

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/10/2019 12:51:43 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	List of Documents - Form 38 - Rule 20.17(1)
File Number:	NSD1485/2018
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



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 25/10/2019 12:51:50 PM AEDT

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 38
Rule 20.17(1)

List of documents

No. NSD1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Limited and others


First Respondent

Pursuant to an order for discovery made on 2 August 2019, the Respondents provide this list of documents and affidavit:

Affidavit

On 25 October 2019, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the Respondents and I am authorised to make this affidavit on behalf of the Respondents.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the Respondents, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in the control of the Respondents and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in the control of the Respondents but I claim privilege from production of each of these documents on the grounds set out in part 2.


Signature of witness


Signature of deponent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, Nick McKenzie, Chris Masters and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

6. The documents set out in part 3 have been but are no longer the control of the Respondents.

Affirmed by the deponent
at Melbourne in the State of Victoria
on 25 October 2019
Before me:

)
)
)
)
)



Signature of deponent



Signature of witness

ANNABELLE PARVATI RITCHIE

of 525 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

Inspection of documents

The documents set out in part 1 may be inspected at Level 23, 525 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 25 October 2019




Signed by Annabelle Ritchie
MinterEllison
Lawyer for the Respondent

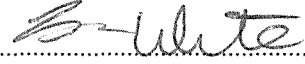
Part 1 - Documents in the control of the Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Transcript of interview with Ali Jan's relatives	1	unknown
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
7.	Article entitled 'Diggers facing police inquiry over 'war crimes' by Paul Maley in the Australian, page uncertain	1	30 November 2018
8.	Article entitled 'SAS soldiers committed war crimes: secret report' by Nick McKenzie and Chris Masters in the Sydney Morning Herald pages 1, 6	1	8 June 2018
9.	Article entitled 'Top SAS officer condemns culture' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 4 (with snippet introducing story entitled 'SAS scandal: Top officer talks tough on army elite' on unknown page)	1	4 August 2018
10.	Article entitled 'Culture warriors have it wrong' by Catherine McGregor in the Sydney Morning Herald, page 20	1	15 June 2018
11.	Article entitled 'Show the will to prosecute soldiers' by Ben Saul in the Sydney Morning Herald, page unknown	1	14 June 2018
12.	Article entitled 'What does the SAS stand for?' by Chris Masters and Nick McKenzie in the Sydney Morning Herald, page 26-27	1	5 August 2018
13.	Articles entitled 'Historians call our War Memorial director' by Michael Bachelard and 'VC winner filed defamation claim' by uncertain author in the Sydney Morning Herald on 18 August 2018, page uncertain	1	18 August 2018
14.	Article entitled 'Evidence will clear me: Roberts-Smith' by Paul Maley in the Australian, page 3	1	24 November 2018
15.	Article entitled 'VC War hero 'coached his victim to lie' by Deborah Cornwall in the Australian, page 3	1	23 November 2018




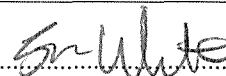

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16.	Article entitled 'Police inquiry into top soldier' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 1 and 6	1	29 November 2018
17.	Article entitled 'Our soldiers hung out to dry' by John Anon in the West Australian, page 17	1	26 June 2018
18.	Article entitled 'A note from the Editor' by Lisa Davies in the Sydney Morning Herald, online	1	Unknown
19.	Article entitled 'March and a quiet beer in store for VC hero' by Paul Maley in the Australian, page 2	1	24 April 2019
20.	Article entitled 'Special forces brace for a culture shock' by Paul Maley in the Australian, online	1	25 May 2019
21.	Article entitled 'There's much more at stake here than leaked information' by Brendan Nicholson in the Strategist, online	1	8 June 2019
22.	Article entitled 'Walking the line' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 27, 32-33	1	21 September 2019
23.	Article entitled 'Battle on the Home Front' by Paul Maley in the Australian, page 11	1	27 September 2019
24.	Article entitled 'Shining the spotlight: Why we reported that Ben Roberts-Smith was under investigation' by Carrie McDougall and Michael Bachelard in the Sydney Morning Herald, online	1	27 September 2019
25.	Article entitled 'Ben Roberts-Smith blasts Nine's abuse of power' by Paul Maley in the Australian	1	6 October 2019
26.	Article entitled 'The hunt for Ben Roberts-Smith steps up' by uncertain author in the Australian Morning Mail, online	1	13 May 2019
27.	Article entitled 'VC winner Ben Roberts-Smith speaks out' by uncertain author in the Australian Morning Mail, online	1	5 May 2019
28.	Comments on online forum the Australian Military Community entitled 'A Brief from CPL Ben Roberts Smith', various authors	1	2 October 2018
29.	'Looking at SASR Culture' Benchmark SASR Review Report, author unknown	1	2010
30.	Article entitled 'Special Forces: The Downside – Impossible missions out of country and out of culture' by Andrew Farran in the Australian War Powers Reform Bulletin issue 60, accessed 18 July 2018 online	1	11 July 2018
31.	Article by Chris Masters sent via email to Tanya Masters on 17 August 2018 entitled 'How, and why, do we go to war?' by Paul Barratt in Inside Story	1	17 August 2018


 Signature of witness



 Signature of deponent

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33.	The First Casualty - unpublished response to Brendan Nelson by Chris Masters and Nick McKenzie	1	Unknown
34.	Photograph of executed man with prosthetic leg on Easter Sunday 2009	1	12 April 2009
35.	Photograph of SASR in Afghanistan with framed prosthetic leg	1	Unknown
36.	Photograph of framed prosthetic leg	1	Unknown
37.	Correspondence between Nick McKenzie, Mark O'Brien and Channel 7 representatives (prepublication)	1	June to August 2018
38.	Correspondence between Nick McKenzie and Defence Department re media enquiry	1	May 2018
39.	Email from Nick McKenzie to Brendan Nelson - Media inquiry	1	24 August 2018
40.	Photograph, Ben Roberts-Smith	1	January 2018
41.	Article by Paul Maley in the Australian, entitled 'Police clear Ben Robert-Smith after allegations of assault'	1	25 September 2018
42.	Photograph, Hassan	1	Unknown
43.	SOCOMD Culture and Interaction Study by Dr Sarah Crompvoets	1	February 2016
44.	Statement released by Ben Roberts-Smith after the Respondents' defence was filed	1	18 October 2018
45.	Article, Easter Sunday in West Dorafshan 2009, by Lieutenant Ash Judd, Officer Commanding 2 Platoon team "Rogue"	1	October 2010
46.	Ben Roberts-Smith Victoria Cross Citation	1	23 January 2011
47.	Ben Roberts-Smith Commendation for Distinguished Service Citation	1	26 January 2014
48.	MP3 file of Ben Robert-Smith interview with Peter Pederson, War Memorial (USB)	1	2011
49.	Article entitled 'You think I'm brave? Meet my mates: Ben Roberts-Smith' by Brendan Nicholson	1	21 April 2011
50.	Ben Roberts-Smith Medal for Gallantry Citation	1	Unknown


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No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
51.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Canberra Times, pages 17-18	1	10 June 2018
52.	IGADF Inquiry Report – Reasons for Ruling on Complaint Concerning Conduct of a Lawyer said to be working for the Inspector-General of the ADF Afghanistan Inquiry	1	November 2018
53.	Unpublished letters regarding Ben Roberts-Smith sent to the Sydney Morning Herald	1	Various dates
54.	Unpublished letters regarding Ben Roberts-Smith sent to the Age	1	Various dates
55.	Published letters regarding Ben Roberts Smith published in the Age	1	Various dates
56.	Published responses regarding Ben Roberts-Smith to Canberra Times articles	1	Various dates
57.	Text messages exchanged between Chris Masters and Nick McKenzie	1	Various dates
58.	Photo of Ali Jan	1	Unknown
59.	Photo of Baqir	1	Unknown
60.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC, MG'	1	5 July 2017
61.	Letter from Mark O'Brien Legal to Nick McKenzie, copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	4 July 2018
62.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC MG'	1	18 October 2017
63.	Letter from Mark O'Brien Legal to Nick McKenzie copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	14 June 2018
64.	Letter from Mark O'Brien Legal to David Wroe copy James Chessell with subject 'Ben Roberts-Smith VC MG'	1	3 August 2018
65.	Article entitled 'Court grants suppression of Ben Roberts-Smith accuser's identity' by Miklos Bolza in Lawyerly, online	1	29 January 2019
66.	Article entitled 'A law unto themselves' by Chris Masters in the Sunday Age, page 20-21	1	10 June 2018
67.	Article entitled 'Line of Fire' by Chris Masters in the Good Weekend, page 22-27	1	On or around 21 October 2017
68.	Article entitled 'VC winner files legal claim against Fairfax' by Simone Fox-Koob in the Sydney Morning Herald, page unknown	1	On or around 17 August 2018



 Signature of witness


 Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
69.	Article entitled 'Roberts-Smith inquiry findings should be made public' by Dana McCauley in the Sydney Morning Herald	1	On or around 12 August 2018
70.	Map entitled 'Darwan locator', date unknown	1	Unknown
71.	Photo of Hekmatullah, date unknown	1	Unknown
72.	Map entitled 'Darwan map', date unknown	1	Unknown
73.	Short video of Ali Jan's family	1	Unknown
74.	Article entitled "Abdul's brother went out to buy flour. He never came home" by Nick McKenzie and Chris Masters on the Sydney Morning Herald website	1	8 June 2018
75.	Article entitled "Special forces rookie 'blooded' by executing an unarmed man" by Chris Masters and Nick McKenzie on the Sydney Morning Herald website	1	10 June 2018
76.	Article entitled "SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 1	1	9 June 2018
77.	Article entitled "'Troops kept kill board': SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 10-13	1	9 June 2018
78.	Article entitled 'Special forces rookie 'blooded' by executing an unarmed man' by Chris Masters and Nick McKenzie in the Sun Herald on page 6	1	10 June 2018
79.	Article entitled 'War hero fires back over abuse claims' by Nick McKenzie, David Wroe and Chris Masters in the Sydney Morning Herald page 1	1	11 August 2018
80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018

Part 2 - Documents in the control of the Respondents for which privilege from production is claimed

No.	Description of document	Date of document	State grounds of privilege
81.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between any of the Respondents and a lawyer, or b) a confidential communication made between 2 or more lawyers acting for any of the Respondents, or c) the contents of a confidential document (whether delivered or not) prepared any of the Respondents, a lawyer or another person, <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to any of the Respondents, and in respect of which privilege has not been waived.</p>
82.	Various documents to which client legal privilege applies relating to litigation	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between any of the Respondents and another person, or between a lawyer acting for the Respondents and another person, or b) the contents of a confidential document (whether delivered or not), <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which any of the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p>
83.	Various documents recording conversations with confidential sources and/or various documents provided by confidential sources	Various	The production of the documents would disclose the identity of a confidential source, the disclosure of which would cause the author of the matter complained of to disclose the confidential source's identity and/or enable their identity to be ascertained and would breach ethical duties under the Journalist Code of Ethics.


 Signature of witness


 Signature of deponent

Part 3 - Documents that have been but are no longer in the control of the Respondents

No.	Description of document	Date of document	What became of document
84.	Various encrypted messages periodically deleted	N/A	Deleted



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Signature of witness



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Signature of deponent

Form 38
Rule 20.17(1)

List of documents

No. NSD1485 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Limited and others

Respondents

Pursuant to an order for discovery made on 2 August p2019, the Second Respondent provides this list of documents and affidavit:

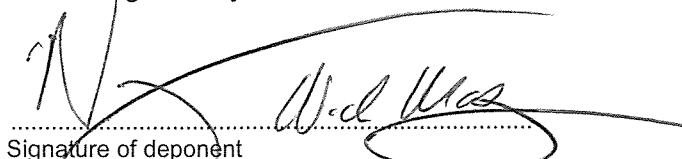
Affidavit

On 13 November 2019, I NICK MCKENZIE, affirm and say:

1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I claim privilege from production of each of these documents on the grounds set out in part 2.
6. The documents set out in part 3 have been but are no longer in my control.



Signature of witness



Signature of deponent

Filed on behalf of (name & role of party)	Nick McKenzie, Second Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYI PLB 1183220

Form approved 01/08/2011

Affirmed by the deponent
 at Melbourne in the State of Victoria
 on 13 November 2019
 Before me:

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)
)

Signature of deponent



Signature of witness

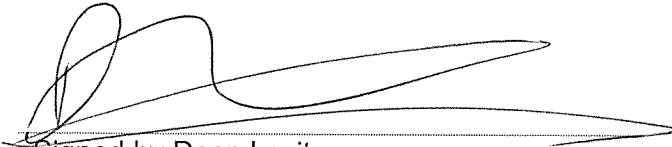
ANNABELLE PARVATI RITCHIE

of 525 Collins Street, Melbourne
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)

Inspection of documents

The documents set out in part 1 may be inspected at Level 23, 525 Collins St, Melbourne 3000
 on business days between the hours of 9:00am and 5:00pm.

Date: 13 November 2019



Signed by Dean Levitan
 MinterEllison
 Lawyer for the Second Respondent

Part 1 - Documents in the control of the Second Respondent


No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Translation of transcript of interview with Ali Jan's relatives	1	28 September 2018
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
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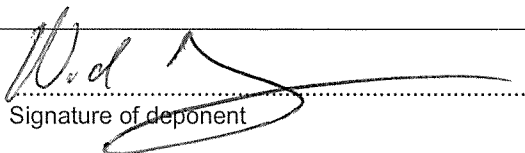
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 Signature of witness

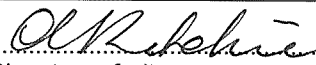
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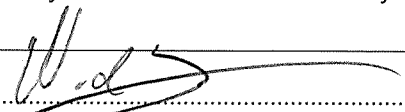
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 Signature of witness


 Signature of deponent

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80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018
81.	Photograph, executed Afghan man on Easter Sunday 2009	1	12 April 2009
82.	Some of the recordings of the interview with Ali Jan's relatives (translations at document 2)	Numerous	On or around September 2018

Part 2 - Documents in the control of the Second Respondent for which privilege from production is claimed

No.	Description of document	Date of document	State grounds of privilege
83.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and a lawyer, or b) a confidential communication made between 2 or more lawyers acting for the First, Second, Third and/or Fourth Respondent, or c) the contents of a confidential document (whether delivered or not) prepared by the First, Second, Third and/or Fourth Respondent, a lawyer or another person, <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to the Respondents, and in respect of which privilege has not been waived.</p>
84.	Various documents to which client legal privilege applies relating to litigation	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and another person, or between a lawyer acting for the First, Second, Third and/or Fourth Respondent and another person, or b) the contents of a confidential document (whether delivered or not), <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p>
85.	Various documents recording conversations with confidential sources and/or various documents provided by confidential sources	Various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.



Signature of witness

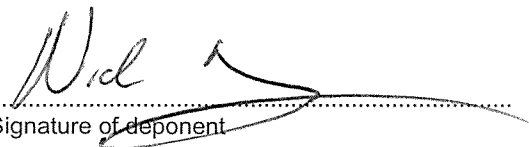


Signature of deponent

Part 3 - Documents that have been but are no longer in the control of the Second Respondent

No.	Description of document	Date of document	What became of document
86.	Various encrypted messages periodically deleted	N/A	Deleted
87.	Recordings of interview with Ali Jan's relatives	On or around September 2018	Some of the recordings were deleted in the ordinary course of business after the translation of the transcript (document 2) was prepared


 Signature of witness


 Signature of deponent

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 11/03/2020 4:09:23 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
File Number:	NSD1485/2018
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:	25/03/2020, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 11/03/2020 4:23:41 PM AEDT

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

LAST DATE OF SERVICE IS 17 MARCH 2020



Subpoena to produce documents

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others named in the schedule
Respondents

To:

P17

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.

Please read Notes 1 to 13 at the end of this subpoena.

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

Date:

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

Filed on behalf of (name & role of party)	<u>Ben Roberts-Smith VC MG, Applicant</u>
Prepared by (name of person/lawyer)	<u>Monica Allen</u>
Law firm (if applicable)	<u>Mark O'Brien Legal</u>
Tel	<u>+61 2 9216 9898</u> Fax <u>-</u>
Email	<u>paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au</u>
Address for service (include state and postcode)	<u>Level 19, 68 Pitt Street, Sydney NSW 2000</u>



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

Place: c/- Mark O'Brien Legal, Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

Email: monica.allen@markobrienlegal.com.au

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 the 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:

Time: 9.30am

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 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 communications and documents passing between yourself and any of:
 - (a) the First Respondent (by its employees or agents, including but not limited to Nick McKenzie, Chris Masters and David Wroe);
 - (b) the Australian Defence Force (by its employees or agents, including but not limited to Vice-Admiral Ray Griggs);
 - (c) the Australian Federal Police (by its employees or agents, including but not limited to Detective Superintendent Matthew Warren);
 - (d) **P17's husband**

referring to and/or evidencing any allegation that Ben Roberts-Smith VC MG (the **Applicant**) assaulted you on 28 March 2018, including but not limited to notes, recordings, emails, text messages, Telegram messages, WhatsApp messages, Facebook or other social media messages, statements and other documents.
2. One copy of your telephone records evidencing any communications between yourself and:
 - (a) the First Respondent (by its employees or agents, including but not limited to Nick McKenzie, Chris Masters and David Wroe); and
 - (b) the Australian Defence Force (by its employees or agents, including but not limited to Vice-Admiral Ray Griggs),

for the period 29 March 2018 to date.
3. All documents evidencing and/or referring to any complaint or allegation and/or record or notation by you that the Applicant assaulted you, including but not limited to emails, letters, statements, draft statements, text messages, Telegram messages, WhatsApp messages, Facebook or other social media messages, statements and other documents.
4. One copy of all documents referring to and/or evidencing the complaint(s) made by you to the Australian Federal Police and/or the ACT Police in the period from 30 May 2018 to 24 August 2018 concerning the allegation that the Applicant assaulted you on 28 March 2018, including but not limited to statements, notebook entries, file notes, photographs,



voice recordings, letters, emails, text messages, Telegram messages, WhatsApp messages, Facebook or other social media messages, statements and other documents.

