. Emma Roberts;

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

b. Danielle Scott;

c. Person 17,

the period between 1 August 2020 and 27 July 2022.

4. All documents, images, recordings, notes, emails, letters, text messages, WhatsApp or Signal messages, or other communications comprising or evidencing any information, documents, or images provided to you by Danielle Scott, or any person acting on her behalf, which you subsequently provided or forwarded to MinterEllison, or any employee or partner of that firm, as referred to in paragraph 43 of your affidavit affirmed on 14 April 2025.
5. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you, or any person acting on your behalf, and Person 17, or any person acting on her behalf, in relation to the audio recording of a conversation between you and Person 17 recorded in or about March or April 2021 (**Audio Recording**) from 21 March 2025 to date.
6. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you, or any person acting on your behalf, and Lynton Besser, or any other producer or researcher for the ABC's program *Media Watch*, in relation to Person 17 or the Audio Recording from 21 March 2025 to date.
7. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Dean Levitan in relation to these proceedings from 21 March 2025 to date.
8. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Peter Bartlett in relation to these proceedings from 21 March 2025 to date.
9. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Emma Roberts, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.
10. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Danielle Scott, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.

Date: 17 April 2025



Signed by Monica Allen
Lawyer for the Appellant

Note

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

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

Mia Uzunovski

From: Monica Allen <monica.allen@blackbaylawyers.com>
Sent: Thursday 17 April 2025 04:44 PM
To: Beverley Newbold
Cc: Victoria-Jane Otavski; Beverley Newbold; Michelle Nguyen; James Beaton
Subject: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: Subpoena to Produce Documents - Dean Levitan.pdf; Subpoena to Produce Documents - Peter Bartlett.pdf

Importance: High

Dear Colleagues

Please find **attached** by way of service Subpoenas to Produce Documents to:

- Peter Bartlett; and
- Dean Levitan.

The Subpoenas to Produce are returnable at 9.30am on 23 April 2025.

We would be grateful if you could confirm as a matter of urgency whether you have instructions to accept service of the subpoenas on behalf of Mr Bartlett and Mr Levitan, failing which, we will arrange for personal service.

Kind regards

Monica Allen
Special Counsel



P 02 8005 3077
M 0432 977 939

monica.allen@blackbaylawyers.com
www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.
Liability limited by a scheme approved under Professional Standards Legislation.

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:29 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Form 43B
Rule 24.13(1)(b)

Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Peter Bartlett
c/- MinterEllison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

Version 5 form approved 11/01/2023



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which Nick McKenzie provided you information in relation to the Appellant obtained from Emma Roberts or Danielle Scott in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie in relation to information obtained from Danielle Scott or Emma Roberts in the period between 1 August 2020 and 27 July 2022.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and any of the following persons in relation to the Appellant:
 - a. Emma Roberts;
 - b. Danielle Scott;
 - c. Person 17,in the period between 1 August 2020 and 27 July 2022.
4. All notes of any meeting attended by Emma Roberts or Danielle Scott, on the one hand, and Nick McKenzie and any employee or partner of Minter Ellison, as well as any counsel briefed on the matter, on the other hand in the period between 1 August 2020 and 27 July 2022, including but not limited to the meeting on 14 March 2021.
5. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Person 17, or any person acting on her behalf, in relation to the audio recording of a conversation between Nick McKenzie and Person 17 in the period between 1 August 2020 and 27 July 2022.
6. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie in relation to these proceedings from 21 March 2025 to date.



7. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Emma Roberts, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.
8. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Danielle Scott, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.



Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;
 so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce. The copy of a document may be:
 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Dean Levitan
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

Schedule

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 17 April 2025

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:35 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Form 43B
Rule 24.13(1)(b)

Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Dean Levitan
c/- MinterEllison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

Version 5 form approved 11/01/2023



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which Nick McKenzie provided you information in relation to the Appellant obtained from Emma Roberts or Danielle Scott in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie in relation to information obtained from Danielle Scott or Emma Roberts in the period between 1 August 2020 and 27 July 2022.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and any of the following persons in relation to the Appellant:
 - a. Emma Roberts;
 - b. Danielle Scott;
 - c. Person 17,in the period between 1 August 2020 and 27 July 2022.
4. All notes of any meeting attended by Emma Roberts or Danielle Scott, on the one hand, and Nick McKenzie and any employee or partner of Minter Ellison, as well as any counsel briefed on the matter, on the other hand in the period between 1 August 2020 and 27 July 2022, including but not limited to the meeting on 14 March 2021.
5. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Person 17, or any person acting on her behalf, in relation to the audio recording of a conversation between Nick McKenzie and Person 17 in the period in the period between 1 August 2020 and 27 July 2022.
6. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie in relation to these proceedings from 21 March 2025 to date.



7. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Emma Roberts, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.
8. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Danielle Scott, or any person acting on her behalf, in relation to these proceedings from 21 March 2025 to date.



Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;
 so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce. The copy of a document may be:
 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

**Schedule**

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 16 April 2025

Mia Uzunovski

From: Beverley Newbold
Sent: Thursday 17 April 2025 10:02 PM
To: Monica Allen
Cc: Victoria-Jane Otavski; Michelle Nguyen; James Beaton; Rafael Aiolfi
Subject: Re: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: image001.png; Subpoena to Produce Documents - Dean Levitan.pdf; Subpoena to Produce Documents - Peter Bartlett.pdf

Dear Ms Allen

Mr Bartlett is in Egypt and Mr Levitan is in Western Australia. We will revert in relation to service.

In the meantime, please could you send us a copy of your client's applications for leave to issue the subpoenas.

Regards

Beverley

Beverley Newbold Partner

t [+61 2 9921 4894](tel:+61299214894) **f** [+61 2 9921 8070](tel:+61299218070) **m** [+61 411 275 869](tel:+61411275869)

Minter Ellison Governor Macquarie Tower • 1 Farrer Place Sydney NSW 2000

beverley.newbold@minterellison.com www.minterellison.com

On 17 Apr 2025, at 8:44 am, Monica Allen <monica.allen@blackbaylawyers.com> wrote:

Dear Colleagues

Please find **attached** by way of service Subpoenas to Produce Documents to:

1. Peter Bartlett; and
2. Dean Levitan.

The Subpoenas to Produce are returnable at 9.30am on 23 April 2025.

We would be grateful if you could confirm as a matter of urgency whether you have instructions to accept service of the subpoenas on behalf of Mr Bartlett and Mr Levitan, failing which, we will arrange for personal service.

Kind regards

Monica Allen

Special Counsel

P 02 8005 3077

M 0432 977 939

monica.allen@blackbaylawyers.com

www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.

Liability limited by a scheme approved under Professional Standards Legislation.

Mia Uzunovski

From: Beverley Newbold
Sent: Friday 18 April 2025 07:43 PM
To: Monica Allen
Cc: Victoria-Jane Otavski; Michelle Nguyen; James Beaton; Rafael Aiolfi; Mia Uzunovski
Subject: Re: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: image001.png; Subpoena to Produce Documents - Dean Levitan.pdf; Subpoena to Produce Documents - Peter Bartlett.pdf

Following these applications for leave up, please Monica. Please provide by no later than 10am tomorrow (Saturday).

Please could you also identify to whom the 4 additional subpoenas which were filed on behalf of your client yesterday are directed? And provide us with copies as soon as served.

Regards

Beverley

Beverley Newbold Partner

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From: Beverley Newbold
Sent: Saturday 19 April 2025 07:03 PM
To: Monica Allen
Cc: Victoria-Jane Otavski; Michelle Nguyen; James Beaton; Rafael Aiolfi; Mia Uzunovski
Subject: Re: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

Dear Ms Allen - referring to my two unanswered emails below.
Your failure to respond is prejudicial.
Please provide the information sought below immediately.
Regards
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<image001.png>

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From: Monica Allen <monica.allen@blackbaylawyers.com>
Sent: Saturday 19 April 2025 10:20 PM
To: Beverley Newbold
Cc: Victoria-Jane Otavski; Michelle Nguyen; James Beaton; Rafael Aiolfi; Mia Uzunovski
Subject: RE: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
Attachments: image001.png; Subpoena to Produce Documents - Dean Levitan.pdf; Subpoena to Produce Documents - Peter Bartlett.pdf; Subpoena to Produce Documents - ABC.pdf; Subpoena to Produce Documents - Danielle Scott.pdf; Subpoena to Produce Documents - Emma Roberts.pdf; Subpoena to Produce Documents - Person 17.pdf

Dear Ms Newbold

We refer to your emails sent at 10.03pm on Thursday evening, your email sent at 7.44pm on Good Friday demanding a response by 10am today and your email sent at 7.03pm on the evening of Easter Saturday.

First, can you please confirm on whose behalf you are requesting the applications submitted to the Full Court for leave to issue the subpoenas to produce to Mr Bartlett and Mr Levitan, and for what purpose? If we do not receive confirmation from you by 10am tomorrow (Easter Sunday) that MinterEllison is instructed to accept service of the subpoenas on behalf of Mr Levitan and Mr Bartlett, we will proceed to email the subpoenas directly to Mr Levitan and Mr Bartlett and to make an application on Tuesday to the Full Court for substituted service of those subpoenas via email (noting you have informed us that neither individual is presently in Melbourne).

Secondly, we confirm that the Full Court has approved subpoenas to produce documents to:

1. Person 17;
2. Emma Roberts;
3. Danielle Scott; and
4. the Australian Broadcasting Corporation.

Notwithstanding rule 24.16, we **attach** copies of those subpoenas. We trust you will advise the Second Respondent to not attempt to make direct or indirect contact with the recipients of the subpoenas to discuss the subpoenas.

Finally, the Full Court has also granted leave for the issue of subpoenas to give evidence to Mr Levitan and Mr Bartlett, returnable at the hearing on 1 May 2025. We are awaiting sealed copies of those subpoenas from the Registry and will serve them upon receipt. Can you also confirm whether you have instructions to accept service of the subpoenas to give evidence to Mr Levitan and Mr Bartlett.

Upon confirmation from you as to whom your requests for the applications for the subpoenas to produce documents (addressed to Mr Levitan and Mr Bartlett) are on behalf of, we will take instructions (noting it is the Easter long weekend) and respond in due course.

Kind regards

Monica Allen
Special Counsel



monica.allen@blackbaylawyers.com
www.blackbaylawyers.com.au

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Sent: Saturday, 19 April 2025 7:03 PM
To: Monica Allen <monica.allen@blackbaylawyers.com>
Cc: Victoria-Jane Otavski <victoria.jane@blackbaylawyers.com>; Michelle Nguyen <Michelle.Nguyen@minterellison.com>; James Beaton <James.Beaton@minterellison.com>; Rafael Aiolfi <Rafael.Aiolfi@minterellison.com>; Mia Uzunovski <Mia.Uzunovski@minterellison.com>
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2. Dean Levitan.

The Subpoenas to Produce are returnable at 9.30am on 23 April 2025.

We would be grateful if you could confirm as a matter of urgency whether you have instructions to accept service of the subpoenas on behalf of Mr Bartlett and Mr Levitan, failing which, we will arrange for personal service.

Kind regards

Monica Allen

Special Counsel

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CONFIDENTIALITY

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify the sender if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. Please refer to our [privacy policy](#) for more information on how we collect and handle personal information.