5. One copy of all documents referring to and/or evidencing the medical appointment on 29 March 2018, including but not limited to medical certificates, reports, opinions, referrals, tax invoices and any other documents.



6. 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 the 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 the 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, the 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 the 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.
- 9A. The copy of a document may be:
- (a) a photocopy; or
 - (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

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.

**Schedule**

No. NSD. 1485 of 2018

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: 4 March 2020

RECEIPT / COVER SHEET FOR SUBPOENAED DOCUMENTS



File No: NSD1485/2018

Matter :

BEN ROBERTS-SMITH

V

FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) & ORS

Date the Subpoena issued: 11/3/2020

Date material received in the Registry: 2 May 2020

Documents produced by: Person 17

Description of documents: 1 envelope of documents

Email: mcowden@level22.com.au

At conclusion of the matter:

Securely destroy the documents

Pick up from the registry

Officer's Name / Initial: AA

Court "S" number (Packet No): S13

Certificate Identifying Annexure

"MOB-4"

No. NSD. 1485, 1486, 1487 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd and others

Respondents

This is the annexure marked "MOB-4" now produced and shown to MARK GEOFFREY O'BRIEN at the time of affirming his affidavit on 24 March 2021.

Before me:



Signature of person taking affidavit

Paul Svilans

Level 19, 68 Pitt Street

Sydney New South Wales 2000

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Paul Svilans
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9815
Fax	-
Email	mark.obrien@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]

From: PETER FITZPATRICK
Sent: Saturday, March 20, 2021 2:39 AM

Subject: FW: Risk of self-Incrimination in Defamation Trial

Dear All,

Both the ASASA and SASRF remain committed to assisting those individuals affected by the IGADF Inquiry. A number of serving members have already experienced the legal implications arising from the Defence administrative processes, in particular the potential for self-incrimination in their response to "show cause" action. This risk was fortunately mitigated by individuals being afforded access to civilian expertise in criminal law when drafting their responses.

It has come to our attention that a number of serving and former serving members of SASR have recently received subpoenas to appear as witnesses for the BRS vs Fairfax Media Defamation case or to produce written reports or notes or photographs or video materials. While this case sits outside the recommendations of the Brereton Report, it will consider a number of matters that are directly related. This creates a situation where witnesses may unwittingly provide self-incriminating evidence during the hearing currently scheduled for June; evidence that may be used in any criminal charges arising from further police investigations.

To assist members in this situation, the ASASA and SASRF are seeking expert legal advice relating to witnesses' general rights under the relevant legislation, which is the Evidence Act 1995 (NSW). While individuals may require additional specific advice, this general advice will provide a consistent interpretation of the Act as it relates to self-incriminating evidence.

Until this general expert legal advice is forthcoming, we strongly recommend that individuals should not take any action in preparing or providing evidence of any kind. The advice will be forwarded to you as soon as it is available.

Would you please advise State and territory Branch members of the contents of this email, particularly those who might be impacted by the IGADF inquiry

If they have questions regarding this email, please do not hesitate to contact me or their State or Territory Branch President.

Regards

Peter
Peter J. Fitzpatrick AO,AM (Mil), JP
Chairman
Australian SAS Association
Mob: 0419 931 627
Chairman.asasa@gmail.com



—

////////////////////////////////////

////////////////////////////////////

From: [Jeremy Forbes](#)
To: [Mark O'Brien](#); [Paul Svilans](#); [Monica Allen](#)
Cc: [Peter Bartlett](#); [Dean Levitan](#); [Dougal Hurley](#); [Dylan Dexter](#)
Subject: Roberts-Smith v Fairfax - Notices to Produce [ME-ME.FID4106433]
Date: Wednesday 31 March 2021 07:24:07 PM
Attachments: [31.2.21 - Notice to Produce to the Applicant.PDF](#)
[31.3.21 - Notice to produce document referred to in affidavit to the Applicant.PDF](#)

Dear Colleagues,

Please find **attached** by way of service two notices to produce addressed to the Applicant.

Kind regards

Jeremy

—
Jeremy Forbes

Lawyer

T +61 2 9921 4620

jeremy.forbes@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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



Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents before the Court on 7 April 2021:

1. All correspondence between the Applicant (including the Applicant's legal representatives) and the SAS Association (including the Chairman of the SAS Association) relating or referring to this proceeding.
2. A copy of the correspondence sent to the Applicant or his legal representatives which forwards or attaches the email which is annexure MOB-4 to the affidavit of Mark Geoffrey O'Brien affirmed on 24 March 2021.
3. All documents evidencing or recording communications between the Applicant (including the Applicant's legal representatives) and any special operations command member (including Persons 5, 29, 32 and 51 or a legal representative of a special operations command member) referring to or concerning the 14 May 2010 allegation.
4. All documents evidencing or recording communications between the Applicant (including the Applicant's legal representatives) and any special operations command member (including Persons 11 and 27 or a legal representative of a special operations command member) referring to or concerning the 31 July 2012 allegation.
5. All documents evidencing or recording communications between the Applicant (including the Applicant's legal representatives) and the following special operations command members (including their legal representatives) referring to or concerning the matters referred to at Particulars of Truth [40] to [55]:
 - a. Person 5;
 - b. Person 27;

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents		
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents		
Law firm (if applicable)	MinterEllison		
Tel	03 8608 2152	Fax	-
Email	dean.levitan@minterellison.com		
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000		

- c. Person 29;
 - d. Person 35;
 - e. Person 38; and
 - f. Person 68.
6. All documents evidencing or recording communications between the Applicant (including the Applicant's legal representatives) and Person 56 (including his legal representatives) referring to or concerning the matters referred to at Particulars of Truth [93] to [129].
 7. All correspondence between the Applicant (including the Applicant's legal representatives) and the IGADF (including the IGADF's legal representatives) insofar as it relates to the production of the Applicant's PAP Notice to the Respondents in these proceedings (excluding correspondence to which the Respondents were copied).

Date: 31 March 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Notice to produce a document in a pleading or affidavit

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant

The Respondents requires you to produce for inspection the following documents mentioned in the affidavit of Mark Geoffrey O'Brien affirmed on 24 March 2021 (**O'Brien Affidavit**):

1. The document annexed to the O'Brien Affidavit and marked 'MOB-4', being an email from the Chairman of the SAS Association, without any redactions.

Date: 31 March 2021



Signed by Peter Bartlett
Lawyer for the Respondent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

From: [Jeremy Forbes](#)
To: [Mark O'Brien](#)
Cc: [Monica Allen](#); [Paul Svilans](#); [Peter Bartlett](#); [Dean Levitan](#); [Dougal Hurley](#); [Dylan Dexter](#)
Subject: Roberts-Smith v Fairfax - USBs and Outlines [ME-ME.FID4106433]
Date: Thursday 15 April 2021 05:14:51 PM
Attachments: [15.4.21 - L - MOBL re USB and Outlines.PDF](#)
[15.4.21 - NTP \(USBs\).PDF](#)

Dear Colleagues,

Please find our letter of today's date **attached**. Please also find **attached**, by way of service, a notice to produce addressed to the Applicant.

Kind regards

Jeremy

Jeremy Forbes

Lawyer

T +61 2 9921 4620

jeremy.forbes@minterellison.com

MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

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



MinterEllison

15 April 2021

BY EMAIL Mark.O'Brien@markobrienlegal.com.au

Mark O'Brien
Principal
Mark O'Brien Legal
Level 19
68 Pitt Street
SYDNEY NSW 2000

Dear Colleagues

**Ben Roberts-Smith v Fairfax Media Publications & Ors
Federal Court Proceeding numbers NSD 1485, 1486 and 1487 of 2018**

We refer to our letters of 12 and 13 April 2021 concerning your client's discovery.

We note that in a statement issued on behalf of your client yesterday, and through his Counsel in Court yesterday, your client has denied the allegation that he buried USBs in the backyard of his former home. However, we have not received a response to our correspondence. We again invite your client to consider his discovery obligations and provide a response to our letter. If your client's position is that he does not have, and has never had, possession of the USBs referred to in Ms Scott's outline, we invite your client to verify this position in an affidavit of discovery.

Based upon what we understand to be the contents of the USBs (see attachment L to Ms Scott's outlines), it is our view that at least some documents on the USBs would have been discoverable by your client. However, to avoid a dispute about whether or not the documents are discoverable, we **attach** a Notice to Produce seeking production of the six USB drives and their contents.

Neither the public statement nor the denial in Court address other matters raised by Ms Scott's outline. In particular, we note that on 15 December 2020 we served upon your client a Notice to Produce requiring production of:

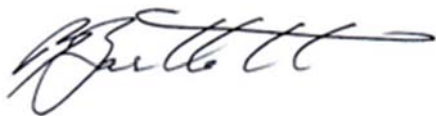
1. All photographs taken by the Applicant in the hotel room at the Hotel Realm Canberra on or around 28 March 2018, including those referred to in paragraph 201 of the Applicant's Outline of Evidence in Reply filed on 12 July 2019, with such documents to be produced in native electronic format.
2. Any video or videos taken of Person 17 on or around 6 March 2018, with such videos to be produced in native electronic format.

In response, your client produced two screenshots of the photos showing Person 17, but did not produce any further documents. It is now apparent from attachments G, H and I of Ms Scott's outline that, as at 17 August 2018, your client was in possession of .jpg files of additional images described in paragraph 201 of your client's outline of evidence in reply, although these have not been produced by your client. Further, at paragraph 15 of Ms Scott's outline, reference is made to Ms Scott providing your client with a copy of a video of Person 17 in October 2018. This document has also not been produced. We invite your client to reconsider his response to the Notice to Produce dated 15 December 2020. If your client is no longer in possession of these documents we invite your client to provide an explanation in this regard.



Please provide a response to this letter by no later than **5pm on Friday 16 April 2021**.

Yours faithfully
MinterEllison

A handwritten signature in dark ink, appearing to read 'Peter Bartlett', with a long horizontal flourish extending to the right.

Contact: Dean Levitan T: +61 3 8608 2152
Dean.Levitan@minterellison.com
Partner: Peter Bartlett T: +61 3 8608 2677
OUR REF: PLB 1183220

Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents before the Court at 9:30am on 21 April 2021:

1. All USB drives which were taken by the Applicant from his former home in Ilkley Road, Ilkley, Queensland, on or around 5 June 2020.
2. Any copies of the contents of the USB drives which were taken by the Applicant from his former home in Ilkley Road, Ilkley, Queensland, on or around 5 June 2020.

Date: 15 April 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

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.

Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents before the Court at 9:30am on 28 April 2021:

1. All USB drives which were taken by the Applicant from his former home in Ilkley Road, Ilkley, Queensland, on or around 5 June 2020.
2. Any copies of the contents of the USB drives which were taken by the Applicant from his former home in Ilkley Road, Ilkley, Queensland, on or around 5 June 2020.

Date: 16 April 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

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.

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/04/2021 9:41:45 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Notice to Produce - Form 61 - Rule 30.28(1)
File Number:	NSD1485/2018
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:	28/04/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 20/04/2021 2:06:06 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents before the Court at 9:30am on 28 April 2021:

1. One copy of each of the draft chapters of the Applicant's autobiographical book.
2. One copy of any email correspondence between the Applicant and any of the following persons in relation to the mission conducted in or around Kakarak, Afghanistan on Easter Sunday 2009 (**Whiskey 108 Mission**):
 - a. Person 5;
 - b. Person 29;
 - c. Person 32; and
 - d. Person 35,

including but not limited to email correspondence using ben@rsgrouppaustralia.com, b.robertssmith@me.com, b.robertssmith@icloud.com, and/or brs@seven.com.au.

3. One copy of any attachments to the email correspondence referred to in category 2 of this Notice to Produce.
4. The statement provided by Person 36 in 2013 and/or July 2017 to the Department of Defence in support of the Applicant.
5. The request from the Applicant to Person 36 in approximately July 2017 to provide a statement/character reference in support of the Applicant, and any communication between the Applicant and Person 36 about that statement.

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

6. All correspondence between the Applicant (including the Applicant's legal representatives) and the SAS Association (including the Chairman of the SAS Association) relating or referring to this proceeding.

Date: 19 April 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1485/2018

BEN ROBERTS-SMITH

Applicant

FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) and others named in
the schedule

Respondent

ORDER

JUDGE: JUSTICE BESANKO

DATE OF ORDER: 23 April 2021

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

1. Pursuant to s 17(4) of the *Federal Court of Australia Act 1976* (Cth) (the Act), the public be excluded from the hearing listed on 23 April 2021, other than by the following arrangement: any member of the public is able to join the hearing via the Microsoft Teams platform by contacting the Associate to Justice Besanko on 08 8219 1000 or by email to sa.hearings@fedcourt.gov.au.
2. Members of the public who attend the hearing via the method in paragraph 1 of these orders, do so on the condition that they are:
 - a. permitted to observe or listen to the hearing, but are in no circumstances permitted to participate in the hearing;
 - b. prohibited from making any recording or photographic record of the hearing, or any part thereof, by any means whatsoever; and
 - c. advised that any failure to observe the conditions in (a) and (b) may constitute a contempt of court and be punishable as such.
3. Pursuant to s 47B of the Act, counsel be permitted to deliver oral submissions by way of internet connection at the hearing.
4. Pursuant to s 47A(1) of the Act the following persons be permitted to give evidence at the hearing of these proceedings by audio-visual link:
 - (a) Person 21;
 - (b) Person 62;



- (c) Person 63;
 - (d) Person 64; and
 - (e) Person 65.
5. The evidence of Person 21 be given via Cisco from the Australian Embassy in Timor-Leste.
 6. The evidence of Person 62, Person 63, Person 64 and Person 65 be given via Cisco from the offices of Kakar Advocates LLC in Kabul, Afghanistan.
 7. The respondents arrange for an English/Pashto interpreter to be present in the courtroom in Sydney and at the offices of Kakar Advocates LLC at the time that Person 62, Person 63, Person 64 and Person 65 give evidence by audio-visual link.
 8. The applicant be entitled to have in the hearing room in the offices of Kakar Advocates LLC at the time that Person 62, Person 63, Person 64 and Person 65 give evidence a lawyer appointed by him whose name will be provided to the Court.
 9. The respondents file and serve statements of the evidence-in-chief of Person 62 and Person 63, signed by those persons, by 7 May 2021 and statements of the evidence-in-chief of Person 64 and Person 65, signed by those persons, by 14 May 2021.
 10. The costs of the respondents' interlocutory application dated 11 February 2021 be the respondents' costs in the cause.
 11. The respondents be granted leave to issue a Subpoena to Give Evidence at the trial to each of the following persons:
 - (a) Person 24;
 - (b) Person 40;
 - (c) Person 41;
 - (d) Person 42; and
 - (e) Person 43.
 12. Leave to issue a Subpoena to Give Evidence at the trial to Person 56 be refused.
 13. The respondents' application to amend their Defence to include particulars in the document entitled "SECRET — confidential — Additional truth particulars" to be served in accordance with the s 38B Orders made on 5 March 2021 be refused.
 14. The respondents be granted leave to serve the amended outline of evidence of Person 18 being Annexure "DLB-2" to the affidavit of Peter Llewellyn Bartlett sworn on 15 March 2021 save and except for paragraphs 24–36 inclusive.
 15. The question of costs on the interlocutory application filed on 16 March 2021 be reserved.
 16. On or before 5 pm on 30 April 2021, the applicant:



- (a) provide a response to the letters from MinterEllison dated 12 and 15 April 2021;
 - (b) file and serve any Third Further Amended List of Documents;
 - (c) produce to the respondents any documents discovered for the first time in Part 1 of the Third Further Amended List of Documents;
 - (d) produce to the respondents any additional documents responsive to the Notice to Produce dated 15 December 2020; and
 - (e) in the event that a Third Further Amended List of Documents is served or further documents produced in response to the Notice to Produce dated 15 December 2020, provide an explanation to the respondents as to why the documents have not previously been discovered/produced.
17. The respondents be granted leave to file and serve a Further Amended Interlocutory Application in the form served on 20 April 2021.
18. On or before 5 pm on 26 April 2021, the respondents file and serve any evidence relied upon in relation to prayers 5 and 6 of the Further Amended Interlocutory Application.
19. On or before 5 pm on 26 April 2021, the applicant respond to the respondents' letter of 12 April 2021 regarding the applicant's proposed application for Persons 9, 23 and 33 to give evidence via audio visual link.
20. On or before 5 pm on 30 April 2021, the applicant file an application under s 47A(1) of the Act (along with evidence and submissions) for the following persons to be permitted to give evidence at the hearing of these proceedings by audio-visual link:
- (a) Person 9;
 - (b) Person 23; and
 - (c) Person 33 (applicant's AVL Application).
21. On or before 5 pm on Friday, 10 May 2021, the respondents and/or the Commonwealth file and serve any evidence or submissions upon which they intend to rely in relation to the applicant's AVL Application.
22. On or before midday on 28 April 2021, the parties file and serve submissions, limited to 6 pages, in relation to the matters referred to in order 23 below.
23. The matter be listed for interlocutory hearing at 10:15 am (AEST) on Thursday, 29 April 2021, at which time the Court will hear:
- (a) the respondents' application for orders in accordance with prayers 1(j), (k), (l), 4, 5 and 6 of the Further Amended Interlocutory Application; and
 - (b) the parties on the order of evidence at trial.



Date that entry is stamped: 23 April 2021

Sia Lagos
Registrar



Schedule

No: NSD1485/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent NICK MCKENZIE

Third Respondent CHRIS MASTERS

Fourth Respondent DAVID WROE

From: [Kate Peuter](#) on behalf of [Monica Allen](#)
To: [Peter Bartlett](#); [Dean Levitan](#); [Dougal Hurley](#); [Jeremy Forbes](#)
Cc: [Mark O'Brien](#); [Paul Svilans](#)
Subject: Ben Roberts-Smith VC MG -v- Fairfax Media Publications Pty Limited - Notification of potential disclosure of NSI
Date: Tuesday 27 April 2021 05:21:14 PM
Attachments: [image001.png](#)
[Letter to Minter Ellison re NSI 27.04.21 .pdf](#)
[NSI disclosure notice re Notice to Produce to the Applicant dated 15 April 2021 - form to AG.pdf](#)
[NSI disclosure notice re Notice to Produce to the Applicant dated 19 April 2021 - form to AG.pdf](#)
[NSI disclosure notice re supplementary discovery by the Applicant - form to AG.pdf](#)
[15.4.21 Notice to Produce.PDF](#)
[19.4.21 - Notice to Produce to the Applicant.pdf](#)

Dear Colleagues

Please see **attached** our letter of today's date and enclosures.