ACKNOWLEDGEMENT OF COUNTRY

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:56 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Person 17
c/- Giles / George Lawyers
Level 7, 135 King Street
SYDNEY NSW 2000

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you, or any person acting on your behalf, and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents exchanged between you, or any person acting on your behalf, and Nick McKenzie, or any person acting on his behalf from 21 March 2025 to date in relation to an audio recording of a conversation between you and Nick McKenzie.
3. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents exchanged between you, or any person acting on your behalf, and Linton Besser, or any other employee of the Australian Broadcasting Corporation from 21 March 2025 to date concerning an audio recording of a conversation between you and Nick McKenzie.



4. **Notes**

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce. The copy of a document may be:
 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

Schedule

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 17 April 2025

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:42 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

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Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Emma Roberts
105 Sunset Road
KENMORE QLD 4069

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which you provided any information to Nick McKenzie in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Danielle Scott in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
4. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to these proceedings from 21 March 2025 to date.



5. **Notes**

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce. The copy of a document may be:
 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

Schedule

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 16 April 2025

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:49 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Danielle Scott
2 Whelk Close
TRINITY BEACH QLD 4879

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	BlackBay Lawyers
Tel	+ 61 2 8005 3077
Fax	-
Email	monica.allen@blackbaylawyers.com
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which you provided any information to Nick McKenzie in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Emma Roberts in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
4. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to these proceedings from 21 March 2025 to date.



Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce. The copy of a document may be:
 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

**Schedule**

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 16 April 2025

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:24:02 PM AEST
File Number: NSD689/2023
File Title: BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD
(ACN 003 357 720) & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Subpoena to Produce Documents

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: The Proper Officer
Australian Broadcasting Corporation
700 Harris Street
ULTIMO NSW 2007

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

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

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

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

The last date for service of this subpoena is [date]. (See Note 1)

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		



Date:

Signed by an officer acting with the authority of the District Registrar

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com



Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Linton Besser, or any other producer or researcher for *Media Watch*, and Nick McKenzie, or any person acting on his behalf, in relation to the individual known in these proceedings as Person 17 or the audio recording of a conversation between Nick McKenzie and Person 17 broadcast on *Media Watch* on 31 March 2025.



Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Production of subpoena or copy of it and documents or things by delivery or post

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
 - (a) at the address specified in the subpoena for the purpose; or
 - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
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7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

Production of copy instead of original

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 - (a) a photocopy;
 - (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
 - (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

Schedule

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 17 April 2025

Mia Uzunovski

From: Beverley Newbold
Sent: Sunday 20 April 2025 07:06 PM
To: Monica Allen
Cc: Victoria-Jane Otavski; Michelle Nguyen; James Beaton; Rafael Aiolfi; Mia Uzunovski
Subject: RE: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

Dear Monica

On your first point, in circumstances where you are aware of, and indeed in your email of yesterday appeared to rely upon, challenges over the Easter long weekend in obtaining instructions, it was improper of you to issue emails directly to Mr Bartlett and Mr Levitan, pending hearing from this firm in relation to accepting instructions. We now have instructions to accept service on behalf of Mr Levitan and Mr Bartlett. I trust I will not need to ask you again not to communicate with them directly.

On your second point, we have yet to see the subpoenas to which you refer.

On your third point, all we are seeking to do is understand the basis upon which you approached the Court for widely-cast subpoenas with significantly abridged return dates. If you are unwilling to tell us this, that will be a matter we raise with the Court on Wednesday.

On your fourth point, it really is not for you to be seeking to take points about correspondence on public holidays in circumstances where, among other things, your client issued subpoenas late the Thursday before the Easter long weekend, returnable this Wednesday.

Regards
Beverley

Beverley Newbold

Partner

T +61 2 9921 4894 M +61 411 275 869

beverley.newbold@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com [Follow us on LinkedIn and Twitter](#)



From: Monica Allen <monica.allen@blackbaylawyers.com>
Sent: Sunday 20 April 2025 08:46 AM
To: Beverley Newbold <Beverley.Newbold@minterellison.com>
Cc: Victoria-Jane Otavski <victoria.jane@blackbaylawyers.com>; Michelle Nguyen <Michelle.Nguyen@minterellison.com>; James Beaton <James.Beaton@minterellison.com>; Rafael Aiolfi <Rafael.Aiolfi@minterellison.com>; Mia Uzunovski <Mia.Uzunovski@minterellison.com>
Subject: RE: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

Dear Ms Newbold

First, we note that despite multiple requests, you have not confirmed whether you will accept service of the subpoenas on behalf of Messrs Levitan and Bartlett. It is also not clear whether you have made contact with them to advise them of the subpoenas and if so, when you made contact. Accordingly, as foreshadowed we have now sent those subpoenas via email to Messrs Levitan and Bartlett. As

officers of the Court as well as in their respective capacities as an employee (Mr Levitan) and partner (Mr Bartlett) of your firm, it is hoped that we will not have to trouble the Full Court for substituted service orders.

Secondly, the subpoenas to produce documents have been issued by the Full Court to Messrs Levitan and Bartlett. It is not for the Respondents to determine the appropriateness of the abridged date - it is a matter for the recipients to determine for themselves if they are in a position to comply and if not, when they can comply.

Thirdly, we do not understand why you require the applications for leave submitted to the Full Court to determine the relevance of the material sought from non-parties. That is a matter that is determined by reference to the subpoena itself. Can you please explain the common law or statutory basis of your request to receive the applications for subpoenas to non-parties so we may consider this further and seek instructions - which we will do so as a matter of urgency.

Fourthly, our point about your correspondence is that it is repeatedly being issued at very late hours in the evening without explanation (on public holidays) with demands for responses the next day.

Kind regards

Monica Allen
Special Counsel



P 02 8005 3077
M 0432 977 939

monica.allen@blackbaylawyers.com
www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.

Liability limited by a scheme approved under Professional Standards Legislation.

From: Beverley Newbold <Beverley.Newbold@minterellison.com>

Sent: Sunday, 20 April 2025 12:22 AM

To: Monica Allen <monica.allen@blackbaylawyers.com>

Cc: Victoria-Jane Otavski <victoria.jane@blackbaylawyers.com>; Michelle Nguyen <Michelle.Nguyen@minterellison.com>; James Beaton <James.Beaton@minterellison.com>; Rafael Aiolfi <Rafael.Aiolfi@minterellison.com>; Mia Uzunovski <Mia.Uzunovski@minterellison.com>

Subject: Re: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

Dear Monica

The implication in your email that it is difficult to obtain instructions during the Easter long weekend is noted and endorsed. I act for the respondents on making my request for copies of the applications. The respondents will need to understand how your client has articulated the relevance of the material sought, the reasonableness of the requests, and the appropriateness of the abridged return date. Please provide copies of the applications for all of the subpoenas referred to in your email below, and any other correspondence to and from the Federal Court in relation to same.

Regards
Beverley

Beverley Newbold Partner

t [+61 2 9921 4894](tel:+61299214894) **f** [+61 2 9921 8070](tel:+61299218070) **m** [+61 411 275 869](tel:+61411275869)

Minter Ellison Governor Macquarie Tower • 1 Farrer Place Sydney NSW 2000

beverley.newbold@minterellison.com www.minterellison.com

On 19 Apr 2025, at 1:20 pm, Monica Allen <monica.allen@blackbaylawyers.com> wrote:

Dear Ms Newbold

We refer to your emails sent at 10.03pm on Thursday evening, your email sent at 7.44pm on Good Friday demanding a response by 10am today and your email sent at 7.03pm on the evening of Easter Saturday.

First, can you please confirm on whose behalf you are requesting the applications submitted to the Full Court for leave to issue the subpoenas to produce to Mr Bartlett and Mr Levitan, and for what purpose? If we do not receive confirmation from you by 10am tomorrow (Easter Sunday) that MinterEllison is instructed to accept service of the subpoenas on behalf of Mr Levitan and Mr Bartlett, we will proceed to email the subpoenas directly to Mr Levitan and Mr Bartlett and to make an application on Tuesday to the Full Court for substituted service of those subpoenas via email (noting you have informed us that neither individual is presently in Melbourne).

Secondly, we confirm that the Full Court has approved subpoenas to produce documents to:

1. Person 17;
2. Emma Roberts;
3. Danielle Scott; and
4. the Australian Broadcasting Corporation.

Notwithstanding rule 24.16, we **attach** copies of those subpoenas. We trust you will advise the Second Respondent to not attempt to make direct or indirect contact with the recipients of the subpoenas to discuss the subpoenas.

Finally, the Full Court has also granted leave for the issue of subpoenas to give evidence to Mr Levitan and Mr Bartlett, returnable at the hearing on 1 May 2025. We are awaiting sealed copies of those subpoenas from the Registry and will serve them upon receipt. Can you also confirm whether you have instructions to accept service of the subpoenas to give evidence to Mr Levitan and Mr Bartlett.

Upon confirmation from you as to whom your requests for the applications for the subpoenas to produce documents (addressed to Mr Levitan and Mr Bartlett) are on behalf of, we will take instructions (noting it is the Easter long weekend) and respond in due course.

Kind regards

Monica Allen

Special Counsel

<image001.png>

P 02 8005 3077

M 0432 977 939

monica.allen@blackbaylawyers.com

www.blackbaylawyers.com.au

From: Beverley Newbold <Beverley.Newbold@minterellison.com>
Sent: Saturday, 19 April 2025 7:03 PM
To: Monica Allen <monica.allen@blackbaylawyers.com>
Cc: Victoria-Jane Otavski <victoria.jane@blackbaylawyers.com>; Michelle Nguyen <Michelle.Nguyen@minterellison.com>; James Beaton <James.Beaton@minterellison.com>; Rafael Aiolfi <Rafael.Aiolfi@minterellison.com>; Mia Uzunovski <Mia.Uzunovski@minterellison.com>
Subject: Re: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

Dear Ms Allen - referring to my two unanswered emails below.
Your failure to respond is prejudicial.
Please provide the information sought below immediately.
Regards
Beverley

Beverley Newbold Partner
t [+61 2 9921 4894](tel:+61299214894) **f** [+61 2 9921 8070](tel:+61299218070) **m** [+61 411 275 869](tel:+61411275869)
Minter Ellison Governor Macquarie Tower • 1 Farrer Place Sydney NSW 2000
beverley.newbold@minterellison.com www.minterellison.com

On 18 Apr 2025, at 10:43 am, Beverley Newbold
<Beverley.Newbold@minterellison.com> wrote:

Following these applications for leave up, please Monica. Please provide by no later than 10am tomorrow (Saturday).

Please could you also identify to whom the 4 additional subpoenas which were filed on behalf of your client yesterday are directed? And provide us with copies as soon as served.

Regards
Beverley

Beverley Newbold Partner
t [+61 2 9921 4894](tel:+61299214894) **f** [+61 2 9921 8070](tel:+61299218070) **m** [+61 411 275 869](tel:+61411275869)
Minter Ellison Governor Macquarie Tower • 1 Farrer Place Sydney NSW 2000
beverley.newbold@minterellison.com www.minterellison.com

On 17 Apr 2025, at 2:02 pm, Beverley Newbold
<Beverley.Newbold@minterellison.com> wrote:

Dear Ms Allen

Mr Bartlett is in Egypt and Mr Levitan is in Western Australia. We will revert in relation to service.

In the meantime, please could you send us a copy of your client's applications for leave to issue the subpoenas.

Regards

Beverley

Beverley Newbold Partner

t [+61 2 9921 4894](tel:+61299214894) **f** [+61 2 9921 8070](tel:+61299218070) **m** [+61 411 275 869](tel:+61411275869)

Minter Ellison Governor Macquarie Tower • 1 Farrer Place
Sydney NSW 2000

beverley.newbold@minterellison.com www.minterellison.com

On 17 Apr 2025, at 8:44 am, Monica Allen
<monica.allen@blackbaylawyers.com>
wrote:

Dear Colleagues

Please find **attached** by way of service
Subpoenas to Produce Documents to:

1. Peter Bartlett; and
2. Dean Levitan.

The Subpoenas to Produce are returnable at
9.30am on 23 April 2025.

We would be grateful if you could confirm as
a matter of urgency whether you have
instructions to accept service of the
subpoenas on behalf of Mr Bartlett and Mr
Levitan, failing which, we will arrange for
personal service.

Kind regards

Monica Allen
Special Counsel

P 02 8005 3077
M 0432 977 939

monica.allen@blackbaylawyers.com
www.blackbaylawyers.com.au

If you receive this email by mistake, please notify us and do not use it. We do not waive any privilege, confidentiality or copyright associated with this email.
Liability limited by a scheme approved under Professional Standards Legislation.

<image001.png>

<Subpoena to Produce Documents - Dean Levitan.pdf>

<Subpoena to Produce Documents - Peter Bartlett.pdf>

CONFIDENTIALITY

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify the sender if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. Please refer to our [privacy policy](#) for more information on how we collect and handle personal information.

ACKNOWLEDGEMENT OF COUNTRY

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

<image001.png>

<Subpoena to Produce Documents - Dean Levitan.pdf>

<Subpoena to Produce Documents - Peter Bartlett.pdf>

<Subpoena to Produce Documents - ABC.pdf>

<Subpoena to Produce Documents - Danielle Scott.pdf>

<Subpoena to Produce Documents - Emma Roberts.pdf>

<Subpoena to Produce Documents - Person 17.pdf>

Our ref: BBL:MA:1326

21 April 2025

Ms Beverley Newbold
Minter Ellison
Level 40, Governor Macquarie Tower
SYDNEY NSW 2000

By email: beverley.newbold@minterellison.com

Dear Ms Newbold

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 689, 690 and 691 of 2023**

We refer to your email received at 7.06 pm on Sunday 20 April 2025.

Service on Messrs Bartlett and Levitan

Thank you for confirming that you accept service on behalf of Mr Bartlett and Mr Levitan in their capacity as subpoena addressees. We will direct all further communications regarding these subpoenas to you. That said, at no point since Thursday did you inform us that you were encountering difficulties obtaining instructions from them. You did not address the issue of accepting service despite our raising it directly, and it remains unclear when you first attempted to contact each of them. If that becomes contentious, we trust this will be explained to the Court.

Subpoenas to give evidence

We understand from your email that you have not seen the subpoenas to *give evidence* addressed to Messrs Bartlett or Levitan, which the Full Court has granted leave to issue. We **enclose** them now (along with the Request Forms) but note that they have not yet been sealed by the Registry and are therefore not capable of being formally served. You have observed from our emails to Messrs Levitan and Bartlett that we indicated that those subpoenas to give evidence would be served imminently. In the meantime, please indicate whether Messrs Bartlett or Levitan raise any issue with respect to the requirements in r 24.17 of the *Federal Court Rules 2011*, such as the time for service and conduct money.

“Widely-cast subpoenas”

It is not clear what you are referring to when you describe “widely-cast subpoenas” with abridged times for service. If that is a reference to subpoenas issued to third parties, we would be grateful if you could:

1. confirm which subpoenas you are referring to;
2. identify which paragraphs, if any, you take issue with and on what basis; and
3. clarify the basis on which you propose to question subpoenas not addressed to your clients.

Once we have that information, we will respond promptly. As you know, your previous request was to obtain the Request Forms for subpoenas to third parties who have not all been served, without explaining the basis on which they were sought. We do not propose to provide those unless and until you do so (noting we are under no obligation to provide you with the Request Forms).

Timing and cooperation

Your complaint about the timing of our communications is misplaced. We remind you that it was the Respondents who proposed the current timetable, which gave us limited time to respond to your evidence. The Requests for Leave were filed online on Wednesday, 16 April 2025. We received notification that the Full Court had approved the requests at 3.39pm on Thursday, 17 April 2025. The hearing is fixed for 1 and 2 May 2025, and the Appellant has a number of procedural obligations to fulfil this week.

We want to work cooperatively with you to ensure this matter is ready for hearing and to avoid unnecessary applications to the Full Court. If Messrs Bartlett or Levitan require additional time to comply with the subpoenas to produce, please let us know what timeframes they propose so that short minutes of order can be agreed.

Yours sincerely
BlackBay Lawyers



Monica Allen
Special Counsel
monica.allen@blackbaylawyers.com

Subpoena to Give Evidence

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Peter Bartlett,
c/- MinterEllison
Collins Arch , 447 Collins Street
MELBOURNE VIC 3000

You are ordered to attend to give evidence. See next page for details.

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

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is [date]. (See Note 1)

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

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

Place: Level 17, 20 Martin Place, Sydney, NSW 2000

Email: monica.allen@blackbaylawyers.com

Details of subpoena

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 1 May 2025

Time: 10.15 am

Place: Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court - arrest

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

No. NSD 689 of 2023

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

Second Respondent:	Nick McKenzie
Third Respondent	Chris Masters
Fourth Respondent	David Wroe

Subpoena to Give Evidence

No. NSD 689 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others named in the schedule

Respondents

To: Dean Levitan
c/- MinterEllison
Collins Arch , 447 Collins Street
MELBOURNE VIC 3000

You are ordered to attend to give evidence. See next page for details.

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

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is [date]. (See Note 1)

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Appellant		
Prepared by (name of person/lawyer)	Monica Allen		
Law firm (if applicable)	BlackBay Lawyers		
Tel	+ 61 2 8005 3077	Fax	-
Email	monica.allen@blackbaylawyers.com		
Address for service (include state and postcode)	Level 17, 20 Martin Place, Sydney, New South Wales, 2000		

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

Place: Level 17, 20 Martin Place, Sydney, NSW 2000

Email: monica.allen@blackbaylawyers.com

Details of subpoena

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 1 May 2025

Time: 10.15 am

Place: Law Courts Building, 184 Phillip St, Queens Square, Sydney NSW 2000

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

Notes

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

Applications in relation to subpoena

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

Loss or expense of compliance

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

Contempt of court - arrest

7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

No. NSD 689 of 2023

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

Second Respondent:	Nick McKenzie
Third Respondent	Chris Masters
Fourth Respondent	David Wroe

**Request for Leave to Issue Subpoena (Form NCF7)**

Federal Court Rules 2011 – Rule 24.13

Subpoenas and Notices to Produce Practice Note (GPN-SUBP)

- Cross boxes where applicable
- Clearly print or type all answers
- Please prepare one Request for Leave to Issue Subpoena for each addressee
- Attach an extra page if you need more space for any of the details requested

1. Details of the proceeding

1.1 Title of proceeding: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

1.2 Proceeding number: NSD689 of 2023

2. Details of person making the Request2.1 I am: ☐ a party to the above proceeding:☒ the Lawyer for:

The Appellant

2.2 Contact details of person making the Request:

(a) Name & Position
[if applicable] Monica Allen

(b) Organisation/Firm: BlackBay Lawyers

(c) Telephone: 61 2 8005 3077

Mobile
:

(d) Email: monica.allen@blackbaylawyers.com

(e) Address: Level 17, 20 Martin Place, Sydney, NSW 2000

(f) Signature:
[an electronic signature can be used, provided this is done by or at the direction of the person completing this Request]

Date: 16 April 2025

3. Request for leave ("Request")3.1 (a) Is the Request urgent? ☐ No ☒ YesOR (b) Is an abridged period of service sought on the addressee (short service)? ☒ No ☐ Yes

If "yes" to either 3.1 (a) or (b), briefly explain the urgency and/or basis for short service being requested:

Hearing commences on 1 May 2025.

3.2 Are the other parties to the proceeding aware of this Request? ☒ No ☐ Yes

3.3 Has the Request (or a similar request) previously been raised with or addressed by the Court? ☒ No ☐ Yes

If "yes" to 3.3, provide details:

--

3.4 Is it intended that the subpoena will be issued for service outside Australia [ie. Outside of the jurisdiction]? ☒ No ☐ Yes

If "yes" to 3.2, set out where, outside Australia the subpoena is to be served:

--

3.5 Name of person to be subpoenaed ("Addressee"):

Peter Bartlett

3.6 I request leave of the Court to issue a subpoena requiring the Addressees to:

- ☒ Attend at Court to give evidence (Form 43A, r 24.13(1)(a) of the *Federal Court Rules*); or
☐ Produce a document or thing (Form 43B, r 24.13(1)(b) of the *Federal Court Rules*); or
☐ Attend at Court to give evidence and produce a document or thing (Form 43C, r 24.13(1)(c) of the *Federal Court Rules*),

I request leave for the following **reasons**:

The Appellant seeks leave to issue subpoenas to give evidence to:

- a. Mr Dean Levitan; and
- b. Mr Peter Bartlett,

in connection with matters arising from the affidavit of Mr McKenzie affirmed on 14 April 2025. That affidavit contains numerous assertions regarding documents allegedly provided to him by Ms Danielle Scott, and related discussions involving the Respondents' solicitors, Messrs Levitan and Bartlett.

Mr McKenzie deposes that he received materials and information from Ms Scott and Ms Roberts, some of which were privileged to the Appellant. While Mr McKenzie claims to have believed that the material was not privileged, he does not identify the specific documents to which that belief applied, nor is there any evidence that the belief was informed by legal advice or verified with the Respondents' solicitors. His belief is vague, unsubstantiated, and unsupported by any reasonable steps of inquiry.

Mr McKenzie further gives evidence about meetings and discussions he had with Messrs Levitan and Bartlett, including a meeting on 14 March 2021 at the home of Ms Roberts, which both solicitors attended. He also deposes to attending a subsequent dinner in Sydney on an unspecified date with Ms Roberts, Ms Scott, and Mr Levitan. Although Mr McKenzie asserts that the dinner was not for the purpose of sharing information or material relevant to the case, and that he does not recall any such disclosures being made (see [61]), the fact of the meeting and its participants is not in dispute.

The importance of their evidence has been reinforced by recent disclosures from the Respondents' solicitors, MinterEllison. In correspondence dated 15 April 2025 (**annexed**), MinterEllison confirmed the existence of a contemporaneous file note authored by Mr Levitan, said to have been prepared for the dominant purpose of providing legal services in this litigation. That note records the 14 March 2021 meeting at the home of Ms Roberts, attended by Mr Levitan, Mr McKenzie, Ms Roberts, and Ms Scott.