Kind regards

Monica Allen

Senior Associate | Mark O'Brien Legal

Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9815

E monica.allen@markobrienlegal.com.au

W www.markobrienlegal.com.au

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Our Ref: MOBL283

27 April 2021

Mr. Peter Bartlett
Minter Ellison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

By Email: Peter.Bartlett@minterellison.com

Dear Colleagues

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

We refer to the notice given by the Attorney-General under s 6A of the *National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act)* on 31 March 2020 in relation to the Proceedings.

Accordingly, the Applicant informs you that he has given notice to the Attorney-General under s 38D(1) of the NSI Act, that he may disclose national security information, other than as a witness in the proceedings, in relation to the Notices to Produce issued on 15 April 2021 and 19 April 2021 and as pursuant to Rule 20.20 of the *Federal Court Rules*.

Please find **enclosed**:

- notifications of potential disclosure of national security information in relation to Notices to Produce to the Applicant dated 15 April 2021 and 19 April 2021;
- notification of potential disclosure of national security information in relation to the Applicant's Supplementary Discovery; and
- a copy of the Notices to Produce dated 15 April 2021 and 19 April 2021.

Yours faithfully



Mark O'Brien

Principal

T +61 2 9216 9828

M +61 412 637 304

E mark.obrien@markobrienlegal.com.au

Form 2—Notice of expected disclosure of national security information in a civil proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY PARTY'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A CIVIL PROCEEDING

TO The Attorney-General

1. I, Mark O'Brien, am the legal representative of the Applicant to the following civil proceedings:
 - Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors (NSD. 1485 of 2018)
 - Ben Roberts-Smith VC MG v The Age Company Pty Ltd & Ors (NSD. 1486 of 2018)
 - Ben Roberts-Smith VC MG v The Federal Capital Press of Australia Pty Ltd & Ors (NSD. 1487 of 2018)
2. I give notice under section 38D of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I believe that: the Applicant is required by Notice to Produce issued by the Respondents on 15 April 2021, to disclose national security information, other than as a witness, in the proceedings.
3. The national security information that will be disclosed is information which:
 - identifies, or tends to identify, Special Operations Command members; and
 - otherwise relates to Australia's defence, security, international relations or law enforcement interests.

Dated: 27 April 2021



.....
Mark O'Brien
Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney NSW 2000
+61 2 9216 9828
mark.obrien@markobrienlegal.com.au

Form 2—Notice of expected disclosure of national security information in a civil proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY PARTY'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A CIVIL PROCEEDING

TO The Attorney-General

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 - Ben Roberts-Smith VC MG v The Age Company Pty Ltd & Ors (NSD. 1486 of 2018)
 - Ben Roberts-Smith VC MG v The Federal Capital Press of Australia Pty Ltd & Ors (NSD. 1487 of 2018)
2. I give notice under section 38D of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I believe that: the Applicant is required by Notice to Produce issued by the Respondents on 19 April 2021, to disclose national security information, other than as a witness, in the proceedings.
3. The national security information that will be disclosed is information which:
 - identifies, or tends to identify, Special Operations Command members; and
 - otherwise relates to Australia's defence, security, international relations or law enforcement interests.

Dated: 27 April 2021



.....
Mark O'Brien
Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney NSW 2000
+61 2 9216 9828
mark.obrien@markobrienlegal.com.au

Form 2—Notice of expected disclosure of national security information in a civil proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY PARTY'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A CIVIL PROCEEDING

TO The Attorney-General

1. I, Mark O'Brien, am the legal representative of the Applicant to the following civil proceedings:
 - Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors (NSD. 1485 of 2018)
 - Ben Roberts-Smith VC MG v The Age Company Pty Ltd & Ors (NSD. 1486 of 2018)
 - Ben Roberts-Smith VC MG v The Federal Capital Press of Australia Pty Ltd & Ors (NSD. 1487 of 2018)
2. I give notice under section 38D of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I believe that: the Applicant is required pursuant to Rule 20.20 of the *Federal Court Rules* to disclose national security information, other than as a witness, in the proceedings.
3. The national security information that will be disclosed is information which:
 - identifies, or tends to identify, Special Operations Command members; and
 - otherwise relates to Australia's defence, security, international relations or law enforcement interests.

Dated: 27 April 2021



.....
Mark O'Brien
Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney NSW 2000
+61 2 9216 9828
mark.obrien@markobrienlegal.com.au

Form 38
Rule 20.17(1)

Supplementary List of documents

No. NSD1485 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited and others


Respondents

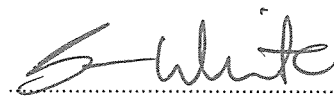
Pursuant to an order for discovery made on 2 August 2019, the Respondents provides this supplementary list of documents and affidavits:

Affidavit of the First Respondent

On 28 April 2021, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the First Respondent and I am authorised to make this affidavit on behalf of the First Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the list of documents dated 25 October 2019 and in this supplementary list of documents.
4. The documents set out in part 1 are in the control of the First Respondent and I do not claim privilege from production for any of these documents.


TESS DIANA COTTER MCGUIRE
Signature of witness
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)


Signature of deponent

Filed on behalf of (name & role of deponent)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person in legal profession)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email peter.bartlett@minterellison.com	
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

5. The documents set out in part 2 are in the control of the Second Respondent but he is prohibited from disclosing them on the grounds set out in part 2.

Affirmed by the deponent
at Melbourne in the State of Victoria
on 28 April 2021
Before me:



Signature of witness

)
)
)
)
)



Signature of deponent

TESS DIANA COTTER MCGUIRE

of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

Affidavit of the Second Respondent

On 28 April 2021, I NICK MCKENZIE, affirm and say:

1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in the list of documents dated 25 October 2019 and in this supplementary list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I am prohibited from disclosing them on the grounds set out in part 2.

Affirmed by the deponent
at Melbourne in the State of Victoria
on 28 April 2021
Before me:

)
)
)
)
)
Signature of deponent

Tess McGuire

Signature of witness

TESS DIANA COTTER MCGUIRE
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

Tess McGuire

TESS DIANA COTTER MCGUIRE
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

Signature of witness

Nick McKenzie
Signature of deponent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Inspection of documents

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 28 April 2021

A handwritten signature in black ink, appearing to read 'Peter Bartlett', is written over a horizontal dotted line.

Signed by Peter Bartlett
MinterEllison
Lawyer for the Respondents

Part 1 - Documents in the control of the First and Second Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
S1.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	8 April 2018
S2.	Email from the Applicant to Danielle Scott	1	22 April 2018
S3.	Email from the Applicant to Danielle Scott	1	24 April 2018
S4.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	27 April 2018
S5.	Screenshot, text message exchange between Danielle Scott and John McLeod	1	22 October 2018
S6.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	9 May 2018
S7.	Email from Emma Roberts to Danielle Scott containing photograph of Valpam medication	1	17 August 2018
S8.	Email from Emma Roberts to Danielle Scott containing photograph of diary pages	2	17 August 2018
S9.	Email from Emma Roberts to Danielle Scott containing screenshot of 'Jenny Hosey' text message	1	17 August 2018
S10.	Photographs, area where lunchbox had been buried	4	5 June 2020
S11.	Screenshots, file names	Numerous	Unknown
S12.	Photograph, Applicant and the prosthetic leg at Fat Lady's Arms	2	Unknown
S13.	Video of Person 17	1	6 March 2018
S14.	Text message exchange between Danielle Scott and Emma Roberts	1	26 April 2018
S15.	Text message, Emma Roberts to Danielle Scott	1	5 June 2020
S16.	Email correspondence, Applicant and Emma Roberts	2	5 June 2020

Part 2 - Documents in the control of the Second Respondent which cannot be disclosed

No.	Description of document	Date of document	State grounds upon which disclosure is prohibited
S17.	One or more documents copied from six USB sticks located in the backyard of the Applicant's former home in Ilkley Road, Ilkley QLD which fall within the categories of documents for discovery.	Various	The documents likely contain national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth) (the NSI Act). A notice pursuant to section 38D of the NSI Act has been issued.



TESS DIANA COTTER MCGUIRE
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

.....
Signature of witness

ME_183228549_1



.....
Signature of deponent

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/04/2021 4:59:12 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	List of Documents - Form 38 - Rule 20.17(1)
File Number:	NSD1485/2018
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



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

Dated: 30/04/2021 4:59:13 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Supplementary List of Documents

No. NSD 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd and others

Respondents

Pursuant to the order for discovery made on 2 August 2019, the Applicant makes this Supplementary List of Documents and affidavit.

Affidavit

On 30 April 2021, I Ben Roberts-Smith VC MG say on oath:

1. I am the Applicant.
2. I have made reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, there are no further documents specified in the order that are or have been in my control, other than the documents specified in this Supplementary List of Documents.
4. The documents set out in Part 2 are in my control but I am prohibited from disclosing them on the grounds set out in Part 2.
5. The documents set out in Part 3 have been but are no longer in my control. Details of when each document was last in my control and what became of it are set out in Part 3.

 Filed on behalf of (name & role of party) Ben Roberts-Smith VC MG, Applicant

 Prepared by (name of person/lawyer) Paul Svilans

Law firm (if applicable) Mark O'Brien Legal

Tel +61 9216 9828

Fax -

Email paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au

Address for service Level 19, 68 Pitt Street, Sydney NSW 2000
(include state and postcode)

Sworn by the deponent
at Sydney in the State of New South Wales
on 30 April 2021
Before me:

)
)
)
)
)



Signed by deponent



Signed by witness
Monica Allen
Lawyer for the Applicant

Date: 30 April 2021



Signed by Monica Allen
Lawyer for the Applicant

Part 2 – Documents in the control of Applicant which cannot be disclosed

No.	Description of document(s) / category	Number of documents in category	State grounds why the documents cannot be produced
1	Draft book manuscript	4	The documents likely contain national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth). A notice pursuant to section 38D of the NSI Act has been issued.
2	PowerPoint slide	1	The document likely contains national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth). A notice pursuant to section 38D of the NSI Act has been issued.
3	Statement from Person 36 'Patrol K2 Op Slipper 2006'	1	The document likely contains national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth). A notice pursuant to section 38D of the NSI Act has been issued.
4	Email dated 3 November 2018 from Person 29 and attachment	2	The documents likely contain national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth). A notice pursuant to section 38D of the NSI Act has been issued.
5	One or more documents copied from USBs which fall within the categories for discovery, including: <ul style="list-style-type: none"> Images of a prosthetic leg taken during Rotations IX, XII and XVIII; Imagery taken on 12 April 2009; JTAC Misrep W108; 	Various	The documents likely contain national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth). A notice pursuant to section 38D of the NSI Act has been issued.

No.	Description of document(s) / category	Number of documents in category	State grounds why the documents cannot be produced
	<ul style="list-style-type: none"> • Post Report W108; • Imagery taken on 11 June 2010; • Imagery taken on 12 October 2012. 		

Part 3 – Documents that have been but are no longer in the control of Applicant

No.	Description of document	Date of document	What became of document
6	Six USBs	Various	In or about August or September 2020, the Applicant consolidated the material on the USB sticks onto his laptop

From: [Kate Peuter](#) on behalf of [Monica Allen](#)
To: [Peter Bartlett](#); [Dean Levitan](#); [Dougal Hurley](#); [Jeremy Forbes](#)
Cc: [Mark O'Brien](#); [Paul Svilans](#)
Subject: Ben Roberts-Smith VC MG -v- Fairfax Media Publications Pty Limited - Notification of potential disclosure of NSI
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[NSI disclosure notice re supplementary discovery by the Applicant - form to AG.pdf](#)
[15.4.21 Notice to Produce.PDF](#)
[19.4.21 - Notice to Produce to the Applicant.pdf](#)

Dear Colleagues

Please see **attached** our letter of today's date and enclosures.

Kind regards

Monica Allen

Senior Associate | Mark O'Brien Legal

Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9815

E monica.allen@markobrienlegal.com.au

W www.markobrienlegal.com.au

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Our Ref: MOBL283

27 April 2021

Mr. Peter Bartlett
Minter Ellison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

By Email: Peter.Bartlett@minterellison.com

Dear Colleagues

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

We refer to the notice given by the Attorney-General under s 6A of the *National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act)* on 31 March 2020 in relation to the Proceedings.

Accordingly, the Applicant informs you that he has given notice to the Attorney-General under s 38D(1) of the NSI Act, that he may disclose national security information, other than as a witness in the proceedings, in relation to the Notices to Produce issued on 15 April 2021 and 19 April 2021 and as pursuant to Rule 20.20 of the *Federal Court Rules*.

Please find **enclosed**:

- notifications of potential disclosure of national security information in relation to Notices to Produce to the Applicant dated 15 April 2021 and 19 April 2021;
- notification of potential disclosure of national security information in relation to the Applicant's Supplementary Discovery; and
- a copy of the Notices to Produce dated 15 April 2021 and 19 April 2021.

Yours faithfully



Mark O'Brien

Principal

T +61 2 9216 9828

M +61 412 637 304

E mark.obrien@markobrienlegal.com.au

Our Ref: MOBL 283
Your Ref: PLB 1183220

30 April 2021

Mr. Peter Bartlett
Minter Ellison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

By Email: Peter.Bartlett@minterellison.com

Dear Colleagues

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

1. We refer to order 16 made by Justice Besanko on 23 April 2021 and your letter dated 12 April 2021.
2. As confirmed by Senior Counsel for the Applicant at the hearing before Justice Besanko yesterday, our client does not waive his confidentiality rights under the Part VIIIA Settlement Agreement he entered into with Ms Roberts on 23 February 2021. It is, with respect, inappropriate that the Respondents and/or your witness, Ms Roberts seek that he do so.
3. In your letter, you assert that our client *"buried a lunch box containing 6 USB sticks in the backyard of the home he shared with his former wife"*. Our client rejects that assertion.
4. We are instructed to respond as follows:
 - a. Our client did not bury or otherwise conceal a lunch box containing USB sticks in the backyard of his former home.
 - b. Our client did not bury or otherwise conceal USB sticks in the backyard of his former home.
 - c. Our client did not ask Ms Roberts or anyone else to do (a) or (b) above.
 - d. If, as your letter asserts and as Ms Scott asserts in her Outline of Evidence, a lunch box containing six USB sticks was found buried in the backyard of his former home, our client was unaware of this until receipt of your letter and Ms Scott's Outline on 12 April 2021.

- e. Until approximately August or September 2020, our client was in possession of six USB sticks he collected from his former matrimonial home on or about 5 June 2020.
- f. The six USB sticks contained photographs of images in Afghanistan, personal financial documents and other material.
- g. In or about August or September 2020, our client consolidated the material on the USB sticks onto his laptop. Our client no longer retains possession of the six USB sticks referred to in paragraph 4(e) above as he discarded them after he had placed all the material onto his laptop.
- h. Since receiving your letter of 12 April 2021, our client has undertaken a further review of material in his possession. At the time of preparing his List of Documents on 23 December 2020 our client did not turn his mind to the discovery of the material that was the USBs.
- i. As a result of that review, the Applicant has prepared a Supplementary List of Documents, which is **enclosed** with this letter.
- j. As is apparent, the explanation for the failure to include the supplementary material as part of our client's initial list of documents is inadvertence.
- k. None of the supplementary material contains anything that supports the Respondents' particulars of truth as pleaded in the Amended Defence to the Statement of Claim.
- l. Accordingly, our client rejects the assertion contained in your letter that he engaged in a deliberate attempt to conceal relevant evidence in these proceedings.

Yours faithfully



Paul Svilans

Principal

T +61 2 9216 9830

M +61 410 687 900

E paul.svilans@markobrienlegal.com.au

Form 38
Rule 20.17(1)

Updated list of further documents

No. NSD1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Limited and others

Respondents

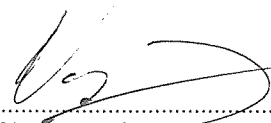
Pursuant to an order for discovery made on 2 August 2019, the Second Respondent provides this list of documents and affidavit:

Affidavit

On 20 May 2021, I NICK MCKENZIE, affirm and say:

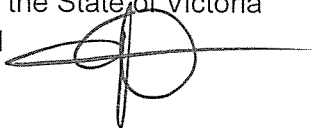
1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I claim privilege from production of each of these documents on the grounds set out in part 2.
6. The documents set out in part 3 have been but are no longer in my control.

~~JESSIE GABRIELLE NYGH~~
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)
.....
Signature of witness

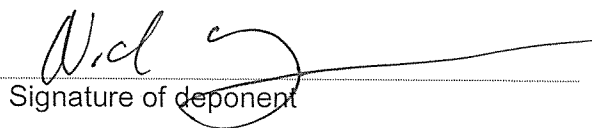

.....
Signature of deponent

Filed on behalf of (name & role of party)	Nick McKenzie, Second Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Level 20, 447 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Affirmed by the deponent
 at Melbourne in the State of Victoria
 on 20 May 2021
 Before me:



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Signature of deponent

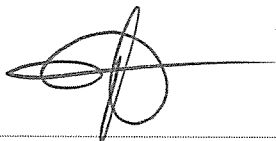
JESSIE GABRIELLE NYGH
 of 447 Collins Street, Melbourne
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 Profession Uniform Law (Victoria)

Signature of witness

Inspection of documents

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000
 on business days between the hours of 9:00am and 5:00pm.