The Respondents now claim privilege over that document, which is directly relevant to the key issues of waiver and the use of privileged information. Significantly, the document was not produced in response to a Notice to Produce issued on 15 February 2022, which was pressed in Court the following day. No documents were produced at that time. Its existence has only now been disclosed – more than three years later – in response to the Appellant's current application. That delay raises serious questions as to the conduct of the Respondents and reinforces the necessity of oral evidence from Messrs Levitan and Bartlett to determine what occurred, what was said, and what was understood at the meeting, particularly in relation to the handling of privileged material.

The proposed subpoenas are limited to oral testimony only. The request is urgent due to the imminent hearing date (1 May 2025), and it is not practicable to obtain the relevant information by other means (e.g. document production or interrogatories), given the importance of testing Mr McKenzie's evidence under cross-examination. The communications and interactions at issue were either oral, conducted via encrypted messaging platforms (e.g. Signal), or involved matters of knowledge and understanding (such as legal privilege), which are not amenable to production notices or non-party discovery. The evidence goes directly to key factual issues and satisfies the requirement for a legitimate forensic purpose.

In the circumstances, there is a clear and legitimate forensic purpose for seeking to compel the attendance of these witnesses to give evidence, and the application satisfies the requirements for leave under *GPN-SUBP*.

The Appellant is also prepared, if the Court considers it appropriate, to serve, in advance of the hearing, outlines of evidence identifying the anticipated subject matter of each witness's evidence.

3.7 I request that the subpoena be made returnable:

☐

Before the hearing - preferred return date:

☒

At the hearing of the matter *[if known]* on:

1 May 2025

3.8 ☒ **Attached** is the draft subpoena (*Form 43A, Form 43B or Form 43C, r 24.13 of the Federal Court Rules 2011*)

For Court Use only

Considered/Issued by:

.....
(Judge)

.....
(Signature)

Comments:

☐

Accept

☐

Reject

☐

Other:

.....

.....

.....

.....

.....

.....

15 April 2025

BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen
Special Counsel
BlackBay Lawyers
Level 17, 20 Martin Place
Sydney NSW 2000

Dear Ms Allen

**Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others; Federal Court of Australia
Case No NSD689/2023**

1. We refer to the Notice to Produce addressed to the Respondents dated 15 February 2022 (**2022 NTP**), which was served at 12:31pm on 15 February 2022 and required production of documents by 10:15am the next day.
2. The 2022 NTP was called upon in Court on 16 February 2022. The Respondents did not produce any documents in response to it.
3. In preparing for the current application before the Court, the Respondents have identified a document that is responsive to the 2022 NTP, being a handwritten file note of the meeting held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland on 14 March 2021. The file note was prepared by Dean Levitan, a solicitor for MinterEllison, for the dominant purpose of MinterEllison providing professional legal services to the Respondents in relation to this litigation. The meeting was attended by Peter Bartlett of MinterEllison, Dean Levitan, Nick McKenzie, Emma Roberts, Danielle Scott and another friend of Emma Roberts.
4. The meeting is referred to in paragraph [60] of the affidavit of Nicholas David McKenzie affirmed on 14 April 2025.
5. The Respondents claim privilege over the document in accordance with the objection schedule enclosed with this letter, in the same way they would have done at the time the Appellant called upon the 2022 NTP.

Yours faithfully
MinterEllison



Contact: Rafael Aiolfi T: +61 2 9921 8693
rafael.aiolfi@minterellison.com
Michelle Nguyen T: +61 2 9921 8874
michelle.nguyen@minterellison.com
Partner: Beverley Newbold T: +61 2 9921 4894
James Beaton T: +61 2 9921 4063 OUR REF: 1456957

Level 40 Governor Macquarie Tower Sydney
GPO Box 521 Sydney NSW 2001 Australia
T +61 2 9921 8888 F +61 2 4072 9110 minterellison.com

Objection Schedule

Type of document	Date	Author	Basis
Handwritten file note	14 March 2021	Dean Levitan	Legal professional privilege Litigation Privilege



- Cross boxes where applicable
- Clearly print or type all answers
- Please prepare one Request for Leave to Issue Subpoena for each addressee
- Attach an extra page if you need more space for any of the details requested

1. Details of the proceeding

- 1.1 Title of proceeding: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
- 1.2 Proceeding number: NSD689 of 2023

2. Details of person making the Request

- 2.1 I am: ☐ a party to the above proceeding:
- ☒ the Lawyer for: The Appellant

2.2 Contact details of person making the Request:

- (a) Name & Position
[if applicable] Monica Allen
- (b) Organisation/Firm: BlackBay Lawyers
- (c) Telephone: 61 2 8005 3077 Mobile :
- (d) Email: monica.allen@blackbaylawyers.com
- (e) Address: Level 17, 20 Martin Place, Sydney, NSW 2000

- (f) Signature:
[an electronic signature can be used, provided this is done by or at the direction of the person completing this Request]

Date: 16 April 2025

3. Request for leave ("Request")

- 3.1 (a) Is the Request urgent? ☐ No ☒ Yes
- OR** (b) Is an abridged period of service sought on the addressee (short service)? ☒ No ☐ Yes

If "yes" to either 3.1 (a) or (b), briefly explain the urgency and/or basis for short service being requested:

Hearing commences on 1 May 2025.

3.2 Are the other parties to the proceeding aware of this Request? ☒ No ☐ Yes

3.3 Has the Request (or a similar request) previously been raised with or addressed by the Court? ☒ No ☐ Yes

If "yes" to 3.3 , provide details:

--

3.4 Is it intended that the subpoena will be issued for service outside Australia [ie. Outside of the jurisdiction]? ☒ No ☐ Yes

If "yes" to 3.2, set out where, outside Australia the subpoena is to be served:

--

3.5 Name of person to be subpoenaed ("Addressee"):

Dean Levitan

3.6 I request leave of the Court to issue a subpoena requiring the Addressees to:

☒ Attend at Court to give evidence (Form 43A, r 24.13(1)(a) of the *Federal Court Rules*); or

☐ Produce a document or thing (Form 43B, r 24.13(1)(b) of the *Federal Court Rules*); or

☐ Attend at Court to give evidence and produce a document or thing (Form 43C, r 24.13(1)(c) of the *Federal Court Rules*),

I request leave for the following **reasons**:

The Appellant seeks leave to issue subpoenas to give evidence to:

- a. Mr Dean Levitan; and
- b. Mr Peter Bartlett,

in connection with matters arising from the affidavit of Mr McKenzie affirmed on 14 April 2025. That affidavit contains numerous assertions regarding documents allegedly provided to him by Ms Danielle Scott, and related discussions involving the Respondents' solicitors, Messrs Levitan and Bartlett.

Mr McKenzie deposes that he received materials and information from Ms Scott and Ms Roberts, some of which were privileged to the Appellant. While Mr McKenzie claims to have believed that the material was not privileged, he does not identify the specific documents to which that belief applied, nor is there any evidence that the belief was informed by legal advice or verified with the Respondents' solicitors. His belief is vague, unsubstantiated, and unsupported by any reasonable steps of inquiry.

Mr McKenzie further gives evidence about meetings and discussions he had with Messrs Levitan and Bartlett, including a meeting on 14 March 2021 at the home of Ms Roberts, which both solicitors attended. He also deposes to attending a subsequent dinner in Sydney on an unspecified date with Ms Roberts, Ms Scott, and Mr Levitan. Although Mr McKenzie asserts that the dinner was not for the purpose of sharing information or material relevant to the case, and that he does not recall any such disclosures being made (see [61]), the fact of the meeting and its participants is not in dispute.

The importance of their evidence has been reinforced by recent disclosures from the Respondents' solicitors, MinterEllison. In correspondence dated 15 April 2025 (**annexed**), MinterEllison confirmed the existence of a contemporaneous file note authored by Mr Levitan, said to have been prepared for the dominant purpose of providing legal services in this litigation. That note records the 14 March 2021 meeting at the home of Ms Roberts, attended by Mr Levitan, Mr McKenzie, Ms Roberts, and Ms Scott.

The Respondents now claim privilege over that document, which is directly relevant to the key issues of waiver and the use of privileged information. Significantly, the document was not produced in response to a Notice to Produce issued on 15 February 2022, which was pressed in Court the following day. No documents were produced at that time. Its existence has only now been disclosed – more than three years later – in response to the Appellant's current application. That delay raises serious questions as to the conduct of the Respondents and reinforces the necessity of oral evidence from Messrs Levitan and Bartlett to determine what occurred, what was said, and what was understood at the meeting, particularly in relation to the handling of privileged material.

The proposed subpoenas are limited to oral testimony only. The request is urgent due to the imminent hearing date (1 May 2025), and it is not practicable to obtain the relevant information by other means (e.g. document production or interrogatories), given the importance of testing Mr McKenzie's evidence under cross-examination. The communications and interactions at issue were either oral, conducted via encrypted messaging platforms (e.g. Signal), or involved matters of knowledge and understanding (such as legal privilege), which are not amenable to production notices or non-party discovery. The evidence goes directly to key factual issues and satisfies the requirement for a legitimate forensic purpose.

In the circumstances, there is a clear and legitimate forensic purpose for seeking to compel the attendance of these witnesses to give evidence, and the application satisfies the requirements for leave under *GPN-SUBP*.

The Appellant is also prepared, if the Court considers it appropriate, to serve, in advance of the hearing, outlines of evidence identifying the anticipated subject matter of each witness's evidence.

3.7 I request that the subpoena be made returnable:

☐

Before the hearing - preferred return date:

☒

At the hearing of the matter *[if known]* on:

1 May 2025

3.8 ☒ **Attached** is the draft subpoena (*Form 43A, Form 43B or Form 43C, r 24.13 of the Federal Court Rules 2011*)

For Court Use only

Considered/Issued by:

.....
(Judge)

.....
(Signature)

Comments:

☐

Accept

☐

Reject

☐

Other:

.....

.....

.....

.....

.....

.....

15 April 2025

BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen
Special Counsel
BlackBay Lawyers
Level 17, 20 Martin Place
Sydney NSW 2000

Dear Ms Allen

**Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others; Federal Court of Australia
Case No NSD689/2023**

1. We refer to the Notice to Produce addressed to the Respondents dated 15 February 2022 (**2022 NTP**), which was served at 12:31pm on 15 February 2022 and required production of documents by 10:15am the next day.
2. The 2022 NTP was called upon in Court on 16 February 2022. The Respondents did not produce any documents in response to it.
3. In preparing for the current application before the Court, the Respondents have identified a document that is responsive to the 2022 NTP, being a handwritten file note of the meeting held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland on 14 March 2021. The file note was prepared by Dean Levitan, a solicitor for MinterEllison, for the dominant purpose of MinterEllison providing professional legal services to the Respondents in relation to this litigation. The meeting was attended by Peter Bartlett of MinterEllison, Dean Levitan, Nick McKenzie, Emma Roberts, Danielle Scott and another friend of Emma Roberts.
4. The meeting is referred to in paragraph [60] of the affidavit of Nicholas David McKenzie affirmed on 14 April 2025.
5. The Respondents claim privilege over the document in accordance with the objection schedule enclosed with this letter, in the same way they would have done at the time the Appellant called upon the 2022 NTP.