Date: 20 May 2021



Signed by Jessie Nygh
 MinterEllison
 Lawyer for the Second Respondent


Part 1 - Documents in the control of the Second Respondent

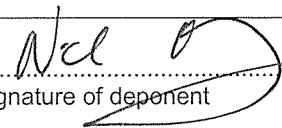
No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Translation of transcript of interview with Ali Jan's relatives	1	28 September 2018
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
7.	Article entitled 'Diggers facing police inquiry over 'war crimes' by Paul Maley in the Australian, page uncertain	1	30 November 2018
8.	Article entitled 'SAS soldiers committed war crimes: secret report' by Nick McKenzie and Chris Masters in the Sydney Morning Herald pages 1, 6	1	8 June 2018
9.	Article entitled 'Top SAS officer condemns culture' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 4 (with snippet introducing story entitled 'SAS scandal: Top officer talks tough on army elite' on unknown page)	1	4 August 2018
10.	Article entitled 'Culture warriors have it wrong' by Catherine McGregor in the Sydney Morning Herald, page 20	1	15 June 2018
11.	Article entitled 'Show the will to prosecute soldiers' by Ben Saul in the Sydney Morning Herald, page unknown	1	14 June 2018
12.	Article entitled 'What does the SAS stand for?' by Chris Masters and Nick McKenzie in the Sydney Morning Herald, page 26-27	1	5 August 2018
13.	Articles entitled 'Historians call our War Memorial director' by Michael Bachelard and 'VC winner filed defamation claim' by uncertain author in the Sydney Morning Herald on 18 August 2018, page uncertain	1	18 August 2018
14.	Article entitled 'Evidence will clear me: Roberts-Smith' by Paul Maley in the Australian, page 3	1	24 November 2018
15.	Article entitled 'VC War hero 'coached his victim to lie' by Deborah Cornwall in the Australian, page 3	1	23 November 2018

Jessie Gabrielle Nygh
 of 447 Collins Street, Melbourne
 An Australian Legal Practitioner
 Signature of witness
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 within the meaning of the Legal
 Profession Uniform Law (Victoria)


Nick
 Signature of deponent

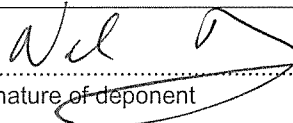
No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
16.	Article entitled 'Police inquiry into top soldier' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 1 and 6	1	29 November 2018
17.	Article entitled 'Our soldiers hung out to dry' by John Anon in the West Australian, page 17	1	26 June 2018
18.	Article entitled 'A note from the Editor' by Lisa Davies in the Sydney Morning Herald, online	1	Unknown
19.	Article entitled 'March and a quiet beer in store for VC hero' by Paul Maley in the Australian, page 2	1	24 April 2019
20.	Article entitled 'Special forces brace for a culture shock' by Paul Maley in the Australian, online	1	25 May 2019
21.	Article entitled 'There's much more at stake here than leaked information' by Brendan Nicholson in the Strategist, online	1	8 June 2019
22.	Article entitled 'Walking the line' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 27, 32-33	1	21 September 2019
23.	Article entitled 'Battle on the Home Front' by Paul Maley in the Australian, page 11	1	27 September 2019
24.	Article entitled 'Shining the spotlight: Why we reported that Ben Roberts-Smith was under investigation' by Carrie McDougall and Michael Bachelard in the Sydney Morning Herald, online	1	27 September 2019
25.	Article entitled 'Ben Roberts-Smith blasts Nine's abuse of power' by Paul Maley in the Australian	1	6 October 2019
26.	Article entitled 'The hunt for Ben Roberts-Smith steps up' by uncertain author in the Australian Morning Mail, online	1	13 May 2019
27.	Article entitled 'VC winner Ben Roberts-Smith speaks out' by uncertain author in the Australian Morning Mail, online	1	5 May 2019
28.	Comments on online forum the Australian Military Community entitled 'A Brief from CPL Ben Roberts Smith', various authors	1	2 October 2018
29.	'Looking at SASR Culture' Benchmark SASR Review Report, author unknown	1	2010
30.	Article entitled 'Special Forces: The Downside – Impossible missions out of country and out of culture' by Andrew Farran in the Australian War Powers Reform Bulletin issue 60, accessed 18 July 2018 online	1	11 July 2018
31.	Article by Chris Masters sent via email to Tanya Masters on 17 August 2018 entitled 'How, and why, do we go to war?' by Paul Barratt in Inside Story	1	17 August 2018


 JESSIE GABRIELLE NYGH
 of 447 Collins Street, Melbourne
 Signature of an Australian Legal Practitioner
 within the meaning of the Legal
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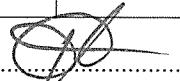

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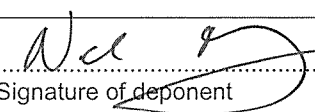
No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
32.	Article entitled 'Greg Lockhart: Tearing down our heroes' by John Menadue on John Menadue on the website johnmenadue.com, accessed 28 August 2018	1	28 August 2018
33.	The First Casualty - unpublished response to Brendan Nelson by Chris Masters and Nick McKenzie	1	Unknown
34.	Photograph of executed man with prosthetic leg on Easter Sunday 2009	1	12 April 2009
35.	Photograph of SASR in Afghanistan with framed prosthetic leg	1	Unknown
36.	Photograph of framed prosthetic leg	1	Unknown
37.	Correspondence between Nick McKenzie, Mark O'Brien and Channel 7 representatives (prepublication)	1	June to August 2018
38.	Correspondence between Nick McKenzie and Defence Department re media enquiry	1	May 2018
39.	Email from Nick McKenzie to Brendan Nelson - Media inquiry	1	24 August 2018
40.	Photograph, Ben Roberts-Smith	1	January 2018
41.	Article by Paul Maley in the Australian, entitled 'Police clear Ben Robert-Smith after allegations of assault'	1	25 September 2018
42.	Photograph, Hassan	1	Unknown
43.	SOCOMD Culture and Interaction Study by Dr Sarah Cromptoets	1	February 2016
44.	Statement released by Ben Roberts-Smith after the Respondents' defence was filed	1	18 October 2018
45.	Article, Easter Sunday in West Dorafshan 2009, by Lieutenant Ash Judd, Officer Commanding 2 Platoon team "Rogue"	1	October 2010
46.	Ben Roberts-Smith Victoria Cross Citation	1	23 January 2011
47.	Ben Roberts-Smith Commendation for Distinguished Service Citation	1	26 January 2014
48.	MP3 file of Ben Robert-Smith interview with Peter Pederson, War Memorial (USB)	1	2011
49.	Article entitled 'You think I'm brave? Meet my mates: Ben Roberts-Smith' by Brendan Nicholson	1	21 April 2011
50.	Ben Roberts-Smith Medal for Gallantry Citation	1	Unknown


 Signature of witness
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 within the meaning of the Legal



 Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
51.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Canberra Times, pages 17-18	1	10 June 2018
52.	IGADF Inquiry Report – Reasons for Ruling on Complaint Concerning Conduct of a Lawyer said to be working for the Inspector-General of the ADF Afghanistan Inquiry	1	November 2018
53.	Unpublished letters regarding Ben Roberts-Smith sent to the Sydney Morning Herald	1	Various dates
54.	Unpublished letters regarding Ben Roberts-Smith sent to the Age	1	Various dates
55.	Published letters regarding Ben Roberts Smith published in the Age	1	Various dates
56.	Published responses regarding Ben Roberts-Smith to Canberra Times articles	1	Various dates
57.	Text messages exchanged between Chris Masters and Nick McKenzie	1	Various dates
58.	Photo of Ali Jan	1	Unknown
59.	Photo of Baqir	1	Unknown
60.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC, MG'	1	5 July 2017
61.	Letter from Mark O'Brien Legal to Nick McKenzie, copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	4 July 2018
62.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC MG'	1	18 October 2017
63.	Letter from Mark O'Brien Legal to Nick McKenzie copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	14 June 2018
64.	Letter from Mark O'Brien Legal to David Wroe copy James Chessell with subject 'Ben Roberts-Smith VC MG'	1	3 August 2018
65.	Article entitled 'Court grants suppression of Ben Roberts-Smith accuser's identity' by Miklos Bolza in Lawyerly, online	1	29 January 2019
66.	Article entitled 'A law unto themselves' by Chris Masters in the Sunday Age, page 20-21	1	10 June 2018
67.	Article entitled 'Line of Fire' by Chris Masters in the Good Weekend, page 22-27	1	On or around 21 October 2017
68.	Article entitled 'VC winner files legal claim against Fairfax' by Simone Fox-Koob in the Sydney Morning Herald, page unknown	1	On or around 17 August 2018


 Signature of witness
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 Signature of deponent


No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
69.	Article entitled 'Roberts-Smith inquiry findings should be made public' by Dana McCauley in the Sydney Morning Herald	1	On or around 12 August 2018
70.	Map entitled 'Darwan locator', date unknown	1	Unknown
71.	Photo of Hekmatullah, date unknown	1	Unknown
72.	Map entitled 'Darwan map', date unknown	1	Unknown
73.	Short video of Ali Jan's family	1	Unknown
74.	Article entitled "Abdul's brother went out to buy flour. He never came home" by Nick McKenzie and Chris Masters on the Sydney Morning Herald website	1	8 June 2018
75.	Article entitled "Special forces rookie 'blooded' by executing an unarmed man" by Chris Masters and Nick McKenzie on the Sydney Morning Herald website	1	10 June 2018
76.	Article entitled "SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 1	1	9 June 2018
77.	Article entitled "'Troops kept kill board': SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 10-13	1	9 June 2018
78.	Article entitled 'Special forces rookie 'blooded' by executing an unarmed man' by Chris Masters and Nick McKenzie in the Sun Herald on page 6	1	10 June 2018
79.	Article entitled 'War hero fires back over abuse claims' by Nick McKenzie, David Wroe and Chris Masters in the Sydney Morning Herald page 1	1	11 August 2018
80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018
81.	Photograph, executed Afghan man on Easter Sunday 2009	1	12 April 2009
82.	Some of the recordings of the interview with Ali Jan's relatives (translations at document 2)	Numerous	On or around September 2018


 Signature of witness
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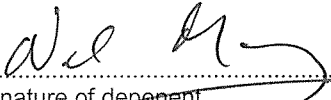
Part 2 - Documents in the control of the Second Respondent for which privilege from production is claimed

No.	Description of document	Date of document	State grounds of privilege
83.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and a lawyer, or b) a confidential communication made between 2 or more lawyers acting for the First, Second, Third and/or Fourth Respondent, or c) the contents of a confidential document (whether delivered or not) prepared by the First, Second, Third and/or Fourth Respondent, a lawyer or another person, <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to the Respondents, and in respect of which privilege has not been waived.</p>
84.	Various documents to which client legal privilege applies relating to litigation	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and another person, or between a lawyer acting for the First, Second, Third and/or Fourth Respondent and another person, or b) the contents of a confidential document (whether delivered or not), <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p>

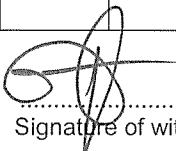

Signature of witness

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JESSIE GABRIELLE MGH
of 447 Collins Street, Melbourne
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Signature of deponent

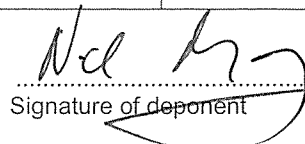
No.	Description of document	Date of document	State grounds of privilege
85a.	Copy of document obtained from a confidential source	17 February 2014	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85b.	Document obtained from a confidential source	7 November 2014	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85c.	Chris Masters' notes of meeting with confidential source	18 March 2016	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85d.	Chris Masters' notes of meeting with confidential source	20 April 2016	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85e.	Chris Masters' notes of meeting with confidential source	7-8 February 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85f.	Chris Masters' notes of meeting with confidential source	27 February 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85g.	Chris Masters' notes of meeting with confidential source	3 March 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85h.	Document obtained from a confidential source	22 March 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85i.	Email correspondence between Chris Masters and a confidential source	7 April 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.



Signature of witness


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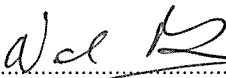
Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85j.	Email from a Fairfax journalist in relation to an interview with a confidential source	11 August 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85k.	Nick McKenzie's notes of meeting with a confidential source	28 August 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85l.	Chris Masters' notes of information obtained from various confidential sources	3 September 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85m.	Chris Masters' notes of information obtained from various confidential sources	2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85n.	Nick McKenzie's notes of meeting with a confidential source	10 September 2019	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85o.	Copy of document obtained from a confidential source	2019	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85p.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85q.	Chris Masters' notes of meeting with confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85r.	Email correspondence between Chris Masters and a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

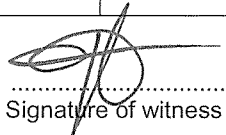

Signature of witness

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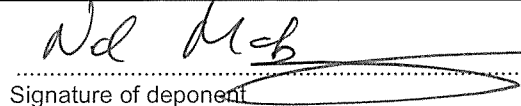

JESSIE GABRIELLE NYAH
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
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Signature of deponent

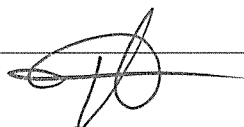
No.	Description of document	Date of document	State grounds of privilege
85s.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85t.	Chris Masters' notes of meeting with confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85u.	Nick McKenzie's notes of meeting with a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85v.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85w.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85x.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85y.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85z.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aa.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.


Signature of witness

JESSIE GABRIELLE NICH
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)


Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85ab.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ac.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ad.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ae.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85af.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ag.	Document obtained by Chris Masters from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ah.	Chris Masters' notes of information obtained from various confidential sources	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ai.	Chris Masters' notes of meeting with confidential source with handwritten annotations	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aj.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.




JESSIE GABRIELLE NYGH
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)

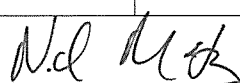


No.	Description of document	Date of document	State grounds of privilege
85ak.	Transcript of conversation between Nick McKenzie and a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85al.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85am.	Copy of document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85an.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ao.	Recording of a conversation between a Fairfax journalist and an interview with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ap.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aq.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ar.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85as.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

Signature of witness


JESSIE GABRIELLE NYGH
 of 447 Collins Street, Melbourne
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)


Signature of deponent




No.	Description of document	Date of document	State grounds of privilege
85at.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85au.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85av.	Copy of document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aw.	Document obtained from a confidential source	date withheld under <i>Evidence Act 1995</i> (Cth) section 126K(1)	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

Part 3 - Documents that have been but are no longer in the control of the Second Respondent

No.	Description of document	Date of document	What became of document
86.	Various encrypted messages periodically deleted	N/A	Deleted
87.	Recordings of interview with Ali Jan's relatives	On or around September 2018	Some of the recordings were deleted in the ordinary course of business after the translation of the transcript (document 2) was prepared


JESSIE GABRIELLE NYGH
 of 447 Collins Street, Melbourne
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)

.....
Signature of witness



 Signature of deponent

From: [Dean Levitan](#)
To: [Paul Svilans](#); [Monica Allen](#)
Cc: [Mark O'Brien](#); [Peter Bartlett](#); [Jeremy Forbes](#); [Dylan Dexter](#); [Dougal Hurley](#); [Tess McGuire](#); [Jessie Nygh](#)
Subject: Ben Roberts-Smith v Fairfax Media & Ors [ME-ME.FID4106433]
Date: Tuesday 25 May 2021 04:20:07 PM
Attachments: [25.5.21 - Notice to Produce to the Applicant.PDF](#)

Dear Colleagues

Please find **attached** Notice to Produce to the Applicant.

Kind regards

Dean Levitan

Associate

T +61 3 8608 2152 M: 0478 164 484

dean.levitan@minterellison.com

MinterEllison Collins Arch 447 Collins Street Melbourne VIC 3000

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



Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents and things before the Court at 9:30am on 2 June 2021:

Communications with witnesses and other persons

1. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 5 referring or relating to:
 - a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 5's interview(s) with the IGADF;
 - c. Person 5's legal representation in connection with the IGADF Inquiry;
 - d. Person 5's legal representation in connection with this proceeding;
 - e. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - f. the events at Whiskey 108 on 12 April 2009.
2. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 11 referring or relating to:
 - a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 11's interview(s) with the IGADF;
 - c. Person 11's legal representation in connection with the IGADF Inquiry;
 - d. Person 11's legal representation in connection with this proceeding;
 - e. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - f. the mission in Darwin on 11 September 2012.
3. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 23 referring or relating to:

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

- a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 23's interview(s) with the IGADF;
 - c. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - d. the events at Chora Pass on or about 2 June 2006.
4. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 29 referring or relating to:
 - a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 29's interview(s) with the IGADF;
 - c. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - d. the events at Whiskey 108 on 12 April 2009;
 - e. you and Emma Roberts being separated during the period October 2017 to April 2018.
5. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 35 referring or relating to:
 - a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 35's interview(s) with the IGADF;
 - c. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - d. the events at Whiskey 108 on 12 April 2009;
 - e. the mission in Darwan on 11 September 2012.
6. One copy of all communications (including text messages, phone records, emails and other documents) passing between you and Person 36 referring or relating to:
 - a. the IGADF Inquiry;
 - b. the date, conduct or substance of Person 36's interview(s) with the IGADF;
 - c. the date, conduct or substance of the Applicant's interviews with the IGADF;
 - d. the events at Chora Pass on or about 2 June 2006.
7. One copy of all communications passing between you and Neil Mooney referring to you and Emma Roberts being separated during the period October 2017 to April 2018
8. One copy of all communications passing between you and Jed Wheeler referring to you and Emma Roberts being separated during the period October 2017 to April 2018

Communications and documents evidencing work completed by John McLeod

9. One copy of all communications and documents evidencing work completed by John McLeod on your behalf in the period of 1 January 2016 – 30 June 2018.

Interview with Australian War Memorial

10. One copy of the transcript of your interview with the Australian War Memorial on 28 March 2018.
11. One copy of any audio or visual recording of your interview with the Australian War Memorial on 28 March 2018.