Yours faithfully
MinterEllison



Contact: Rafael Aiolfi T: +61 2 9921 8693
rafael.aiolfi@minterellison.com
Michelle Nguyen T: +61 2 9921 8874
michelle.nguyen@minterellison.com
Partner: Beverley Newbold T: +61 2 9921 4894
James Beaton T: +61 2 9921 4063 OUR REF: 1456957

Objection Schedule

Type of document	Date	Author	Basis
Handwritten file note	14 March 2021	Dean Levitan	Legal professional privilege Litigation Privilege



- Cross boxes where applicable
- Clearly print or type all answers
- Please prepare one Request for Leave to Issue Subpoena for each addressee
- Attach an extra page if you need more space for any of the details requested

1. Details of the proceeding

- 1.1 Title of proceeding: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
- 1.2 Proceeding number: NSD689 of 2023

2. Details of person making the Request

- 2.1 I am: ☐ a party to the above proceeding:
- ☒ the Lawyer for: The Appellant

2.2 Contact details of person making the Request:

- (a) Name & Position
[if applicable] Monica Allen
- (b) Organisation/Firm: BlackBay Lawyers
- (c) Telephone: 61 2 8005 3077 Mobile :
- (d) Email: monica.allen@blackbaylawyers.com
- (e) Address: Level 17, 20 Martin Place, Sydney, NSW 2000

- (f) Signature:
[an electronic signature can be used, provided this is done by or at the direction of the person completing this Request]

Date: 16 April 2025

3. Request for leave ("Request")

- 3.1 (a) Is the Request urgent? ☐ No ☒ Yes
- OR** (b) Is an abridged period of service sought on the addressee (short service)? ☐ No ☒ Yes

If "yes" to either 3.1 (a) or (b), briefly explain the urgency and/or basis for short service being requested:

Hearing commences on 1 May 2025.

3.2 Are the other parties to the proceeding aware of this Request? ☒ No ☐ Yes

3.3 Has the Request (or a similar request) previously been raised with or addressed by the Court? ☒ No ☐ Yes

If "yes" to 3.3, provide details:

--

3.4 Is it intended that the subpoena will be issued for service outside Australia [ie. Outside of the jurisdiction]? ☒ No ☐ Yes

If "yes" to 3.2, set out where, outside Australia the subpoena is to be served:

--

3.5 Name of person to be subpoenaed ("Addressee"):

Peter Bartlett

3.6 I request leave of the Court to issue a subpoena requiring the Addressees to:

- ☐ Attend at Court to give evidence (Form 43A, r 24.13(1)(a) of the *Federal Court Rules*); or
- ☒ Produce a document or thing (Form 43B, r 24.13(1)(b) of the *Federal Court Rules*); or
- ☐ Attend at Court to give evidence and produce a document or thing (Form 43C, r 24.13(1)(c) of the *Federal Court Rules*),

I request leave for the following **reasons**:

The Appellant seeks leave to issue a subpoenas to produce documents to Mr Peter Bartlett in connection with matters arising from the affidavit of Mr McKenzie affirmed on 14 April 2025.

That affidavit contains numerous assertions regarding documents allegedly provided to him by Ms Danielle Scott, and related discussions involving the Respondents' solicitors, Messrs Levitan and Bartlett.

Mr McKenzie deposes that he received materials and information from Ms Scott and Ms Roberts, some of which were privileged to the Appellant. While Mr McKenzie claims to have believed that the material was not privileged, he does not identify the specific documents to which that belief applied, nor is there any evidence that the belief was informed by legal advice or verified with the Respondents' solicitors. His belief is vague, unsubstantiated, and unsupported by any reasonable steps of inquiry.

Mr McKenzie further gives evidence about meetings and discussions he had with Messrs Levitan and Bartlett, including a meeting on 14 March 2021 at the home of Ms Roberts, which both solicitors attended. He also deposes to attending a subsequent dinner in Sydney on an unspecified date with Ms Roberts, Ms Scott, and Mr Levitan. Although Mr McKenzie asserts that the dinner was not for the purpose of sharing information or material relevant to the case, and that he does not recall any such disclosures being made (see [61]), the fact of the meeting and its participants is not in dispute.

The importance of their evidence has been reinforced by recent disclosures from the Respondents' solicitors, MinterEllison. In correspondence dated 15 April 2025 (**annexed**), MinterEllison confirmed the existence of a contemporaneous file note authored by Mr Levitan, said to have been prepared for the dominant purpose of providing legal services in this litigation. That note records the 14 March 2021 meeting at the home of Ms Roberts, attended by Mr Levitan, Mr McKenzie, Ms Roberts, and Ms Scott.

The Respondents now claim privilege over that document, which is directly relevant to the key issues of waiver and the use of privileged information. Significantly, the document was not produced in response to a Notice to Produce issued on 15 February 2022, which was pressed in Court the following day. No documents were produced at that time. Its existence has only now been disclosed – more than three years later – in response to the Appellant's current application. That delay raises serious questions as to the conduct of the Respondents and reinforces the necessity of oral evidence from Messrs Levitan and Bartlett to determine what occurred, what was said, and what was understood at the meeting, particularly in relation to the handling of privileged material.

The communications and interactions at issue were either oral, conducted via encrypted messaging platforms (e.g. Signal), or involved matters of knowledge and understanding (such as legal privilege), which are not amenable to production notices or non-party discovery. The evidence goes directly to key factual issues and satisfies the requirement for a legitimate forensic purpose.

3.7 I request that the subpoena be made returnable:



Before the hearing - preferred return date:

23 April 2025



At the hearing of the matter *[if known]* on:

- 3.8 ☒ **Attached** is the draft subpoena (*Form 43A, Form 43B or Form 43C, r 24.13 of the Federal Court Rules 2011*)

For Court Use only

Considered/Issued by:

.....
(Judge)

.....
(Signature)

Comments:

☐

Accept

☐

Reject

☐

Other:

15 April 2025

BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen
Special Counsel
BlackBay Lawyers
Level 17, 20 Martin Place
Sydney NSW 2000

Dear Ms Allen

**Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others; Federal Court of Australia
Case No NSD689/2023**

1. We refer to the Notice to Produce addressed to the Respondents dated 15 February 2022 (**2022 NTP**), which was served at 12:31pm on 15 February 2022 and required production of documents by 10:15am the next day.
2. The 2022 NTP was called upon in Court on 16 February 2022. The Respondents did not produce any documents in response to it.
3. In preparing for the current application before the Court, the Respondents have identified a document that is responsive to the 2022 NTP, being a handwritten file note of the meeting held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland on 14 March 2021. The file note was prepared by Dean Levitan, a solicitor for MinterEllison, for the dominant purpose of MinterEllison providing professional legal services to the Respondents in relation to this litigation. The meeting was attended by Peter Bartlett of MinterEllison, Dean Levitan, Nick McKenzie, Emma Roberts, Danielle Scott and another friend of Emma Roberts.
4. The meeting is referred to in paragraph [60] of the affidavit of Nicholas David McKenzie affirmed on 14 April 2025.
5. The Respondents claim privilege over the document in accordance with the objection schedule enclosed with this letter, in the same way they would have done at the time the Appellant called upon the 2022 NTP.

Yours faithfully
MinterEllison



Contact: Rafael Aiolfi T: +61 2 9921 8693
rafael.aiolfi@minterellison.com
Michelle Nguyen T: +61 2 9921 8874
michelle.nguyen@minterellison.com
Partner: Beverley Newbold T: +61 2 9921 4894
James Beaton T: +61 2 9921 4063 OUR REF: 1456957

Objection Schedule

Type of document	Date	Author	Basis
Handwritten file note	14 March 2021	Dean Levitan	Legal professional privilege Litigation Privilege



- Cross boxes where applicable
- Clearly print or type all answers
- Please prepare one Request for Leave to Issue Subpoena for each addressee
- Attach an extra page if you need more space for any of the details requested

1. Details of the proceeding

- 1.1 Title of proceeding: Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors
- 1.2 Proceeding number: NSD 689 of 2023

2. Details of person making the Request

- 2.1 I am: ☐ a party to the above proceeding:
- ☒ the Lawyer for: The Appellant

2.2 Contact details of person making the Request:

- (a) Name & Position
[if applicable] Monica Allen
- (b) Organisation/Firm: BlackBay Lawyers
- (c) Telephone: 61 2 8005 3077 Mobile :
- (d) Email: monica.allen@blackbaylawyers.com
- (e) Address: Level 17, 20 Martin Place, Sydney, NSW 2000

- (f) Signature:
[an electronic signature can be used, provided this is done by or at the direction of the person completing this Request]

Date: 16 April 2025

3. Request for leave ("Request")

- 3.1 (a) Is the Request urgent? ☐ No ☒ Yes
- OR** (b) Is an abridged period of service sought on the addressee (short service)? ☐ No ☒ Yes

If "yes" to either 3.1 (a) or (b), briefly explain the urgency and/or basis for short service being requested:

Hearing commences on 1 May 2025.

3.2 Are the other parties to the proceeding aware of this Request? ☒ No ☐ Yes

3.3 Has the Request (or a similar request) previously been raised with or addressed by the Court? ☒ No ☐ Yes

If "yes" to 3.3, provide details:

--

3.4 Is it intended that the subpoena will be issued for service outside Australia [ie. Outside of the jurisdiction]? ☒ No ☐ Yes

If "yes" to 3.2, set out where, outside Australia the subpoena is to be served:

--

3.5 Name of person to be subpoenaed ("Addressee"):

Peter Bartlett

3.6 I request leave of the Court to issue a subpoena requiring the Addressees to:

- ☐ Attend at Court to give evidence (Form 43A, r 24.13(1)(a) of the *Federal Court Rules*); or
- ☒ Produce a document or thing (Form 43B, r 24.13(1)(b) of the *Federal Court Rules*); or
- ☐ Attend at Court to give evidence and produce a document or thing (Form 43C, r 24.13(1)(c) of the *Federal Court Rules*),

I request leave for the following **reasons**:

The Appellant seeks leave to issue a subpoenas to produce documents to Mr Peter Bartlett in connection with matters arising from the affidavit of Mr McKenzie affirmed on 14 April 2025.

That affidavit contains numerous assertions regarding documents allegedly provided to him by Ms Danielle Scott, and related discussions involving the Respondents' solicitors, Messrs Levitan and Bartlett.

Mr McKenzie deposes that he received materials and information from Ms Scott and Ms Roberts, some of which were privileged to the Appellant. While Mr McKenzie claims to have believed that the material was not privileged, he does not identify the specific documents to which that belief applied, nor is there any evidence that the belief was informed by legal advice or verified with the Respondents' solicitors. His belief is vague, unsubstantiated, and unsupported by any reasonable steps of inquiry.

Mr McKenzie further gives evidence about meetings and discussions he had with Messrs Levitan and Bartlett, including a meeting on 14 March 2021 at the home of Ms Roberts, which both solicitors attended. He also deposes to attending a subsequent dinner in Sydney on an unspecified date with Ms Roberts, Ms Scott, and Mr Levitan. Although Mr McKenzie asserts that the dinner was not for the purpose of sharing information or material relevant to the case, and that he does not recall any such disclosures being made (see [61]), the fact of the meeting and its participants is not in dispute.

The importance of their evidence has been reinforced by recent disclosures from the Respondents' solicitors, MinterEllison. In correspondence dated 15 April 2025 (**annexed**), MinterEllison confirmed the existence of a contemporaneous file note authored by Mr Levitan, said to have been prepared for the dominant purpose of providing legal services in this litigation. That note records the 14 March 2021 meeting at the home of Ms Roberts, attended by Mr Levitan, Mr McKenzie, Ms Roberts, and Ms Scott.

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3.7 I request that the subpoena be made returnable:



Before the hearing - preferred return date:

23 April 2025



At the hearing of the matter *[if known]* on:

- 3.8 ☒ **Attached** is the draft subpoena (*Form 43A, Form 43B or Form 43C, r 24.13 of the Federal Court Rules 2011*)

For Court Use only

Considered/Issued by:

.....
(Judge)

.....
(Signature)

Comments:

☐

Accept

☐

Reject

☐

Other:

15 April 2025

BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen
Special Counsel
BlackBay Lawyers
Level 17, 20 Martin Place
Sydney NSW 2000

Dear Ms Allen

**Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others; Federal Court of Australia
Case No NSD689/2023**

1. We refer to the Notice to Produce addressed to the Respondents dated 15 February 2022 (**2022 NTP**), which was served at 12:31pm on 15 February 2022 and required production of documents by 10:15am the next day.
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3. In preparing for the current application before the Court, the Respondents have identified a document that is responsive to the 2022 NTP, being a handwritten file note of the meeting held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland on 14 March 2021. The file note was prepared by Dean Levitan, a solicitor for MinterEllison, for the dominant purpose of MinterEllison providing professional legal services to the Respondents in relation to this litigation. The meeting was attended by Peter Bartlett of MinterEllison, Dean Levitan, Nick McKenzie, Emma Roberts, Danielle Scott and another friend of Emma Roberts.
4. The meeting is referred to in paragraph [60] of the affidavit of Nicholas David McKenzie affirmed on 14 April 2025.
5. The Respondents claim privilege over the document in accordance with the objection schedule enclosed with this letter, in the same way they would have done at the time the Appellant called upon the 2022 NTP.

Yours faithfully
MinterEllison



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rafael.aiolfi@minterellison.com
Michelle Nguyen T: +61 2 9921 8874
michelle.nguyen@minterellison.com
Partner: Beverley Newbold T: +61 2 9921 4894
James Beaton T: +61 2 9921 4063 OUR REF: 1456957

Level 40 Governor Macquarie Tower Sydney
GPO Box 521 Sydney NSW 2001 Australia
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Objection Schedule

Type of document	Date	Author	Basis
Handwritten file note	14 March 2021	Dean Levitan	Legal professional privilege Litigation Privilege

21 April 2025

BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen
Special Counsel
BlackBay Lawyers
Level 17, 20 Martin Place
Sydney NSW 2000

Dear Ms Allen

Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others Federal Court of Australia Case No. NSD 689, 690 and 691 of 2023 (Proceedings)

1. We refer to:
 - (a) the interlocutory application filed by the Appellant on 27 March 2025 (**Appellant's Interlocutory Application**) and the Appellant's proposed Amended Notice of Appeal, and the affidavits of Monica Allen filed on 27 March 2025 (**Allen Affidavit**) and 30 March 2025;
 - (b) the affidavit of Nick McKenzie filed on 14 April 2025 (**McKenzie Affidavit**);
 - (c) the notice to produce addressed to Mr McKenzie dated 17 April 2025 (**Notice to Produce**);
 - (d) the subpoenas to produce documents addressed to:
 - (i) Peter Bartlett and Dean Levitan, provided to MinterEllison on 17 April 2025 (together, the **ME Subpoenas**);
 - (ii) the Australian Broadcasting Corporation (**ABC**) that was provided to MinterEllison on 19 April 2025 (the **ABC Subpoena**);
 - (iii) Emma Roberts, that was provided to MinterEllison on 19 April 2025 (the **ER Subpoena**);
 - (iv) Danielle Scott, that was provided to MinterEllison on 19 April 2025 (the **DS Subpoena**); and
 - (v) Person 17, that was provided to MinterEllison on 19 April 2025 (the **Person 17 Subpoena**),(collectively referred to as the **Subpoenas**), and
 - (e) the letter from BlackBay Lawyers to MinterEllison of 21 April 2025.
2. First, the Notice to Produce contains categories that are overly broad in their formulation and seek documents that are wholly irrelevant to the Appellant's Interlocutory Application and proposed Amended Notice of Appeal. As drafted, the Notice to Produce will require that the Second Respondent collate and review an extensive amount of material in an unreasonably short amount of time and imposes a burden that it is unduly oppressive. In this context we note also the intervening public holidays, and the practical challenges in further expanding the relevant team of lawyers tasked with reviewing potentially responsive documents, given the prospect that the

collated material may contain material that is subject to the orders made by Justice Besanko on 15 July 2020 (as last amended on 26 September 2023) pursuant to sections 19(3A) and 38B of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth).

3. Secondly, the Subpoenas (many of them with overlapping categories) suffer from the same defects as the categories of the Notice to Produce. In circumstances where the Appellant's proposed Amended Notice of Appeal does not include any allegation of misconduct by any person other than the Second Respondent, it is difficult to understand the relevance or legitimate forensic purpose for issuing the Subpoenas. They are a fishing expedition and one that will create unnecessary distraction and cost to our clients and to third parties. This is an abuse of process.
4. Our letter below sets out why the Notice to Produce and the Subpoenas should be set aside.

Notice to Produce

Category 1

5. The date range for this category, being 1 August 2020 to 27 July 2022, is overly broad. The Appellant's Interlocutory Application is based on the recording referred to in paragraph 7 of the Allen Affidavit (the **Audio Recording**). As stated in paragraphs 11 and 36 of the McKenzie Affidavit, this recording was created in around March or April 2021. In those circumstances, it is unclear how documents created after 30 April 2021 could be relevant. It is self-evident that the conversation in the Audio Recording could only be referring to events occurring before the Audio Recording was made.
6. At the very least, the date range should not extend beyond 31 May 2021. The Appellant seeks to have the evidence that was before Justice Bromwich in proceeding NSD 511 of 2021 received by the Full Court on the present application (see paragraph 12 of the Allen Affidavit). The affidavit of the Appellant sworn on 10 June 2021 (Exhibit MHA-1 to the Allen Affidavit, page 11) for proceeding NSD 511 of 2021 (**10 June Affidavit**) deposes to a concern that Emma Roberts was accessing his RS Group email accounts prior to 20 April 2021: see 10 June Affidavit, [18], [22], [24]). The latest date identified in that affidavit is 30 May 2021, when the Appellant says he logged into his account and found emails prior to 30 May 2021 deleted: see 10 June Affidavit, [26]. It follows that, on the Appellant's own evidence, the events giving rise to his asserted concern regarding access to his email account occurred before the end of May 2021. There is no proper basis for seeking documents created after that date.
7. The date criteria of 1 August 2020 to 27 July 2022 is also applied to a number of other categories of the Notice to Produce and the Subpoenas. To avoid repeating the matters raised in the paragraphs above, we will refer to this as the **Date Range Objection**.
8. Further, this category is excessively broad and not appropriately tethered to the issues in dispute. The category is not limited to matters that have apparent relevance to the matters raised by the Appellant's Interlocutory Application and proposed Amended Notice of Appeal. This ground of objection affects other categories of the Notice to Produce and the Subpoenas. To avoid repeating the same objection in relation to other categories of the Notice to Produce and the Subpoenas, we refer to this as the **Irrelevance Objection**.

Category 2

9. In addition to the Date Range Objection and the Irrelevance Objection, this category, as presently drafted, would:
 - (a) capture a large volume of irrelevant communications. The issue raised by the Appellant's Interlocutory Application and proposed Amended Notice of Appeal only concerns the question of whether the Respondents had access to *privileged* communications or documents of the Appellant. It does not concern any non-privileged information obtained from Danielle Scott or Emma Roberts;
 - (b) be oppressive insofar as it includes documents "in relation to information" obtained from Ms Scott and Ms Roberts, and not just documents "recording" information received from Ms Scott and Ms Roberts;
 - (c) be oppressive insofar as it includes information "derived from" Ms Scott and Ms Roberts, which would require a careful analysis of correspondence to determine if a document was "in relation to information" that was "derived" from Ms Scott and Ms Roberts; and

- (d) be oppressive insofar as it would capture a large volume of privileged documents. This is because this category of documents is specifically directed at communications between Mr McKenzie and "*any employee or partner of MinterEllison*". As the subject matter of the communications will concern issues in dispute in the Proceedings, it is likely that a majority of documents responsive to this category will be subject to claims for legal professional privilege. This will require a large number of careful judgments regarding the applicability of legal professional privilege, which will necessarily slow down the process of reviewing potentially privileged documents and producing the responsive documents to the Applicant and increase the burden of compliance with this category.

- 10. Insofar as the category would capture any documents of apparent relevance, those documents fall within other categories of the Notice of Produce, making Category 2 overly broad and otiose.

Category 3

- 11. In addition to the Date Range Objection and Irrelevance Objection, we note that this category is not limited to any particular topic or subject matter and simply seeks all communications between Mr McKenzie, Ms Roberts, Ms Scott or Person 17 "*in relation to*" the Appellant. This language is overly broad as it is not limited to communications of the specific kind upon which the Appellant's Interlocutory Application and proposed Amended Notice of Appeal is founded, viz., communications concerning privileged communications or documents of the Appellant.
- 12. Further, the expression "*or any person acting on his behalf*" is unclear and leaves room for ambiguity. Such language would capture irrelevant documents in that:
 - (a) no aspect of the Appellant's proposed Amended Notice of Appeal involves any contention that Mr McKenzie obtained information or documents from Ms Scott or Ms Roberts through an intermediary and only alleges misconduct by Mr McKenzie; and
 - (b) to the extent that the inclusion of the phrase captures communications sent by Mr McKenzie's solicitors, it would be oppressive and unduly burdensome because the universe of responsive documents is not only broadened further, but will undoubtedly capture documents that are subject to claims for legal professional privilege as they contain communications between the Respondent's solicitors and potential witnesses in the Proceedings. This is further discussed below in relation to Category 3 of the ME Subpoenas.
- 13. As with Category 2, insofar as this category would capture any documents of apparent relevance, those documents fall within other categories of the Notice of Produce, making Category 3 overly broad and otiose.

Category 4

- 14. This category is unconfined by any reference to a date range and is therefore overly broad. The category ought be limited to the period August 2020 to 31 May 2021 for the reasons indicated above.

Category 5

- 15. The documents sought by way of this category have no apparent relevance to any issue raised by the Appellant's Interlocutory Application or proposed Amended Notice of Appeal. Again, the Appellant's Interlocutory Application arises out of the Audio Recording, which was created in March or April 2021 and the trial in the Proceedings concluded on 27 July 2022. In these circumstances, the proposition that communications between Mr McKenzie and Person 17 (or any persons acting on their behalf) *in the period 21 March to 17 April 2025* are relevant to the Appellant's Interlocutory Application or proposed Amended Notice of Appeal is unreal, fanciful and speculative. The category is a fishing expedition and an abuse of process. This ground of objection affects other categories of the Notice and the Subpoenas. To avoid repeating the same objection in relation to other categories of the Notice to Produce and the Subpoenas, we refer to this as the **Post 21 March Objection**.