Statements, comments or interviews in relation to publications

12. One copy of any document referring to, recording or relating to a statement, comment or interview given by you, or by any spokesperson or agent on your behalf, (including but

not limited to any representative of Mark O'Brien Legal and Channel Seven and their spokespersons) in relation to the following publications:

- a. "War hero lashes his accusers" by Paul Maley published in *The Weekend Australian* on 11 August 2018;
- b. "Reputation ravaged: VC hero Ben Roberts-Smith launches defamation action" article by Tim Clarke published in *The West Australian* on 18 August 2018;
- c. "ABC and Fairfax pursuit of Ben Roberts-Smith 'malicious'" by Deborah Cornwall published in *The Australian* on 18 September 2018;
- d. "ABC helped Fairfax pursue VC hero" by Deborah Cornwall published in *The Australian* on 19 September 2018;
- e. "War hero cleared of violence claim" by Paul Maley published in *The Australian* on 25 September 2018;
- f. "VC soldier rejects new abuse claims" by Tim Clarke published in *The Weekend West* on 20 October 2018;
- g. "Morrison slams war crimes" by Richard Ferguson and Joe Kelly published in *The Australian* on 2 November 2018;
- h. "Evidence will clear me: Roberts-Smith" by Paul Maley published in *The Weekend Australian* on 24 November 2018;
- i. "War hero 'will be cleared'" by Tim Clarke published in *The Weekend West* on 24 November 2018;
- j. "March and a quiet beer in store for VC hero" by Paul Maley published in *The Australian* on 24 April 2019;
- k. "VC hero denies execution claims" by Paul Maley and Emily Ritchie published in *The Australian* on 23 September 2019;
- l. "SAS hero denies Afghan's murder" by Paul Maley published in *The Australian* on 24 September 2019;
- m. "ADF 'turns back' on VC hero" by Annabel Hennessy published in *The West Australian* on 24 September 2019;
- n. "Battle on the home front" by Paul Maley published in *The Australian* on 27 September 2019;
- o. "Ben Roberts-Smith blasts Nine's 'abuse of power'" by Paul Maley published in *The Australian* on 6 October 2019;
- p. "VC winner's media battle" published in *The Australian* on 7 October 2019;
- q. "ADF 'ignored' VC winner's anguish" by Paul Maley and Joe Kelly published in *The Australian* on 16 November 2019;
- r. "They're calling me a murderer: war hero Ben Roberts-Smith" by Paul Maley published in *The Australian* on 16 December 2019;
- s. "AFP grills war hero over killing" by Paul Maley published in *The Australian* on 24 March 2020;
- t. "Military hero Ben Roberts-Smith denies AFP war crimes move" by Paul Maley published in *The Australian* on 7 May 2020;
- u. "Decorated war veteran Ben Roberts-Smith shoots down claims he's been referred to Commonwealth Director of Public Prosecutions" by Annabel Hennessy published in *The West Australian* on 7 May 2020;
- v. "No AFP war crimes probe" by Annabel Hennessy published in *The West Australian* on 8 May 2020;
- w. "War allegations are spurious: VC winner" by Paul Maley published in *The Australian* on 6 June 2020;
- x. "Nine to view key Brereton evidence from Ben Roberts-Smith" by Ben Packham published in *The Australian* on 11 November 2020;
- y. "Investigator to test war crime allegations" by Lanai Scarr published in *The West Australian* on 13 November 2020;
- z. "PM vows to confront war crimes" by Ben Packham published in *The Australian* on 13 November 2020;
- aa. "War atrocities will shock nation" by Ben Packham published in *The Australian* on 13 November 2020;

- bb. "Victoria Cross recipient Ben Roberts-Smith has slammed Nine Entertainment Co for 'baseless' allegations" by Sophie Elsworth published in *The Australian* on 12 April 2021;
- cc. "Seven sticks by war hero after TV claim" by Sophie Elsworth published in *The Australian* on 13 April 2021;
- dd. "New police probe as VC defamation trial looms" by Kieran Gair published in *The Australian* on 15 April 2021;
- ee. "War hero fires back at 'slurs': 60 Minutes 'totally false'" by Michael Thrail published in *The Australian* on 15 April 2021; and
- ff. "Nine's setback in defo case" by Ben Harvey published in *The West Australian* on 24 April 2021.

Dealings with Apple in relation to your laptop

13. In relation to the alleged trade in of your laptop on or about 17 April 2021 as outlined in your letter on 21 May 2021,
 - a. one copy of any communications or documents evidencing or referring to the purchase of your new laptop;
 - b. one copy of any communications or documents evidencing or referring to the trade in of your old laptop; and
 - c. one copy of any communications or documents evidencing or referring to a recommendation from Apple to erase the hard drive on your old laptop.

Date: 25 May 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Our Ref: MOBL283

26 May 2021

Danielle Scott
2 Whelk Close
Trinity Beach QLD 4879

Dear Ms Scott

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

We act for the Applicant in the above matter. We **enclose**, by way of service, Subpoena to Produce as filed in the Federal Court of Australia.

Yours faithfully



Monica Allen
Senior Associate
T +61 2 9216 9815
E monica.allen@markobrienlegal.com.au

**Subpoena – Declaration by addressee
Notice to addressee**

No. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others

Respondents

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the 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 complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, a Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

Filed on behalf of (name & role of party)	<u>Ben Roberts-Smith VC MG, Applicant</u>		
Prepared by (name of person/lawyer)	<u>Monica Allen</u>		
Law firm (if applicable)	<u>Mark O'Brien Legal</u>		
Tel	<u>+61 2 9216 9898</u>	Fax	
Email	<u>paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au</u>		
Address for service (include state and postcode)	<u>Level 19, 68 Pitt Street, Sydney NSW 2000</u>		

Declaration by addressee (subpoena recipient)

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐ **All copied documents**

All of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

☐ **Some original documents**

Some or all of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address:

Date:

Signed by [Name of addressee]
Addressee

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/05/2021 9:43:38 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
File Number:	NSD1485/2018
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:	09/06/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 26/05/2021 2:50:53 PM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

LAST DATE FOR SERVICE IS 1 JUNE 2021 BY C.O.B.



Form 43B
Rule 24.13(1)(b)

Subpoena to produce documents

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 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.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 1 June 2021 (See Note 1)

Date:

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

Filed on behalf of (name & role of party)	<u>Ben Roberts-Smith VC MG, Applicant</u>
Prepared by (name of person/lawyer)	<u>Paul Svilans</u>
Law firm (if applicable)	<u>Mark O'Brien Legal</u>
Tel	<u>+61 2 9216 9898</u>
Fax	<u>-</u>
Email	<u>paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au</u>
Address for service (include state and postcode)	<u>Level 19, 68 Pitt Street, Sydney NSW 2000</u>

[Version 3 form approved 3/09/2014]



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

Place: c/- Mark O'Brien Legal, Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

Email: paul.svilans@markobrienlegal.com.au and monica.allen@markobrienlegal.com.au

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 the 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:

Time: 9.30am

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 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. One copy of all communications passing between you and Emma Roberts referring to:
 - (a) any separation between Ms Roberts and the Applicant during any of the period between October 2017 to April 2018;
 - (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;
 - (c) Person 17;
 - (d) John McLeod;
 - (e) any of the Respondents;
 - (f) the Applicant (from 1 January 2020 to date).
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.
3. One copy of all communications passing between you and John McLeod.
4. One copy of all communications passing between you and John McLeod referring to:
 - (a) any request by the Applicant to post envelopes for him;
 - (b) any provision by the Applicant to Mr McLeod of envelopes;
 - (c) any provision by the Applicant to Mr McLeod of slips of paper;
5. One copy of all communications passing between you and Person 17.
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:
 - (a) The Applicant;
 - (b) Person 17;
 - (c) John McLeod;



- (d) Emma Roberts.
8. One copy of all communications passing between you and any of TCN Channel Nine Pty Limited, Nine Network Australia Pty Limited and/or any of their servants or agents.
 9. One copy of all communications passing between you and any of TCN Channel Nine Pty Limited, Nine Network Australia Pty Limited and/or any of their servants or agents referring to:
 - (a) the Applicant;
 - (b) Person 17;
 - (c) John McLeod;
 - (d) Emma Roberts.
 10. One copy of all documents evidencing the sending to you by Ms Roberts of the documents referred to in paragraph 26 of your Outline of Evidence filed in these proceedings, a copy of which less attachments is annexed and marked "A" (**Your Outline**).
 11. One copy of all communications passing between you and the AFP:
 - (a) referring to the Applicant;
 - (b) referring to the contact by the AFP and the provision of the contents of the USBs as referred to in paragraph 30 of Your Outline.
 12. The computer onto which you copied the contents of the six USBs as referred to in paragraph 30 of Your Outline.
 13. One electronic copy of the photographs (including the metadata of those photographs) as referred to in paragraph 32 of Your Outline.



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 the 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 the 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, the 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 the 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.
- 9A. The copy of a document may be:
- (a) a photocopy; or
 - (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

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.

**Schedule**

No. NSD. 1485 of 2018

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: 25 May 2021

The Registrar
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

31 May 2021

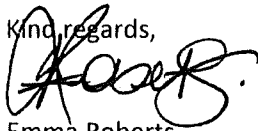
Ben Roberts-Smith v Fairfax Media Publications Pty Ltd

Dear Registrar,

I have been issued a subpoena to produce documents. A copy of the subpoena with the declaration is enclosed along with copies of the documents provided in compliance with it.

One document produced is sensitive and may be subject to a claim for legal professional privilege. I have placed this document in a sealed envelope.

Kind regards,

A handwritten signature in black ink, appearing to read 'Emma Roberts', written over the typed name.

Emma Roberts



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1485/2018

BEN ROBERTS-SMITH

Applicant

FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) and others named in
the schedule

Respondent

ORDER IN CHAMBERS

JUDGE: JUSTICE BESANKO

DATE OF ORDER: 02 June 2021

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

Subpoenas to produce

Defence Subpoenas

1. On or before 4 June 2021 the Commonwealth make available to the parties the documents ready to be produced responsive to the:
 - a) Respondents' subpoena addressed to the Department of Defence dated 5 March 2020;
 - b) Applicant's subpoena addressed to the Department of Defence dated 4 March 2021; and
 - c) Respondents' subpoena addressed to the Department of Defence dated 26 March 2021;with the documents to be dealt with in accordance with the s 38B orders.
2. On or before 11 June 2021 the Commonwealth produce to the Court the documents referred to in order 1 above.



Uplift and inspection

3. Leave be granted to the solicitors for the parties to uplift documents produced by Person 32 (Packet S33), Person 18 (Packet S32), Optus (Packet S36 and S37), Telstra (Packet S30(2)), Person 1 (Packet S35), Person 6 (Packet S34), Emma Roberts-Smith (Packet TBC), Dr Lawford (Packet S25) and Dr Sonderegger (Packet S28) physically and/or electronically, for the purposes of inspection and copying, on the following conditions:
 - a) If original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed.
 - b) Documents not leave the custody of the solicitor, or counsel instructed by the solicitor.
 - c) Documents be returned to the Registry in the same condition, order and packaging as when uplifted.
 - d) Documents be returned promptly and, in any event, when an officer of the Registry so requests.

Balance of subpoenas / Notices to Produce

4. The following subpoenas and notices to produce be adjourned to 10:15am on 7 June 2021:
 - a) The Respondents' subpoena to the Inspector-General of the Australian Defence Force dated 22 December 2020;
 - b) The Respondents' subpoenas addressed to Optus dated 5 May 2021 and 25 May 2021;
 - c) The Respondents' subpoena addressed to Nationwide News Pty Limited dated 20 May 2021;
 - d) Notice to Produce from the Respondents addressed to the Applicant dated 19 April 2021;
 - e) Notice to Produce from the Respondents addressed to the Applicant dated 25 May 2021;



- f) Notice to Produce from the Applicant addressed to the Respondents dated 20 April 2021;
 - g) The Applicant's subpoena to Emma Roberts-Smith dated 20 May 2021.
5. The following subpoenas be adjourned to 10:15am on 9 June 2021:
- a) Applicant's subpoena addressed to the Department of Defence dated 4 March 2021; and
 - b) Respondents' subpoena addressed to the Department of Defence dated 26 March 2021.

Other Procedural Matters

6. On or before 5pm on Friday 4 June 2021, the Applicant is to:
- a) File and serve a further list of documents, itemising all documents listed in the Supplementary List of Documents dated 30 April 2021 (including the date and title of each document), save that photographs relating to the prosthetic leg may be described by category;
 - b) Produce to the Respondents copies of the metadata of the documents referred to at item 5 of the Supplementary List of Documents dated 30 April 2021 (with any Identifying Information redacted and replaced with pseudonyms), pursuant to the notice to produce to the Applicant dated 13 May 2021, save that to the extent photographs of the prosthetic leg were taken at the same event or time, the Applicant need only produce one sample of metadata for each event or time.
7. The parties be granted liberty to apply on short notice in the event that a case management hearing is required on Friday 4 June 2021.

Date that entry is stamped: 2 June 2021

Sia Lagos
Registrar



Schedule

No: NSD1485/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent NICK MCKENZIE

Third Respondent CHRIS MASTERS

Fourth Respondent DAVID WROE



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1485/2018

BEN ROBERTS-SMITH

Applicant

FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) and others named in
the schedule

Respondent

ORDER

JUDGE: JUSTICE BESANKO

DATE OF ORDER: 02 June 2021

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

1. Pursuant to s 17(4) of the *Federal Court of Australia Act 1976* (Cth) (the Act), the public be excluded from the hearing listed on 2 June 2021, other than by the following arrangement: any member of the public is able to join the hearing via the Microsoft Teams platform by contacting the Associate to Justice Besanko on 08 8219 1000 or by email to sa.hearings@fedcourt.gov.au.
2. Members of the public who attend the hearing via the method in paragraph 1 of these orders, do so on the condition that they are:
 - a. permitted to observe or listen to the hearing, but are in no circumstances permitted to participate in the hearing;
 - b. prohibited from making any recording or photographic record of the hearing, or any part thereof, by any means whatsoever; and
 - c. advised that any failure to observe the conditions in (a) and (b) may constitute a contempt of court and be punishable as such.
3. Pursuant to s 47B of the Act, counsel be permitted to deliver oral submissions by way of internet connection at the hearing.
4.
 - a. The subpoena to produce documents dated 12 April 2021 and addressed to Dr Parbodh Gogna be set aside.



- b. The Applicant's Amended Interlocutory application dated 19 May 2021 be otherwise dismissed.
5. The parties be heard on the order to be made with respect to paragraph 2 of the Notice to produce served by the Applicant on the Respondents on 20 April 2021.
6. The Court appoints Shane Bell of McGrathNicol as an independent expert in relation to matters concerning the Applicant's laptop, pursuant to rule 23.01 of the *Federal Court Rules 2011* (Cth) (Rules). Mr Bell is expressly permitted to be assisted by Mr Evan Vouglis in his capacity as an independent expert.
7. Mr Bell's appointment as an independent expert be subject to a requirement that Mr Bell provide an undertaking to the parties and the Court that he:
 - a. keep any information he acquires confidential, subject to a contrary order of the Court; and
 - b. not discuss the matter with any other employee of McGrathNicol, other than Mr Vouglis.
8. On or before 3pm on 2 June 2021, the Applicant provide his laptop (subject to the notice to produce dated 13 May 2021) and any associated passwords to Mr Bell at Level 12, 20 Martin Place, Sydney.
9. Mr Bell prepare a report answering the following questions:
 - a. Is any data on the Applicant's laptop recoverable?
 - b. When was the Applicant's laptop 'wiped'?
 - c. What method was employed to 'wipe' the Applicant's laptop?
10. On or before 5pm on 7 June 2021, Mr Bell provide to the parties and the Court a brief report on the questions at order 9, above. As required by rule 23.02 of the Rules, that Report must:
 - a. be signed by Mr Bell;
 - b. contain particulars of the training, study or experience by which Mr Bell has acquired specialist knowledge;
 - c. identify the questions at order 9, above;
 - d. set out each of the factual findings or assumptions upon which Mr Bell's opinion is based;
 - e. set out separately from the factual findings or assumptions each of Mr Bell's opinions;
 - f. set out the reasons for those opinions; and
 - g. contain an acknowledgement that the opinions are based wholly or substantially on the specialised knowledge referred to at order 10(b), above.
11. Mr Bell take all steps reasonably required to answer the questions at order 9, above. Expressly, this includes permitting Mr Bell to take an image of the Applicant's laptop.



12. Once Mr Bell has reached a conclusion to the question at order 9(a), above, Mr Bell take no further steps to inspect any data that is recoverable.
13. Mr Bell keep possession of the Applicant's laptop in safe custody until further order of the Court.
14. Mr Bell is to ensure that any image taken of the Applicant's laptop is stored in the manner approved by the Department of Defence as a result of McGrathNicol's appointment to the Defence Investigations Panel.
15. The Respondents pay Mr Bell's professional fees, but those costs be costs in the cause.
16. The Respondents be granted leave to file a further amended defence in the form served on the Applicant on 2 June 2021.
17. The question of the Applicant's costs thrown away in relation to the further amended defence be reserved until the conclusion of the trial.
18. Liberty to apply.

Date that entry is stamped: 2 June 2021

Sia Lagos
Registrar



Schedule

No: NSD1485/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent NICK MCKENZIE

Third Respondent CHRIS MASTERS

Fourth Respondent DAVID WROE

From: [Monica Allen](#)
To: [Peter Bartlett](#); [Dean Levitan](#); [Dougal Hurley](#); [Jeremy Forbes](#); [Dylan Dexter](#)
Cc: [Mark O'Brien](#); [Paul Svilans](#)
Subject: Ben Roberts-Smith VC MG v Fairfax Media Publications & Ors - Applicant's Response to Notice to Produce dated 25 May 2021
Date: Wednesday 2 June 2021 06:08:50 PM
Attachments: [image001.png](#)
[Investigation - Evan Robert Donaldson v1.1 \(1\).pdf](#)
[AF41950138.pdf](#)
[We need a few details to complete your trade-in \(41.8 KB\).msg](#)
[We're processing your order W849332099 \(82.7 KB\).msg](#)

Dear Colleagues

We refer to the Notice to Produce to the Applicant served on 25 May 2021 and respond as follows:

1. Nothing to produce.
2. Nothing to produce.
3. Nothing to produce.
4. The documents captured by this paragraph have been discovered in our client's Supplementary List of Documents.
5. Nothing to produce.
6. The documents captured by this paragraph have been discovered in our client's initial List of Documents and Supplementary List of Documents.
7. Nothing to produce.
8. Nothing to produce.
9. See **attached** document. We note that the Applicant has already provided a copy of the video of Person 17 in answer to a previous Notice to Produce.
10. Nothing to produce.
11. Nothing to produce.
12. Subject of discussion between the parties.
13. See **attached** documents.