Category 6

- 16. We are aware that the Appellant's Interlocutory Application was a subject of the episode of the *Media Watch* program that was broadcast on 31 March 2025, but it is unreal, fanciful and speculative to suggest that the documents sought by this category have any bearing on the issue raised by the Appellant's Interlocutory Application or proposed Amended Notice of Appeal. The

category is a fishing expedition and an abuse of process. We refer to this as the **Media Watch Objection**.

Categories 7 and 8

17. The Post 21 March Objection applies to these categories. In addition, these categories seek all communications sent "*in relation to these proceedings*". That is overly broad and likely to capture communications that pertain to matters that are wholly irrelevant to the Appellant's Interlocutory Application and Amended Notice of Appeal.
18. Further, the documents sought are likely to be privileged in circumstances where Mr Bartlett and Mr Levitan were the solicitors with carriage of the proceedings at trial and on the appeal.

Categories 9 and 10

19. The Post 21 March Objection applies to these categories. Further, the reference to communications "*in relation to these proceedings*" is overly broad and likely to capture communications that pertain to matters that are wholly irrelevant to the Appellant's Interlocutory Application and Amended Notice of Appeal.

The Subpoenas

20. The remaining sections of this letter discuss the Subpoenas that have been issued by the Appellant. To avoid repetition, we will adopt the definitions above. Our clients are entitled to challenge the validity of the Subpoenas as parties to the Proceedings whose interests are affected by the Subpoenas.

ME Subpoenas

21. The ME Subpoenas seek, among other things, the production of communications and documents privileged to the Respondents. In circumstances where the Appellant on the Interlocutory Application and proposed Amended Notice of Appeal does not allege any misconduct by any lawyers, it is difficult to see the basis for such subpoenas other than a fishing exercise.

Category 1

22. The Irrelevance Objection applies to this category. In particular, the reference to information obtained "*in relation to the Appellant*" is overly broad and not appropriately tethered to the issues raised by the Appellant's Interlocutory Application and proposed Amended Notice of Appeal. In this regard, we repeat the observation in paragraph 9(a) above.
23. The Date Range Objection also applies to this category.

Category 2

24. The Irrelevance Objection applies to this category. Again, this category goes beyond the current scope of the Interlocutory Application and proposed Amended Notice of Appeal as framed. The "information" referred to is not limited to the Appellant's privileged information or documents, and the category seeks documents "in relation to information obtained" from Ms Scott or Ms Roberts (see paragraph 9(a), (b) and (c) above). The documents sought would likely also be privileged (see paragraph 9(d) above).
25. The Date Range Objection also applies to this category.

Category 3

26. The Irrelevance Objection applies to this category. Substantially the same issues arise as are described in paragraphs 11 and 12 above in respect of Category 3 of the Notice to Produce.
27. This category seeks communications between Mr Bartlett or Mr Levitan and people who gave evidence as witnesses for the Respondents and/or provided outlines of evidence as potential witnesses to be called by the Respondents. Most, if not all, of these communications will be privileged. The time required to properly consider and make these privilege claims will increase the burden of compliance with this category. We refer to this as the **Witness Objection**.
28. Further, there is no suggestion in any of the materials sought to be adduced by the Appellant in support of the Appellant's Interlocutory Application that Person 17 had access to or improperly

obtained information by accessing the Appellant's email account. It is therefore unclear the relevance, if any, of communications between Person 17 and Mr Bartlett or Mr Levitan (or, in fact, any other person) to the issues raised by the Appellant's Interlocutory Application. We refer to this as the **Person 17 Objection**.

29. The Date Range Objection also applies to this category.

Category 4

30. The Date Range Objection and Irrelevance Objection apply to this category.
31. To the extent that any such meeting was convened for the purpose of discussing or preparing the evidence that Ms Roberts and/or Ms Scott would give in the proceedings below, any notes that record the substance of what was discussed in relation to that evidence will likely be privileged. The time required to properly consider and make these privilege claims will increase the burden of compliance with this category.

Category 5

32. The Irrelevance Objection applies to this category. Even assuming there were communications between Messrs Bartlett or Levitan and Person 17 or persons acting on her behalf in relation to the audio recording, such communications have no apparent relevance to any issue raised by the Interlocutory Application or the proposed Amended Notice of Appeal.
33. This category appears to be an attempt to fish for a case that Mr Bartlett or Mr Levitan were aware of the Audio Recording at the time of trial. Any such case is outside the terms of the Interlocutory Application and the proposed Amended Notice of Appeal and would be an abuse of process.
34. The Date Range Objection also applies to this category.

Categories 6 to 8

35. The Post 21 March Objection applies to these categories.
36. As with categories 7 and 8 of the Notice to Produce, we also note that to the extent Mr Bartlett or Mr Levitan communicated with Mr McKenzie in this time period, such communications were likely made for the dominant purpose of providing legal advice in connection with anticipated legal proceedings, being the Appellant's Interlocutory Application. Further, to the extent that these communications relate to matters the subject of Ms Roberts' or Ms Scott's evidence in the proceedings, or the preparation of that evidence, they are also likely to be subject to claims for legal professional privilege.
37. Finally, the reference to communications "*in relation to these proceedings*" in each of these categories is overly broad and likely to capture communications that pertain to matters that are wholly irrelevant to the Appellant's Interlocutory Application. This is also likely to further increase the compliance burden on Mr Bartlett and Mr Levitan.

ABC Subpoena

38. The Media Watch Objection and the Post 21 March Objection applies to this subpoena. The whole subpoena serves no legitimate forensic purpose and is accordingly liable to be set aside.

Person 17 Subpoena

39. The Irrelevance Objection, Person 17 Objection and Date Range Objection apply to Category 1. No aspect of the Interlocutory Application or proposed Amended Notice of Appeal concerns communications between persons acting on behalf of Person 17, on the one hand, and persons acting on behalf of Mr McKenzie on the other. The words "*in relation to the Appellant*" are likewise untethered to the Interlocutory Application or proposed Amended Notice of Appeal for the reasons given above.
40. The Post 21 March Objection applies to categories 2 and 3, and the Media Watch Objection applies to category 3.
41. In short, there is no legitimate forensic purpose for the Person 17 Subpoena and it is liable to be set aside.

DS Subpoena and ER Subpoena

42. The schedules to the DS and ER Subpoenas are identical, save for the names of each recipient subpoenaed. To avoid repetition, we deal with the objections together.
43. With respect to categories 1, 2, and 3, the Irrelevance Objection and Date Range Objection apply. Further, with respect to category 3, the Witness Objection applies.
44. With respect to category 4, the Post 21 March Objection applies.
45. In short, there is no legitimate forensic purpose for the DS Subpoena and ER Subpoena. On any view, the DS Subpoena and ER Subpoena must be regarded as an abuse of process and are accordingly liable to be set aside.
46. Further, the categories of the DS and ER Subpoenas are substantially similar to, or have substantial overlap with, the following subpoenas issued by your client in *Roberts-Smith v Fairfax Media Publications Pty Limited (No 40) [2022] FCA 1614* (Proceedings No. NSD 1485, 1486 and 1487 of 2018), which have been duly complied with:
 - (a) Subpoena issued to Ms Roberts dated 20 May 2021 (**20 May Subpoena**);
 - (b) Subpoena issued to Ms Scott dated 26 May 2021 (**26 May Subpoena**); and
 - (c) Subpoena issued to Ms Scott dated 16 February 2022 (**16 February Subpoena**).
47. The substantial similarities and overlaps in the categories are set out in the table at Annexure A to this letter.
48. The documents now sought are substantially similar to those already produced under the 20 May, 26 May and 16 February Subpoenas, and your client has not provided any explanation as to the legitimate forensic purpose of issuing these near duplicative subpoenas. This amounts to an abuse of process, and creates an unnecessary burden on the producing parties and the Court's resources.

Next steps

49. On the basis of the issues raised in the preceding paragraphs, we invite you to reconsider and withdraw the Subpoenas and the Notice to Produce by **12pm, Tuesday, 22 April 2025**. Should your client choose not to, we are instructed that our clients will file an interlocutory application seeking to set aside the Subpoenas and the Notice to Produce (either in whole or in substantial part). We will seek to have our application returnable before Justice Perram on Wednesday, 23 April at 9.30am. In the event the Court does not accede to the Respondents' application to set aside, our clients will seek first access to any documents produced under the Subpoenas (save for the ABC Subpoena).
50. The Appellant has also indicated that the Full Court has granted leave for the issue of subpoenas to give evidence to Mr Levitan and Mr Bartlett, returnable at the hearing on 1 May 2025. We are yet to receive sealed copies of these subpoenas and are awaiting service. We reserve our clients' position in relation to these subpoenas.
51. Our clients will tender this letter on the question of costs of any necessary application to set aside the Notice to Produce and Subpoenas, and noting the abuses of court processes being undertaken on behalf of your client, including against non-parties as may be appropriate.
52. All of our clients' rights are reserved.

Yours faithfully
MinterEllison

Minter Ellison

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Annexure A

ER Subpoena	20 May 2021 Subpoena
1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which you provided any information to Nick McKenzie in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.	3. One copy of all communications passing between you and any of the Respondents. 4. One copy of all communications passing between you and any of the Respondents referring to: <ul style="list-style-type: none"> (a) the Applicant (b) Person 17; (c) John McLeod; (d) Danielle Scott.
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Danielle Scott in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.	1. One copy of all communications passing between you and Danielle Scott referring to: <ul style="list-style-type: none"> (a) Person 17; (b) John McLeod; (c) any of the Respondents; (d) the Applicant (from 1 January 2020 to date); (e) any statement by any person suggesting that you and the Applicant were separated during any of the period between October 2017 to April 2018. 2. One copy of all communications passing between you and Danielle Scott referring to and/or evidencing: <ul style="list-style-type: none"> (a) any separation of you from the Applicant during any of the period between October 2017 to April 2018; (b) any request by you for Ms Scott to keep documents for safekeeping;
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.	3. One copy of all communications passing between you and any of the Respondents. 4. One copy of all communications passing between you and any of the Respondents referring to: <ul style="list-style-type: none"> (a) the Applicant; (b) Person 17; (c) John McLeod; (d) Danielle Scott.
4. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to these proceedings from 21 March 2025 to date.	N/A

DS Subpoena	26 May 2021 Subpoena	16 February 2022 Subpoena
1. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which you provided any information to Nick McKenzie in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.	6. One copy of all communications passing between you and any of the Respondents. 7. One copy of all communications passing between you and any of the Respondents referring to: <ul style="list-style-type: none"> (a) The Applicant; 	-
2. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Emma Roberts in relation to the	1. One copy of all communication passing between you and Emma Roberts referring to:	1. One copy of all documents comprising and/or referring to and/or evidencing any notes drafted of the meeting in or about March 2021 held at the home of Emma

Appellant in the period between 1 August 2020 and 27 July 2022.	<p>(a) any separation between Ms Roberts and the Applicant during any of the period between October 2017 to April 2018;</p> <p>(b) any statement by any person suggesting that Ms Roberts and the Applicant were separated during any of the period between October 2017 to April 2018;</p> <p>(c) Person 17;</p> <p>(d) John McLeod;</p> <p>(e) any of the Respondents;</p> <p>(f) the Applicant (from 1 January 2020 to date).</p> <p>2. One copy of all communications passing between you and Emma Roberts referring to and/or evidencing any request by Ms Roberts for you to keep documents for safekeeping.</p>	Roberts at 10 Hunter Street, Indooroopilly, Queensland attended by yourself, Emma Roberts, Nick McKenzie, the legal representatives for the Respondents and Melissa Grove.
3. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.	<p>6. One copy of all communications passing between you and any of the Respondents.</p> <p>7. One copy of all communications passing between you and any of the Respondents referring to:</p> <p>(a) The Applicant;</p>	1. One copy of all documents comprising and/or referring to and/or evidencing any notes drafted of the meeting in or about March 2021 held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland attended by yourself, Emma Roberts, Nick McKenzie, the legal representatives for the Respondents and Melissa Grove.
4. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you and Nick McKenzie, or any person acting on his behalf, in relation to these proceedings from 21 March 2025 to date.	-	-

Our ref: BBL:MA:1326

21 April 2025

Ms Beverley Newbold
Minter Ellison
Level 40, Governor Macquarie Tower
SYDNEY NSW 2000

By email: beverley.newbold@minterellison.com

Dear Ms Newbold

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 689, 690 and 691 of 2023**

We refer to your letter of 21 April 2025.