Kind regards

Monica Allen

Senior Associate | Mark O'Brien Legal
Level 19, 68 Pitt Street, Sydney NSW 2000 Australia
T +61 2 9216 9815
E monica.allen@markobrienlegal.com.au
W www.markobrienlegal.com.au

Liability limited by a scheme approved under Professional Standards Legislation.

The information contained in this email message is intended for the named recipients only. It may contain privileged and/or confidential information. If you are not the intended recipient, any use, reliance upon it, disclosure or copying of this message is unauthorised. If you have received this email message or document in error, please delete the message and return the document as soon as possible.

From: [Dean Levitan](#)
To: [Paul Svilans](#)
Cc: [Mark O'Brien](#); [Peter Bartlett](#); [Monica Allen](#); [Jeremy Forbes](#)
Subject: Ben Roberts-Smith v Fairfax Media & Ors [ME-ME.FID4106433]
Date: Wednesday 2 June 2021 01:07:45 PM
Attachments: [2.6.21 - L to MOBL re subpoena to MinterEllison.PDF](#)
[2.6.21 - Notice to Produce to the Applicant re RS Group Proceeding.PDF](#)

Dear Colleagues

Please find **attached** correspondence and Notice to Produce.

Kind regards

—
Dean Levitan

Associate

T +61 3 8608 2152 M: 0478 164 484

dean.levitan@minterellison.com

MinterEllison Collins Arch 447 Collins Street Melbourne VIC 3000

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



MinterEllison

2 June 2021

By email: paul.svilans@markobrienlegal.com.au

Paul Svilans
Principal
Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney NSW 2000

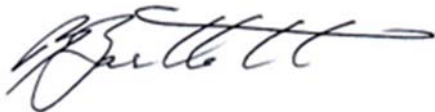
Dear Colleagues

Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors

We refer to the subpoena to produce documents to MinterEllison dated 2 June 2021. We note the subpoena has been filed in proceeding NSD 511 of 2021 (**RS Group Proceeding**).

In circumstances where the subpoena is returnable on 4 June 2021, we request that you immediately provide to us copies of all documents provided to the Court in the RS Group Proceeding, including but not limited to any affidavits, written submissions and a transcript of any oral submissions.

Yours faithfully
MinterEllison



Contact: Dean Levitan T: +61 3 8608 2152
Dean.Levitan@minterellison.com
Partner: Peter Bartlett T: +61 3 8608 2677
OUR REF: PLB 118



Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents and things before the Court at 9:30am on 9 June 2021:

1. all documents provided to the Court in Proceeding NSD511/2021, including but not limited to any affidavits and written submissions; and
2. a transcript of any hearing in Proceeding NSD511/2021.

Date: 2 June 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

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.

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/06/2021 3:49:13 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	NSD1485/2018
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:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 8/06/2021 9:00:51 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Interlocutory Application

No. NSD. 1485, 1486, 1487 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd and others

Respondents

To the Respondents

The Applicant applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place: Levels 17 - 22 Law Courts Building, Queens Square, Sydney NSW 2000

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

Prepared by (name of person/lawyer) Paul Svilans

Law firm (if applicable) Mark O'Brien Legal

Tel +61 2 9216 9830

Fax -

Email paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au

Address for service Level 19, 68 Pitt Street, Sydney, New South Wales, 2000
(include state and postcode)



Interlocutory orders sought

1. That the Applicant have leave to separate from the documents produced by Emma Roberts in response to subpoena to produce issued to her on 20 May 2021, being Packet 38, any documents for which a claim for privilege is made by the Applicant (the **Privileged Documents**);
2. That until further order, access to the Privileged Documents be restricted to the Applicant.
3. That the Applicant serve upon the Respondents an Objection Schedule in relation to the Privileged Documents;
4. That other than the Privileged Documents, the parties have general access to Packet 38.
5. The Applicant be granted leave and a release from the implied undertaking to the extent necessary to refer to and rely upon the documents contained in Packet 38 in proceedings number NSD 511 of 2021.

Service on the Respondents

It is intended to serve this application on the Respondents.

Date: 4 June 2021

A handwritten signature in black ink, appearing to read "Paul Svilans", is written over a horizontal line.

Signed by Paul Svilans
Lawyer for the Applicant

7 June 2021

The Registrar
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

Dear Registrar

Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018

I received a subpoena that requires me to produce documents by 9 June 2021.
The subpoena listed 13 categories. There is one document which I think is subject to legal professional privilege by a third party and that is contained in an envelope.

Category 1 – documents enclosed.

Category 2 – documents enclosed. Some of these also fall within category 1.

Category 3 – documents enclosed, USB with video enclosed.

Category 4 – nothing to produce.

Category 5 – documents enclosed.

Category 6 – nothing to produce.

Category 7 – nothing to produce.

Category 8 – document enclosed.

Category 9 – nothing to produce.

Category 10 – produced with category 2.

Category 11 – document enclosed.

Category 12 – nothing to produce.

Category 13 – USB enclosed.

Kind regards,

A handwritten signature in black ink, appearing to be 'Danielle Scott', written over a horizontal line.

Danielle Scott
2 Whelk Close
Trinity Beach QLD 4879

From: [Dylan Dexter](#)
To: [Mark O'Brien](#); [Paul Svilans](#); [Monica Allen](#)
Cc: [Peter Bartlett](#); [Dean Levitan](#); [Jeremy Forbes](#); [Dougal Hurley](#)
Subject: NSD 1485, 1486, 1487 of 2018 Ben Roberts-Smith v Fairfax Media Publications & Ors - Notice to Produce [ME-ME.FID4106433]
Date: Thursday 10 June 2021 11:57:45 AM
Attachments: [10.6.21 - Notice to Produce to the Applicant.PDF](#)

Dear Colleagues
Please see **attached**, by way of service, notice to produce.
Kind regards
Dylan

Dylan Dexter
Lawyer
T +61 3 8608 2971
dylan.dexter@minterellison.com
MinterEllison Collins Arch 447 Collins Street Melbourne VIC 3000
minterellison.com Follow us on [LinkedIn](#) and [Twitter](#)



Notice to produce

No. NSD1485, 1486 and 1487 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Ltd & Ors

Respondents

To the Applicant:

The Respondents require you to produce the following documents and things before the Court at 10:15am on 11 June 2021:

1. One copy of the document entitled "108.avi" referred to in the email from the Applicant to Person 29 dated 29 June 2019, a copy of which is attached to this Notice.

Date: 10 June 2021



Signed by Peter Bartlett
Lawyer for the Respondent

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.

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Ltd, Nick McKenzie, Chris Master and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Dean Levitan, Lawyer for the Respondents
Law firm (if applicable)	MinterEllison
Tel	03 8608 2152
Fax	-
Email	dean.levitan@minterellison.com
Address for service (include state and postcode)	Collins Arch, 447 Collins St Melbourne, VIC 3000

Subject **Ben Roberts-Smith has shared a video with you using Dropbox**
From Ben Roberts-Smith <ben@rsgrouppaustralia.com>
To **Person 29**
Date 2019-06-29 11:41

roundcube 

Hi,

Here's a link to "108.avi" in my Dropbox:

<https://www.dropbox.com/s/5151j2lnp4zdfbh/108.avi?dl=0>

Regards

BRS

Notice to Produce

No. NSD. 1485 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd and others

Respondents

To the Respondents

The Applicant requires you to produce the following documents or things before the Court at 9.30am on 14 July 2021:


1. One copy of any communication/s passing, prior to publication of the fifth matter complained of, between Person 17 and any of the Respondents referring to and/or concerning:
 - a) any of the matters particularised in paragraphs 132–138 of the Further Amended Defence; and/or
 - b) any of the matters referred to in Person 17's Outline of Evidence as served in these proceedings;
2. One copy of any note or record of any conversation/s taking place prior to publication of the fifth matter complained of between Person 17 and:
 - a) any servant or agent of the Respondents (other than a legal practitioner); and/or
 - b) the Second, Third or Fourth Respondent

referring to and/or concerning:

- a) any of the matters particularised in paragraphs 132–138 of the Further Amended Defence; and/or
- b) any of the matters referred to in Person 17's Outline of Evidence as served in these proceedings;

Filed on behalf of (name & role of party)	<u>Ben Roberts-Smith VC MG</u>		
Prepared by (name of person/lawyer)	<u>Monica Allen</u>		
Law firm (if applicable)	<u>Mark O'Brien Legal</u>		
Tel	<u>+ 61 2 9216 9898</u>	Fax	<u>-</u>
Email	<u>paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au</u>		
Address for service (include state and postcode)	<u>Level 19, 68 Pitt Street, Sydney, New South Wales, 2000</u>		

Date: 1 July 2021



Signed by Paul Svilans
Lawyer for the Applicant

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.

Bank of Queensland Limited ABN 32 009 656 740
100 Myring Tce, Newstead QLD
Branch Accounting Office

000055
DATE 17, 07, 2021

PAY TO THE ORDER OF [REDACTED] or bearer

AMOUNT \$36.00

THIRTY SIX DOLLARS & 20 CENTS

HEDRICK FAMILY TRUST TRADING AS
SS CONSULTING GROUP
ABN 47 209 551 874

#000055 #124-9541 20715177#

Our Ref: MOB283

13 July 2021

P17

Dear Madam

Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018

We act for the Applicant in the above matter.

We enclose, by way of service, Subpoena to Produce as filed in the Federal Court of Australia.

Yours faithfully



Paul Svillans

Principal

T +61 2 9216 9830

M +61 410 687 900

E paul.svillans@markcobrienlegal.com.au

www.markcobrienlegal.com.au

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NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/07/2021 5:29:45 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
File Number:	NSD1485/2018
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:	21/07/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 13/07/2021 9:46:48 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

THE LAST DATE FOR SERVICE OF THIS SUBPOENA IS 13 JULY 2021.



Declaration by addressee (subpoena recipient)

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐ **All copied documents**

All of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

☐ **Some original documents**

Some or all of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address:

Date:

Signed by
 Addressee



**Subpoena – Declaration by addressee
Notice to addressee**

No. 1485 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others

Respondents

The addressee is the person to whom the subpoena is addressed, and who will be the recipient of the 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 complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, a Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

Filed on behalf of (name & role of party) Ben Roberts-Smith VC MG, Applicant
Prepared by (name of person/lawyer) Monica Allen
Law firm (if applicable) Mark O'Brien Legal
Tel +61 2 9216 9696 Fax _____
Email paul.evillans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au
Address for service Level 19, 68 Pitt Street, Sydney NSW 2000
(include state and postcode)

[Version 2 form approved 02/05/2019]



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

Place: c/- Mark O'Brien Legal, Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

Email: monica.allen@markobrienlegal.com.au

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 the 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: 21 July 2021

Time: 9.30am

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 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

Form 43B
Rule 24.13(1)(b)



Subpoena to produce documents

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG
Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others named in the schedule
Respondents

To:

P17

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.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 13 July 2021 (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, Applicant
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9898
Fax	-
Email	paul.tyler@markobrienlegal.com.au , monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney NSW 2000

[Version 3 form approved 3/09/2014]



Schedule of documents

The documents and things you must produce are as follows:

1. All communications passing between yourself and Ben Roberts-Smith VC MG (the **Applicant**), including but not limited to notes, recordings, emails, text messages, Telegram messages, WhatsApp messages, Facebook or other social media messages, and other documents.
2. All communications passing between yourself and any other person which refer to the **Applicant** and/or your relationship with the Applicant, including but not limited to notes, recordings, emails, text messages, Telegram messages, WhatsApp messages, Facebook or other social media messages, statements and other documents.



3. 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 the 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 the 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, the 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 the 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.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (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

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.

**Schedule**

No. NSD. 1485 of 2018

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: 9 July 2021

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/07/2021 5:29:45 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
File Number:	NSD1485/2018
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:	21/07/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 13/07/2021 9:46:37 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

THE LAST DATE FOR SERVICE OF THIS SUBPOENA IS 13 JULY 2021.



Form 44
Rule 24.21

Subpoena – Declaration by addressee Notice to addressee

No. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others

Respondents

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the 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 complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, a Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Applicant
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9898
Fax	
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney NSW 2000

**Declaration by addressee (subpoena recipient)**

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐**All copied documents**

All of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

☐**Some original documents**

Some or all of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address:

Date:

Signed by [Name of addressee]
Addressee



Subpoena to produce documents

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others named in the schedule
Respondents

To: The Proper Officer
South Side Medical



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.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 13 July 2021 (*See Note 1*)

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:

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Applicant		
Prepared by (name of person/lawyer)	Mark O'Brien		
Law firm (if applicable)	Mark O'Brien Legal		
Tel	+61 2 9216 9898	Fax	-
Email	mark.obrien@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au		
Address for service (include state and postcode)	Level 19, 68 Pitt Street Sydney NSW 2000		



Place: c/- Mark O'Brien Legal, Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

Email: mark.obrien@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au

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 the 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: 21 July 2021

Time: 9.30am

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 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. One copy of all documents referring to and/or evidencing treatment sought by and/or given to P17 [REDACTED] during the period 1 January 2018 to 31 December 2018, such documents including but not limited to treatment notes, medical records, reports, opinions, referrals and any other documents.



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 the 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 the 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, the 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 the 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.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (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

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.

**Schedule**

No. NSD. 1485 of 2018

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: 9 July 2021

Form 38
Rule 20.17(1)

Supplementary List of documents

No. NSD1485 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited and others

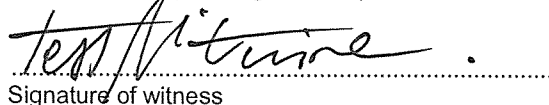
Respondents

Pursuant to an order for discovery made on 2 August 2019, the Respondents provides this supplementary list of documents and affidavits:

Affidavit of the First Respondent

On 14 July 2021, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the First Respondent and I am authorised to make this affidavit on behalf of the First Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the Further Updated List of Documents dated 8 June 2021, the Supplementary List of Documents dated 28 April 2021 and in this supplementary list of documents.
4. The documents set out in part 1 are in the control of the First Respondent and I do not claim privilege from production for any of these documents.

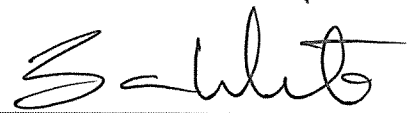

Signature of witness


Signature of deponent

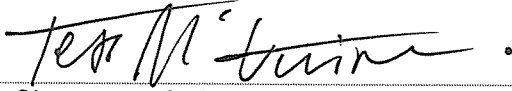
Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Collins Arch, 447 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Affirmed by the deponent
 at Melbourne in the State of Victoria
 on 14 July 2021
 Before me:

)
)
)
)
)



Signature of deponent



Signature of witness


Tess M^cGUIRE
 of 447 Collins Street, Melbourne
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)

Affidavit of the Second Respondent

On 15.7.21, I NICK MCKENZIE, affirm and say:


1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the Further Updated List of Documents dated 8 June 2021, the Supplementary List of Documents dated 28 April 2021 and in this supplementary list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.

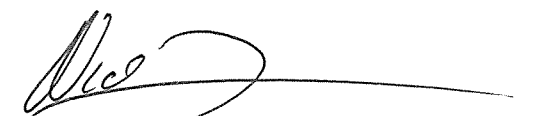
Affirmed by the deponent
at Melbourne in the State of Victoria
on 15.7.21
Before me:


Signature of witness

)
)
)
)
)
Signature of deponent
15.7.21

Tess MCGUIRE
of 447 Collins Street, Melbourne
An Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)


Signature of witness


Signature of deponent 15.7.21

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Collins Arch, 447 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Inspection of documents

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 15 July 2021

A handwritten signature in black ink, appearing to read 'P. Bartlett', written over a horizontal line.

Signed by Peter Bartlett
MinterEllison
Lawyer for the Respondents

Part 1 - Documents in the control of the First and Second Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
S1.	Screenshot, text message from Nick McKenzie to member of the Australian Federal Police	1	12 March 2021
S2.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	4	7 April 2021
S3.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	12 April 2021
S4.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	5	13 April 2021
S5.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	24 May 2021
S6.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	28 June 2021

Tessa McKenzie
 of 447 Collins Street, Melbourne
 An Australian Legal Practitioner
 within the meaning of the Legal
 Profession Uniform Law (Victoria)

Nick McKenzie
 15.7.21

Ben Little

1. The first part of the paper discusses the importance of the study of the history of the world, and the role of the historian in the present day. It is argued that the study of history is essential for a full understanding of the world, and that the historian has a duty to present the past as it really was, without bias or prejudice.

2. The second part of the paper discusses the methods of historical research, and the importance of the use of primary sources. It is argued that the historian must use the most reliable sources available, and that he must be able to distinguish between the facts and the opinions of the writers of the past.

3. The third part of the paper discusses the importance of the study of the history of the world, and the role of the historian in the present day. It is argued that the study of history is essential for a full understanding of the world, and that the historian has a duty to present the past as it really was, without bias or prejudice.