Oppression complaint

The complaint in paragraph 2 of your letter about the short period of time available to respond to the Notice to Produce and subpoenas is noted, but this was unavoidable, due to the circumstances in which our client's application was made and the need for it to be determined urgently, given the impending retirement of Katzmann J. A short timetable to prepare the matter was necessary in those circumstances, and your clients proposed the dates which were consented to by us and made by the Court.

While we recognise that some of the available time is taken up by public holidays, that has equally applied to the Appellant's obligations pursuant to the orders. We respectfully note that you have not been reticent about sending correspondence after business hours (in several cases, long after the close of business) and on public holidays, and demanding an almost immediate response from us.

We face the same difficulties but have to comply with our obligations. As we have said in previous correspondence, we wish to work collaboratively with you, and we are prepared to consider any reasonable request for an extension of time in which to respond.

We reject any complaint that the Notice to Produce and subpoenas are unduly oppressive in the circumstances.

Scope of Amended Notice of Appeal

In paragraph 3 of your letter, you repeat your assertion that the Amended Notice of Appeal does not include an allegation of “misconduct” by any person other than Mr McKenzie.

We have explained why this assertion is misconceived in at least two previous letters and we do not propose to repeat what we have said previously, other than to reiterate that the Amended Notice of Appeal unambiguously alleges that the Respondents collectively made improper use of the Appellant’s confidential and privileged information in the proceedings.

Date range objection

The date range of 1 August 2020 to 27 July 2022 is appropriate for the following reason.

On our client’s evidence, Mr McKenzie first made contact with Ms Roberts on 5 August 2020 (by phone) and 8 August 2020 (by text message): Ex MHA-1 pages 353, 546 (T 1976.38), 622 (T 2052.45). On 27 July 2022, Besanko J reserved judgment in the proceedings.

As we have already pointed out to you on several occasions, the Amended Notice of Appeal expressly alleges that the Respondents made improper use of the Appellant’s confidential and privileged information in the proceedings. There is a real possibility that such use could have occurred at any time from Mr McKenzie’s first contact with Ms Roberts until the conclusion of the proceedings.

The date of the Audio Recording itself is beside the point. The recording is evidence of an admission by Mr McKenzie as to a broader course of conduct.

Irrelevance objection

In paragraph 8 of your letter, you assert that Category 1 of the Notice to Produce is “excessively broad” not “appropriately tethered to the issues in dispute”, and “not limited to matters that have apparent relevance”. You offer no particularity about why you say this category lacks relevance.

You then assert that the same objection affects other categories of the Notice to Produce and the subpoenas.

With respect, a relevance objection cannot be made in this generic way, without engaging with the specific terms of each category to which the objection is taken. For that reason, we do not accept that your letter articulates any proper or cogent objection to the relevance of each category in dispute.

We set out below a brief statement as to why each disputed category is relevant to an issue in dispute, but given your clients’ failure to articulate the objection properly, we reserve the right to provide further explanation of the relevance of each category at a later time.

Notice to Produce

Category 1

In his affidavit, Mr McKenzie makes a number of assertions about the information he received from Ms Roberts and Ms Scott, and what it did or did not include. Our client is entitled to test those assertions.

You say, in relation to Category 2, that the issue raised by the Amended Notice of Appeal is only whether the Respondents had access to privileged information through Ms Roberts and Ms Scott, not non-privileged information. However, the parties are not necessarily *ad idem* about what constitutes the Appellant's privileged information. It is not your clients' prerogative to decide for themselves whether a particular piece of information is or is not privileged. That is the role of the Court to determine.

Category 2

In his affidavit (which was prepared by your firm which acts for all the Respondents) Mr McKenzie makes assertions about the legal advice he received in relation to information obtained from Ms Roberts and Ms Scott. For example, in paragraph 43 he says:

It was my practice thereafter to send to MinterEllison all of the information I learned from Danielle that I thought was relevant, along with any documents or images Danielle provided to me that I believed were relevant. ... No one ever suggested to me that any of the material I obtained from Danielle and provided to MinterEllison was or might be privileged to Roberts-Smith or that I had acted improperly in obtaining that material because it was or might be privileged to Roberts-Smith.

Mr McKenzie has thereby clearly put into issue the advice he received from your firm about the information he obtained, as the basis for his state of mind that none of that information was privileged information of the Appellant. Our client is entitled to test what advice was in fact given, and whether that advice was cogent having regard to the information in question.

For the avoidance of doubt, it is our client's position that your clients have waived privileged by serving and relying upon Mr McKenzie's affidavit. If a claim to legal professional privilege is made, it will be challenged. Our client requires that each document the subject of a claim to legal professional privilege be specifically itemised in a schedule as is required.

Category 3

We repeat our observations in relation to Categories 1 and 2.

Category 4

We are prepared to limit this category to documents dated between 1 August 2020 and 27 July 2022. We repeat the observations made above about the relevance of this date range.

Category 5

Whilst we do not agree with your assertions as to relevance, we are instructed to not press this category in order to avoid an unnecessary debate before the Court.

Category 6

In the *Media Watch* segment broadcast on 31 March 2025, Linton Besser's editorial comments about the Audio Recording bear more than a passing similarity to Mr McKenzie's version of events, as set out in his affidavit. It is apparent to us that there is likely to have been some communication between Mr McKenzie, or someone on his behalf, and Mr Besser or the *Media Watch* team about Mr McKenzie's version of events, at a time prior to him making his affidavit.

We also note that Mr Besser stated at the end of the segment that: “We contacted Person 17 to ask for the full tape, whoever recorded it”.

As you know, Person 17 is a person whose identity is the subject of a suppression/non-publication order. It is not apparent to us how Mr Besser or the *Media Watch* team could have known where or how to contact Person 17, unless somebody provided them her contact details in breach of the suppression/non-publication order. Our client certainly did not put *Media Watch* in contact with Person 17. In our view, the most likely explanation is that Mr McKenzie did so.

Any dealings by Mr McKenzie with Mr Besser and *Media Watch* are matters which may well have a significant effect on his credit.

Categories 7-10

Each of these categories captures communications between Mr McKenzie and persons implicated by our client’s application in the improper use of his confidential and privileged information, in the period after our client’s former solicitors first notified your firm that it was in possession of the Audio Recording.

Mr McKenzie’s communications with those persons plainly may be of significant relevance to his credit.

Minter Ellison subpoenas

Category 1

We repeat our observations in relation to Category 1 of the Notice to Produce.

Category 2

We repeat our observations in relation to Category 2 of the Notice to Produce.

Category 3

We repeat our observations in relation to Categories 1 and 2 of the Notice to Produce.

We do not understand the objection you describe as the “Person 17 Objection” in circumstances where the present application by our client was precipitated by a recording of a conversation with Person 17 herself.

Category 4

We repeat our observations in relation to Categories 1 and 2 of the Notice to Produce.

Mr McKenzie specifically refers to the meeting on 14 March 2021 in paragraph 60 of his affidavit and relies on his purported recollection that Ms Roberts did not share any communications or documents exchanged between the Appellant and his lawyers, nor say anything that suggested she was sharing information she had obtained from looking at communications or documents exchanged between the Appellant and his lawyers. Mr McKenzie purports to have these recollections notwithstanding that he allegedly did not keep a note of the meeting.

Mr McKenzie specifically deposes that Mr Bartlett and Mr Levitan attended the meeting. As solicitors, it is plainly on the cards that one or both of them kept a note. Our client is entitled to test Mr McKenzie's recollection by reference to any notes of that meeting made by other participants, including Messrs Bartlett and Levitan.

As we have stated above, it is our client's position that your clients have waived privileged, and any claim to privilege will be challenged.

Category 5

Whilst we do not agree with your assertions as to relevance, we are instructed to not press this category in order to avoid an unnecessary debate before the Court.

Categories 6-8

We repeat our observations in relation to Categories 7-10 of the Notice to Produce.

Subpoenas addressed to persons other than your clients

In addition to Mr McKenzie, we understand that you act for Messrs Bartlett and Levitan. That is a matter for your firm to determine based on whether it is aware of any conflicts of interest.

We do not understand you to act for Ms Roberts or Ms Scott, and we are aware that the Australian Broadcasting Corporation and Person 17 have their own representation.

In previous correspondence, we asked you to identify the basis on which you take issue with subpoenas which are not addressed to persons for whom you act. You did not answer that question. We again ask you to identify the basis on which you purport to object to subpoenas addressed to parties who are not your clients.

Pending such explanation, we do not propose to respond to your asserted objections in relation to the subpoenas to the ABC, Person 17, Ms Roberts or Ms Scott. What we have said above in relation to the Notice to Produce and the Minter Ellison subpoenas should in any event suffice to inform you of the basis on which these subpoenas are relevant.

For completeness, we also note that at paragraph 44 of Mr McKenzie's affidavit, he acknowledges that he recorded two lengthy conversations with Ms Scott in August 2020, conversations that plainly fell within the scope of the Respondents' discovery obligations (see agreed categories 1(a) and 1(b)). Mr McKenzie says those recordings were provided at the time to Mr Levitan. Yet they were not discovered. That is a serious omission. While Mr McKenzie asserts that he had forgotten about the recordings until "this matter arose," no explanation is offered as to why they were not discovered at the time, or why Mr Levitan, who received the recordings, did not ensure their production. That omission remains wholly unexplained. It reinforces the appropriateness of our client's course in serving the Notice to Produce and seeking leave for the issue of subpoenas, including those directed to communications with Ms Scott. At the very least, it tends to confirm that the Respondents' discovery was plainly deficient and non-compliant. Our client will be raising this issue with the Court, particularly given its likely bearing on the determination of the amended ground of appeal.

Yours sincerely
BlackBay Lawyers



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