4:14



< 261



Anita >

iMessage
Fri, 12 Mar, 5:16 pm

Dear Anita
My name is Nick McKenzie. I'm known to the AFP. My lawyers and I wish to make a formal confidential verbal complaint about various sensitive matters relating to a POI. What is the best way to arrange a meeting in Canberra?
Thanks
Nick McKenzie

Wed, 7 Apr, 12:25 pm

Hi Anita
I've left the hearing and am back on the phone. Nick

Wed, 7 Apr, 1:32 pm

Hi Anita,
I'm speaking to the lawyers about how best I hand the potentially classified material to the AFP. Preliminary advice is I will return it with a short statement explaining my interaction with it, including



iMessage



4:14



< 261



Anita >

Wed, 7 Apr, 1:32 pm

Hi Anita,
I'm speaking to the lawyers about
how best I hand the potentially
classified material to the AFP.
Preliminary advice is I will return it
with a short statement explaining
my interaction with it, including
my reporting of its existence to
police. Can I do this in Canberra
next week?
Nick

Yes no problem. I'm off Monday
but available any other day

Great, thanks

Mon, 12 Apr, 11:29 am

Hi Nick, I'm on leave today. Back
tomorrow. I'll give you a call then

Ok

Tue, 13 Apr, 1:14 pm

Dear Anita

iMessage



4:14



< 261



Anita >

Dear Anita
My lawyers spoke to AFP legal
this morning.
AFP legal have said that I should
write to you and notify you that I
have been advised by my lawyers
not to hand the files back at this
stage because you have
discovery obligations in the
defamation proceedings. I will
give them to my lawyers and they
will store them in their secure
room and safe used for storing
classified material.
Nick

Sorry, withdraw last message.
Here is message
Dear Anita
My lawyers spoke to AFP legal
this morning.
AFP legal have said that I should
write to you and notify you that I
have been advised by my lawyers
not to hand the files back at this
stage because I have discovery
obligations in the defamation
proceedings. I will give them to



iMessage



4:14



< 261



Anita >

this morning.

AFP legal have said that I should write to you and notify you that I have been advised by my lawyers not to hand the files back at this stage because I have discovery obligations in the defamation proceedings. I will give them to my lawyers and they will store them in their secure room and safe used for storing classified material. They are in continuing discussions with AFP legal.
Nick

Noted, thanks Nick

Anita

Lawyers now tell me not to put them in lawyers secure room but keep them on me (I presume to avoid unintended 'transmission' of material). I have locked them in a cupboard in my office awaiting further advice.
Nick

Received, thank you



iMessage



4:14



Anita >

Mon, 24 May, 9:13 am

Hi Anita

I am giving over to the AGS at the commonwealth law offices today the material on the USBs as per arrangements organised by my lawyers/court.

Nick

Ok thank you

Monday 9:01 pm

Hi Anita

I just wanted to confirm I do not possess any USB material. The commonwealth law office (AGS) has given the USB material I gave the AGS back to our lawyers as per the court discovery NSI regime. Mr Roberts-Smith's lawyers have the same copies I provided by the AGS (although he never produced many of the classified docs etc on his USBs and has given no explanation what he did with them).

Nick



iMessage



4:15



< 261



Anita >

the material on the USBs as per
arrangements organised by my
lawyers/court.
Nick

Ok thank you

Monday 9:01 pm

Hi Anita
I just wanted to confirm I do not
possess any USB material. The
commonwealth law office (AGS)
has given the USB material I gave
the AGS back to our lawyers as
per the court discovery NSI
regime. Mr Roberts-Smith's
lawyers have the same copies I
provided by the AGS (although he
never produced many of the
classified docs etc on his USBs
and has given no explanation
what he did with them).
Nick

Delivered

Thanks Nick. I'll pass this on to
the relevant people.



iMessage



NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/07/2021 6:31:38 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	NSD1485/2018
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:	Case Management Hearing
Time and date for hearing:	23/07/2021, 11:30 AM
Place:	Court Room 18D, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney; By Web Conference, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 22/07/2021 9:04:27 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Interlocutory application

No. NSD1485/2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited and others

Respondents

To the Applicant

The Respondents applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place: Federal Court of Australia, Law Courts Building, 184 Phillip Street, Sydney, NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

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

Filed on behalf of	Fairfax Media Publications Pty Limited & Ors
Prepared by	Peter Bartlett
Law firm	MinterEllison
Tel	+61 3 8608 2037
Fax	+61 3 8608 1088
Email	Peter.Bartlett@minterellison.com
Address for service	447 Collins Street, Melbourne VIC 3000

**Interlocutory orders sought**

1. The Applicant's notice to produce addressed to the Respondents dated 1 July 2021 be set aside.
2. The Applicant's notice to produce addressed to the Respondents dated 2 July 2021 be set aside.
3. The Applicant's subpoena dated 13 July 2021 described in Confidential Annexure A to this Interlocutory Application, be set aside.
4. Costs.

Service on the Applicant

It is intended to serve this application on the Applicant.

Date: 20 July 2021

A handwritten signature in black ink, appearing to read "P Bartlett", is written over a horizontal line.

Signed by Peter Bartlett
Lawyer for the Respondents



No. NSD1485/2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited and others

Respondents

**CONFIDENTIAL ANNEXURE A TO THE INTERLOCUTORY APPLICATION FILED ON 20
JULY 2021**

Subpoena issued at the request of the Applicant to South Side Medical dated 13 July 2021.



NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/07/2021 5:29:45 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
File Number:	NSD1485/2018
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:	21/07/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



Sia Lagos

Dated: 13/07/2021 9:46:37 AM AEST

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

THE LAST DATE FOR SERVICE OF THIS SUBPOENA IS 13 JULY 2021.



Form 44
Rule 24.21

Subpoena – Declaration by addressee Notice to addressee

No. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others

Respondents

The **addressee** is the person to whom the subpoena is addressed, and who will be the recipient of the 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 complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.

If you declare that the material you produce is copies of documents, a Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.

If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Applicant
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9898
Fax	
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney NSW 2000

**Declaration by addressee (subpoena recipient)**

[tick the relevant option below, (provide your address as appropriate), sign and date]

☐**All copied documents**

All of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.

☐**Some original documents**

Some or all of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address:

Date:

Signed by [Name of addressee]
Addressee



Subpoena to produce documents

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd ACN 003 357 720 and others named in the schedule
Respondents

To: The Proper Officer
South Side Medical



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.

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 13 July 2021 (*See Note 1*)

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:

Filed on behalf of (name & role of party)	Ben Roberts-Smith VC MG, Applicant		
Prepared by (name of person/lawyer)	Mark O'Brien		
Law firm (if applicable)	Mark O'Brien Legal		
Tel	+61 2 9216 9898	Fax	-
Email	mark.obrien@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au		
Address for service (include state and postcode)	Level 19, 68 Pitt Street Sydney NSW 2000		



Place: c/- Mark O'Brien Legal, Level 19, 68 Pitt Street, Sydney, New South Wales, 2000

Email: mark.obrien@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au

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 the 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: 21 July 2021

Time: 9.30am

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 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. One copy of all documents referring to and/or evidencing treatment sought by and/or given to P17 [REDACTED] during the period 1 January 2018 to 31 December 2018, such documents including but not limited to treatment notes, medical records, reports, opinions, referrals and any other documents.



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 the 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 the 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, the 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 the 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.
- 9A. The copy of a document may be:
- (a) a photocopy; or
 - (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

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.

**Schedule**

No. NSD. 1485 of 2018

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: 9 July 2021

RECEIPT / COVER SHEET FOR SUBPOENAED DOCUMENTS



Matter:

File No: NSD 1485/2018

BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) & ORS

Date the Subpoena issued: 25 May 2021

Date material received in the Registry: 13 August 2021

Documents produced by: Danielle Scott

Description of documents: 1 Envelope – Open Packet 1

Contact Details:

Name of person producing documents:

Email Address:

Contact No:

At conclusion of the matter:

- ☐ Securely destroy the documents
- ☐ Pick up from the registry

Officer's Name/ Initial: MBC

Court "S" number (Packet No): S56



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1485/2018

BEN ROBERTS-SMITH

Applicant

FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720)

First Respondent

NICK MCKENZIE

Second Respondent

CHRIS MASTERS

Third Respondent

DAVID WROE

Fourth Respondent

ORDER

Registrar: REGISTRAR CRIDLAND

Date of Order: 15 September 2021

Where made: Sydney

THE COURT ORDERS THAT:

Access to Packet S61

1. Leave be granted to the parties to inspect and copy in the Registry, the documents produced in accordance with the subpoena addressed to Emma Roberts (Packet S61).
2. Leave be also granted to the solicitors for the parties to uplift these documents, physically and/or electronically, for the purposes of inspection and copying, on the following conditions:
 - a) If original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed.
 - b) Documents not leave the custody of the solicitor, or counsel instructed by the solicitor.



- c) Documents be returned to the Registry in the same condition, order and packaging as when uplifted.
 - d) Documents be returned promptly and, in any event, when an officer of the Registry so requests.
3. On completion of this matter, the Registrar may return to the addressee of the subpoena any document without giving the issuing party any further notice.

First Access to Packet S62

4. Leave be granted to Respondents to have first access to inspect and copy in the Registry, the documents produced in accordance with the subpoena addressed to Person 17 (Packet S62) for seven days.
5. Leave be also granted to the solicitors for the Respondents to uplift these documents, physically and/or electronically, for the purposes of inspection and copying, on the following conditions:
- a) If original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed.
 - b) Documents not leave the custody of the solicitor, or counsel instructed by the solicitor.
 - c) Documents be returned to the Registry in the same condition, order and packaging as when uplifted.
 - d) Documents be returned promptly and, in any event, when an officer of the Registry so requests.
6. On completion of this matter, the Registrar may return to the addressee of the subpoena any document without giving the issuing party any further notice.

Subpoenas addressed to the Department of Defence issued at the request of the Applicant

7. The subpoenas addressed to the Department of Defence dated 24 August 2021 issued by the Court at the request of the Applicant be adjourned to the Return of Subpoena List before a Registrar on Wednesday, 6 October 2021 at Law Courts Building, Queens Square, Sydney.



Subpoena addressed to Person 17

8. The subpoena addressed to Person 17 dated 13 July 2021 issued by the Court at the request of the Applicant be adjourned to the Return of Subpoena List before a Registrar on Wednesday, 22 September 2021 at Law Courts Building, Queens Square, Sydney.

Subpoena addressed to Danielle Scott

9. In respect of any objection to access on the grounds of privilege to the documents produced in answer to the subpoena addressed to Danielle Scott, an Objection Schedule in accordance with the Practice Note GPN-SUBP is to be filed and served by 9.00 am on Wednesday, 22 September 2021.

Subpoena addressed to the Department of Defence issued at the request of the Respondents

10. In relation to the subpoena to produce addressed to the Secretary, Department of Defence issued on 5 August 2021 at the request of the Respondents (**Defence subpoena**):
- a) Subject to the availability of appropriate Court staff, the Commonwealth is to produce to the Court a copy of all documents responsive to the Defence subpoena as soon as practicable following the date of this order and by no later than 29 September 2021, with the documents to be dealt with as Sensitive Documents in accordance with the s 38B Orders.
 - b) The Commonwealth is to provide to the parties all documents responsive to the Defence subpoena as soon as practicable and by no later than 29 September 2021.

Date that entry is stamped: 15 September 2021

Sia Lagos
Registrar



Subsection 35A (5) of the *Federal Court of Australia Act 1976* (the *Act*) provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 2.02(3) of the *Federal Court (Bankruptcy) Rules 2016* provides that, subject to any direction by the Court to the contrary, an application under subsection 35A(5) of the Act for review of the exercise of a power of the Court by a Registrar under subsection 35A(1) of the Act must be made by filing an interim application in accordance with Form B3 within 21 days after the day on which the power was exercised.

Form 59

Rule 29.02(1)

No. NSD1485/2018

NSD1486/2018

NSD1487/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited and others

Respondents

Objection Schedule in relation to documents produced pursuant to subpoena to produce documents addressed to Person 17 dated 14 July 2021

The Respondents claim legal professional privilege in relation to the following documents produced in response to the subpoena to produce documents addressed to Person 17 dated 14 July 2021 (Packet S62)

	Description of document	Basis of the objection
Documents in PDF bundle entitled "Attachment 1"		
1.	Letter from MinterEllison to Person 17 dated 18 September 2018 attaching document 1A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
1A.	Attachment to document 1: Memorandum regarding Person 17 by Sandy Dawson SC and Lyndelle Barnett, Counsel for the Respondents	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
2.	Email from Person 17 to Dean Levitan (MinterEllison) dated 29	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	March 2019 attaching document 2A	Respondents obtaining information or evidence for use in these proceedings.
2A.	Attachment to document 2: Draft statement of Person 17	Litigation privilege: The document was prepared for the dominant purpose of Person 17 providing the Respondents with information and evidence for use in these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
3.	Email from Dean Levitan (MinterEllison) to Person 17 dated 8 April 2019 attaching documents 3A and 3B	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
3A.	Draft Outline of Evidence of Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
3B.	List of documents required from Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
Documents in PDF bundle entitled "Attachment 2"		
4.	Email from Person 17 to Dean Levitan (MinterEllison) dated 1 May 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
5.	Email from Dean Levitan (MinterEllison) to Person 17 dated 4 May 2019 attaching document 5A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
5A.	Draft Outline of Evidence of Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
6.	Email from Dean Levitan (MinterEllison) to Person 17 dated 10 May 2019 attaching document 6A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
6A.	Draft Outline of Evidence of Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
7.	Email from Dean Levitan (MinterEllison) to Person 17 dated	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	17 May 2019, attaching document 7A	Respondents obtaining information or evidence for use in these proceedings.
7A.	Draft Outline of Evidence of Person 17 prepared by MinterEllison attaching document 7A	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
8.	Email from Person 17 to Dean Levitan (MinterEllison) dated 22 May 2019 attaching document 8A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
8A.	Draft Outline of Evidence of Person 17	Litigation privilege: The document was prepared for the dominant purpose of Person 17 providing the Respondents with information and evidence for use in these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
9.	Email from Person 17 to Dean Levitan (MinterEllison) dated 23 May 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
10.	Email from Dean Levitan (MinterEllison) to Person 17 dated 24 May 2019 attaching document 10A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
10A.	Draft Outline of Evidence of Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
11.	Email from Person 17 to Dean Levitan (MinterEllison) dated 24 May 2019 attaching document 11A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
11A.	Draft Outline of Evidence of Person 17	Litigation privilege: The document was prepared for the dominant purpose of Person 17 providing the Respondents with information and evidence for use in these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
12.	Email from Dean Levitan (MinterEllison) to Person 17 dated 28 May 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
13.	Email chain between Dean Levitan (MinterEllison) and Person 17, Nick McKenzie, Peter Bartlett (MinterEllison) dated 3 July 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
14.	Email from Person 17 to Dean Levitan (MinterEllison), Peter	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	Bartlett (MinterEllison), Lyndelle Barnett and Sandy Dawson SC dated 18 August 2019	Respondents being provided with professional legal services relating to these proceedings.
15.	Email from Dean Levitan (MinterEllison) to Person 17 dated 20 August 2019, attaching document 15A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
15A.	Draft letter prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 for that same dominant purpose.
Documents in PDF bundle entitled "Attachment 3"		
16.	Email from Person 17 to Dean Levitan (MinterEllison) dated 9 September 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
17.	Email from Person 17 to Dean Levitan (MinterEllison) dated 18 September 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
18.	Email chain between Person 17 and Dean Levitan (MinterEllison) dated 26 September 2019 – 25 September 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
19.	Email from Dean Levitan (MinterEllison) to Person 17 and Nick McKenzie dated 2 October 2019, attaching document 19A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
19A.	Agenda for teleconference between MinterEllison and Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
20.	Email from Person 17 to Dean Levitan (MinterEllison) dated 3 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
21.	Email from Dean Levitan (MinterEllison) to Person 17 dated 3 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
22.	Email from Dean Levitan (MinterEllison) to Person 17 and Nick McKenzie dated 23 October 2019, attaching documents 22A, 22B, 22C, 22D and 22E	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.

22A.	Agenda for teleconference between MinterEllison and Person 17 prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
22B.	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
22C.	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
22D.	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
22E.	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
23.	Email from Person 17 to Dean Levitan (MinterEllison) and Nick McKenzie dated 23 October 2019, attaching document 23A	Litigation privilege: The document comprises a confidential made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
23A.	Document prepared by MinterEllison with Person 17's additions	Litigation privilege: The document was prepared for the dominant purpose of Person 17 providing the Respondents with information and evidence for use in these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
Documents in PDF bundle entitled "Attachment 4"		
24.	Email from Person 17 to Dean Levitan (MinterEllison) dated 29 October 2019, attaching document 24A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
24A.	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of Person 17 providing the Respondents with information and evidence for use in these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
25.	Email from Dean Levitan (MinterEllison) to Person 17 dated 29 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.

26.	Email from Person 17 to Dean Levitan (MinterEllison) and Nick McKenzie dated 30 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
27.	Email from Dean Levitan (MinterEllison) to Person 17 and Nick McKenzie dated 31 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
28.	Email from Dean Levitan (MinterEllison) to Person 17 dated 28 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
29.	Email from Dean Levitan (MinterEllison) to Person 17 dated 7 November 2019, attaching document 29A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
29A.	Agenda for teleconferences between MinterEllison and Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
30.	Email from Dean Levitan (MinterEllison) to Person 17 and Nick McKenzie dated 4 December 2019, attaching document 30A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
30A.	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
31.	Email from Person 17 to Dean Levitan (MinterEllison) dated 9 December 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
32.	Email from Dean Levitan (MinterEllison) to Person 17 dated 9 December 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
33.	Email from Person 17 to Dean Levitan (MinterEllison) and Anna Davyskib (MinterEllison) dated 30 January 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
34.	Email from Dean Levitan (MinterEllison) to Person 17 and Anna Davyskib (MinterEllison) dated 3 February 2020, attaching document 34A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

34A.	Transcript of proceedings – Ben Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors dated 16 November 2018	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
Documents in PDF bundle entitled “Attachment 5”		
35.	Email from Anna Davyskib (MinterEllison) to Person 17 and Dean Levitan dated 17 February 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
36.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 26 February 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
37.	Email from Anna Davyskib (MinterEllison) to Person 17 and Dean Levitan (MinterEllison) dated 26 February 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
38.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 27 February 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
39.	Email from Anna Davyskib (MinterEllison) to Person 17 and Dean Levitan (MinterEllison) dated 28 February 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
40.	Email from Person 17 to Dean Levitan (MinterEllison), Anna Davyskib (MinterEllison) and Nick McKenzie dated 5 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
41.	Email from Anna Davyskib (MinterEllison) to Person 17, Dean Levitan (MinterEllison) and Nick McKenzie dated 5 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
42.	Email from Anna Davyskib (MinterEllison) to Person 17, Dean Levitan (MinterEllison) and Nick McKenzie dated 4 March 2020, attaching document 42A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
42A.	Agenda for teleconference between MinterEllison and Person 17 dated 5 March 2020	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.

43.	Email from Person 17 to Anna Davyskib (MinterEllison), Dean Levitan (MinterEllison), and Nick McKenzie dated 5 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
44.	Email from Anna Davyskib (MinterEllison) to Person 17, Dean Levitan (MinterEllison) and Nick McKenzie dated 5 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
45.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 11 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
46.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 24 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
47.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 24 March 2020, attaching document 47A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
47A.	Applicant's Subpoena to produce documents addressed to Person 17 dated 4 March 2020	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
48.	Email from Anna Davyskib (MinterEllison) to Person 17 and Dean Levitan (MinterEllison) dated 19 March 2020, attaching documents 48A, 48B and 48C	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
48A	Letter from Mark O'Brien (MOBL) to Person 17 dated 8 August 2018	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
48B	Draft notice to admit prepared by MinterEllison dated March 2020	Litigation privilege: The document was prepared for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
48C	Applicant's Subpoena to produce documents addressed to	Litigation privilege: The document forms part of a confidential communication made for the dominant purpose

	Commissioner of Police dated 4 March 2020	<p>of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
49.	Email chain between Person 17, Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 19 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
50.	Email chain between Person 17, Dean Levitan (MinterEllison) and Anna Davyskib (MinterEllison) dated 19 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
51.	Email chain between Anna Davyskib (MinterEllison), Person 17, and Dean Levitan (MinterEllison) dated 19 March 2020 – 26 March 2020, attaching document 51A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
51A	Material produced by the Queensland Police Service to the Court on 24 March 2020 in response to subpoena dated 4 March 2020	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
52.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 26 March 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
53.	Email chain between Person 17, Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 31 March 2020 – 30 March 2020, attaching document 53A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
53A	Document prepared by Person 17 for MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents' solicitor for that same dominant purpose.
54.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 3 April 2020, attaching document 54A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
54A	Hand written notes of Person 17	Litigation privilege: The document forms part of a confidential communication to Person 17 made for the

		<p>dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
55.	Email from Person 17 to Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 3 April 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
Documents in PDF bundle entitled "Attachment 6"		
56.	Email from Anna Davyskib (MinterEllison) to Person 17 and Dean Levitan (MinterEllison) dated 9 April 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
57.	Email chain between Person 17, Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 21 May 2020 – 29 April 2020, attaching document 57A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
57A.	Text messages between Sue Newton (Wakerley) and Person 17 dated 10 August 2018 – 4 March 2019	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
58.	Email from Person 17 to Dean Levitan (MinterEllison), Anna Davyskib (MinterEllison) and Nick McKenzie dated 18 June 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings..
59.	Email chain between Dean Levitan, Person 17, Anna Davyskib (MinterEllison) and Nick McKenzie dated 18 June 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
60.	Email from Anna Davyskib (MinterEllison) to Person 17, Nick McKenzie and Dean Levitan (MinterEllison) dated 8 July 2020, attaching documents 60A and 60B	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
60A.	Agenda for teleconference between MinterEllison and Person 17 dated 9 July 2020	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
60B	Document prepared by MinterEllison about key dates	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings,

	concerning the Applicant and Person 17	and was communicated to Person 17 on a confidential basis for that same dominant purpose.
61.	Email from Nick McKenzie to Person 17, Anna Davyskib (MinterEllison) and Dean Levitan (MinterEllison) dated 15 July 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
62.	Email from Dean Levitan (MinterEllison) to Nick McKenzie, Person 17, and Anna Davyskib (MinterEllison) dated 17 July 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
63.	Email from Nick McKenzie to Person 17, and Dean Levitan (MinterEllison) dated 24 July 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
64.	Email from Person 17 to Dean Levitan (MinterEllison) and Nick McKenzie dated 28 July 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
65.	Email from Person 17 to Dean Levitan (MinterEllison) and Nick McKenzie dated 11 August 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
66.	Email chain between Person 17, Nick McKenzie and Dean Levitan (MinterEllison) dated 12 August 2020 – 11 August 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
67.	Email chain between Person 17, Nick McKenzie and Dean Levitan (MinterEllison) dated 12 August 2020 – 11 August 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
68.	Email chain between Person 17, Nick McKenzie and Dean Levitan (MinterEllison) dated 12 August 2020 – 11 August 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
69.	Email chain between Person 17, Nick McKenzie and Dean Levitan (MinterEllison) dated 12 August 2020 – 11 August 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
70.	Email from Person 17 to Dean Levitan (MinterEllison) Lyndelle Barnett of counsel, Monique Cowden (Person 17's legal representative) of counsel and Nick McKenzie dated 17 September 2020, attaching documents 70A, 70B and 70C	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
70A	'Covert war crimes inquiry compromised by former AFP chief	Litigation privilege: The document forms part of a confidential communication made for the dominant purpose

	Mick Keelty' article, <i>The Age</i> , by Nick McKenzie and Chris Masters dated 16 August 2020	<p>of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
70B	Draft Letter of Complaint to AFP / ACLEI prepared by Person 17	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
70C	Letter to AFP from Person 17 dated 21 August 2019	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
71.	Email chain between Person 17, Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison) and Nick McKenzie dated 12 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
72.	Email from Dean Levitan (MinterEllison) to Monique Cowden (Person 17's legal representative) of counsel, Person 17, and Peter Bartlett (MinterEllison) dated 19 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
73.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison) and Nick McKenzie dated 21 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
74.	Email from Nick McKenzie to Person 17, Dean Levitan (MinterEllison), and Peter Bartlett (MinterEllison) dated 21 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
75.	Email chain between Person 17, Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison) and Nick McKenzie dated 21 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
76.	Email from Dean Levitan (MinterEllison) to Person 17, Nick McKenzie and Peter Bartlett (MinterEllison) dated 22 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

77.	Email chain between Person 17, Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison) and Nick McKenzie dated 23 October 2020 – 22 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
78.	Email from Person 17 to Dean Levitan (MinterEllison), and Nick McKenzie dated 29 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
79.	Email from Person 17 to Dean Levitan (MinterEllison), and Nick McKenzie dated 29 October 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
80.	Email from Nick McKenzie to Person 17, Dean Levitan (MinterEllison), and Peter Bartlett (MinterEllison) dated 10 November 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
81.	Email from Person 17 to Nick McKenzie and Dean Levitan (MinterEllison) dated 18 November 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
Documents in PDF bundle entitled “Attachment 7”		
82.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett and Nick McKenzie dated 1 December 2020, attaching document 82A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
82A	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents’ representatives for that same dominant purpose.
83.	Email chain between Person 17, Dean Levitan (MinterEllison), and Nick McKenzie dated 31 October 2019 – 29 October 2019	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
84.	Email chain between Person 17, Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison) and Nick McKenzie dated 9 December 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
85.	Email from Person 17 to Dean Levitan (MinterEllison), and Nick McKenzie dated 13 December 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

86.	Email from Person 17 to Dean Levitan (MinterEllison) dated 11 December 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
87.	Email from Dean Levitan (MinterEllison) to Person 17 dated 14 December 2020	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents obtaining information or evidence for use in these proceedings.
88.	Email from Dean Levitan (MinterEllison) to Person 17 and Peter Bartlett (MinterEllison) dated 19 February 2021, attaching document 88A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
88A	Document prepared by MinterEllison	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
89.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett and Nick McKenzie dated 22 February 2021, attaching document 89A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
89A	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents' legal representatives for that same dominant purpose.
90.	Email chain between Nick McKenzie, Person 17, Dean Levitan (MinterEllison), and Lyndelle Barnett dated 23 February 2021 – 22 February 2021, attaching document 90A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
90A	Document prepared by Nick McKenzie	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 on a confidential basis for that same dominant purpose.
91.	Email from Person 17 to Nick McKenzie, Dean Levitan (MinterEllison), and Lyndelle Barnett dated 24 February 2021, attaching document 91A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
91A.	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents' legal representatives for that same dominant purpose.

92.	Email chain between Nick McKenzie, Person 17, Dean Levitan (MinterEllison), and Lyndelle Barnett dated 24 February 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
93.	Email from Person 17 to Monique Cowden (Person 17's legal representative), Dean Levitan (MinterEllison), Lyndelle Barnett, Peter Bartlett (MinterEllison) and Nick McKenzie, dated 15 March 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
94.	Email chain between Nick McKenzie, Person 17, and Dean Levitan (MinterEllison), dated 22 March 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
95.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), and Nick McKenzie, dated 25 March 2021, attaching document 95A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
95A	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents' representatives for that same dominant purpose.
96.	Email from Dean Levitan (MinterEllison) to Person 17 and Monique Cowden (Person 17's legal representative) dated 29 March 2021, attaching document 96A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
96A	Memorandum to Person 17 prepared by MinterEllison dated 29 March 2021	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to Person 17 for that same dominant purpose.
97.	Email chain between Person 17, Dean Levitan (MinterEllison), and Peter Bartlett dated 29 March 2021 – 2 March 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
Documents in PDF bundle entitled "Attachment 8"		
98.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), and Nick McKenzie, dated 6 April 2021, attaching document 98A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

98A	'Ben Roberts-Smith asked wife to lie about his affair, court told', <i>The Age</i> , by Adam Cooper dated 2 November 2020	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
99.	Email from Nick McKenzie to Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 6 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
100.	Email chain between Person 17, Nick McKenzie, Dean Levitan (MinterEllison), Lyndelle Barnett and Monique Cowden (Person 17's legal representative) dated 20 April 2021 – 6 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
101.	Email from Nick McKenzie to Person 17 and Dean Levitan (MinterEllison) dated 20 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
102.	Email chain between Person 17, Nick McKenzie, and Dean Levitan (MinterEllison), dated 21 April 2021 – 20 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
103.	Email chain between Nick McKenzie, Person 17, and Dean Levitan (MinterEllison), dated 23 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
104.	Email chain between Person 17, Nick McKenzie, and Dean Levitan (MinterEllison), dated 23 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
105.	Email chain between Nick McKenzie, Person 17, and Dean Levitan (MinterEllison), dated 24 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
106.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett, Monique Cowden (Person 17's legal representative) and Nick McKenzie dated 12 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
107.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	(Person 17's legal representative), Peter Bartlett (MinterEllison) and Nick McKenzie dated 20 April 2021 – 12 April 2021	Respondents being provided with professional legal services relating to these proceedings.
108.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison) and Nick McKenzie dated 20 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
109.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison) and Nick McKenzie dated 28 April 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
110.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Nick McKenzie, dated 3 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
111.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Nick McKenzie, dated 11 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
112.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison) and Nick McKenzie dated 14 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
113.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Nick McKenzie, dated 15 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
114.	Email from Person 17 to Dean Levitan (MinterEllison), and Nick McKenzie, dated 20 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
115.	Email chain between Dean Levitan (MinterEllison), Person 17, and Nick McKenzie, dated 21 May 2021 – 20 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
116.	Email chain between Person 17, Dean Levitan (MinterEllison), and	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	Nick McKenzie, dated 21 May 2021 – 20 May 2021	Respondents being provided with professional legal services relating to these proceedings.
117.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Nick McKenzie, dated 22 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
118.	Email from Person 17 to Nick McKenzie, Dean Levitan (MinterEllison), and Monique Cowden (Person 17's legal representative), dated 23 May 2021, attaching document 118A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
118A	Document prepared by Person 17	Litigation privilege: The document was prepared for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings, and was communicated to the Respondents' representatives for that same dominant purpose.
119.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 28 May 2021 – 27 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
120.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Monique Cowden (Person 17's legal representative), and Nick McKenzie, dated 29 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
121.	Email chain between Nick McKenzie, Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 29 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
122.	Email from Person 17 to Nick McKenzie, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 29 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
123.	Email chain between Person 17, Nick McKenzie, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 29 May 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
124.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	Barnett and Monique Cowden (Person 17's legal representative) dated 3 June 2021	Respondents being provided with professional legal services relating to these proceedings.
125.	Email from Nick McKenzie to Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative) dated 7 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
126.	Email chain between Person 17, Nick McKenzie, Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 7 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
127.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 8 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
128.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 9 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
129.	Email from Lyndelle Barnett to Person 17 and Dean Levitan (MinterEllison), Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 9 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
Documents in PDF bundle entitled "Attachment 9"		
130.	Email from Person 17 to Dean Levitan (MinterEllison), Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 10 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
131.	Email chain between Dean Levitan (MinterEllison), Person 17, Nick McKenzie, and Monique Cowden (Person 17's legal representative), dated 10 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
132.	Email chain between Person 17, Dean Levitan (MinterEllison), Nick McKenzie, and Monique Cowden (Person 17's legal representative), dated 10 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

133.	Email from Person 17 to Dean Levitan (MinterEllison), and Lyndelle Barnett dated 17 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
134.	Email chain between Lyndelle Barnett, Person 17 and Dean Levitan (MinterEllison), dated 17 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
135.	Email chain between Lyndelle Barnett, Person 17 and Dean Levitan (MinterEllison), dated 17 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
136.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 24 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
137.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 24 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
138.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 24 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
139.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 24 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
140.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 24 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
141.	Email from Person 17 to Lyndelle Barnett, Dean Levitan (MinterEllison), Nick McKenzie and Monique Cowden (Person 17's legal representative), dated 25 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
142.	Email from Person 17 to Lyndelle Barnett, Dean Levitan	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	(MinterEllison), and Nick McKenzie, dated 26 June 2021	Respondents being provided with professional legal services relating to these proceedings.
143.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
144.	Email chain between Person 17, Dean Levitan (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021 – 26 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
145.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
146.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
147.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
148.	Email from Person 17 to Dean Levitan (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 27 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
149.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 29 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
150.	Email chain between Nick McKenzie, Person 17, Dean Levitan (MinterEllison), and Peter Bartlett (MinterEllison), dated 1 July 2021 – 29 June 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
151.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 1 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
152.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, and Nick McKenzie, dated 1 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

153.	Email from Dean Levitan (MinterEllison) to Nick McKenzie, Peter Bartlett (MinterEllison), and Person 17, dated 1 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
154.	Email chain between Person 17, Dean Levitan (MinterEllison), Nick McKenzie, and Peter Bartlett (MinterEllison), dated 1 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
155.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 14 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
156.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, and Monique Cowden (Person 17's legal representative), dated 14 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
157.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Tess McGuire (MinterEllison) dated 12 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
158.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Tess McGuire (MinterEllison) dated 12 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
159.	Email from Dean Levitan (MinterEllison) to Person 17, Monique Cowden (Person 17's legal representative), Peter Bartlett (MinterEllison), and Tess McGuire (MinterEllison) dated 13 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
160.	Email from Person 17 to Dean Levitan (MinterEllison), Monique Cowden, Peter Bartlett (MinterEllison), and Tess McGuire (MinterEllison) dated 15 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
161.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett and Monique Cowden, dated 15 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
162.	Email chain between Person 17, Dean Levitan (MinterEllison),	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the

	Lyndelle Barnett and Monique Cowden, dated 15 July 2021	Respondents being provided with professional legal services relating to these proceedings.
163.	Email from Dean Levitan (MinterEllison) to Person 17, Lyndelle Barnett and Monique Cowden, dated 16 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
164.	Email from Dean Levitan (MinterEllison) to Person 17, Monique Cowden, and Peter Bartlett (MinterEllison), dated 30 July 2021, attaching documents 164A, 164B, 164C, 164D, 164E, 164F and 164G	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
164A	Copy of Exhibit R64	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
164B	Copy of Exhibit R65	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
164C	Copy of Exhibit R66	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
164D	Copy of Exhibit R67	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
164E	Copy of Exhibit R68	Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

		The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.
164F	Copy of Exhibit R69	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
164G	Copy of Exhibit R70	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
165.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden, and Peter Bartlett (MinterEllison), dated 31 July 2021 – 30 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
166.	Email from Dean Levitan (MinterEllison) to Person 17, Monique Cowden, and Peter Bartlett (MinterEllison), dated 28 July 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
167.	Email from Person 17 to Dean Levitan (MinterEllison), Peter Bartlett (MinterEllison), Lyndelle Barnett, Monique Cowden and Nick McKenzie dated 4 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
168.	Email from Person 17 to Dean Levitan (MinterEllison), Monique Cowden and Nick McKenzie dated 11 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
169.	Email chain between Person 17 and Dean Levitan (MinterEllison), dated 12 August 2021, attaching documents 169A and 169B	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
169A	Applicant's Outline of Submissions on Respondents' Application to set aside Notices to Produce and Subpoena to Produce, dated 3 August 2021	Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.

		The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.
169B	Respondents' submissions in relation to the Interlocutory Application filed 22 July 2021, dated 30 July 2021	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
170.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden, Nick McKenzie and Peter Bartlett (MinterEllison), dated 12 August 2021, attaching document 170A	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
170A	Copy of Exhibit R72	<p>Litigation privilege: The document forms part of a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.</p> <p>The Respondents assert privilege in respect of the copy of the document to the extent it forms part of a confidential communication, not in the document itself.</p>
171.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden, Nick McKenzie and Peter Bartlett (MinterEllison), dated 12 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
172.	Email from Dean Levitan (MinterEllison), to Person 17 and Peter Bartlett (MinterEllison), dated 25 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
173.	Email from Person 17 to Dean Levitan (MinterEllison), Monique Cowden and Nick McKenzie dated 27 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
174.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden, Nick McKenzie and Peter Bartlett (MinterEllison), dated 27 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.
175.	Email chain between Person 17, Dean Levitan (MinterEllison), Monique Cowden, Nick McKenzie and Peter Bartlett (MinterEllison), dated 27 August 2021	Litigation privilege: The document comprises a confidential communication made for the dominant purpose of the Respondents being provided with professional legal services relating to these proceedings.