

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/09/2019 8:03:44 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:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD989/2019
File Title:	AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, which appears to read "Warwick Soden".

Dated: 30/09/2019 1:31:10 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.



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD 989 of 2019

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

### Australian Broadcasting Corporation

Applicant

### Martin Kane and others

Respondents

Affidavit of: **Michael Antony Rippon**

Address: C/- ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

Occupation: Solicitor

Date: 24 September 2019

I, Michael Antony Rippon, affirm:

1. I am a solicitor employed by the applicant (**ABC**) and I am authorised to make this affidavit on the ABC's behalf.
2. I presently have day to day carriage of this matter on behalf of the ABC.
3. The content of this affidavit is based on my own knowledge unless otherwise indicated.
4. I make this affidavit pursuant to paragraph 1 of the orders made by the Honourable Justice Abraham on 19 August 2019, as amended by paragraph 2 of the further orders made by her Honour on 18 September 2019.

Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer)	Michael Rippon
Law firm (if applicable)	Australian Broadcasting Corporation, Legal Department
Tel	(02) 8333 1696
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[Version 3 form approved 02/05/2019]

5. On 5 June 2019, the third respondent (**Brumby**) executed a search warrant on the ABC's premises. Brumby and the constables assisting him seized documents and things purportedly pursuant to the warrant (**seized material**).
6. Nothing in this affidavit should be understood as a concession that the seizure of any of the seized material was authorised by the search warrant. The ABC maintains its claim that the search warrant was invalid, and the seizure of the seized materials was unlawful, on the grounds set out in the originating application filed on 24 June 2019 and amended on 9 August 2019.

#### **Legal professional privilege claims**

7. The ABC claims that the documents identified in the table below, which formed part of the seized material, are subject to legal professional privilege.

<b>No</b>	<b>Description</b>	<b>Basis for claim of privilege</b>
1	Email dated 22 June 2017 at 2:01pm from Neil Mercer to Daniel Oakes, with the subject line "RE: Defence"	A line in the email chain discloses the substance of a communication made by Michael Martin (ABC Legal) for the dominant purpose of giving legal advice.
2	Email dated 3 July 2017 at 5:25pm, from Samuel Clark to Daniel Oakes, Mark Doman and Neil Mercer with the subject line "Legal note – Story 4"	The email discloses a communication made by Michael Martin (ABC Legal) for the dominant purpose of giving legal advice.
3	Email dated 3 July 2017 at 5:34pm, from Neil Mercer to Daniel Oakes, cc Samuel Clark and Mark Doman, with the subject line "Re: Legal note – Story 4"	The email chain discloses a communication made by Michael Martin (ABC Legal) for the dominant purpose of giving legal advice, and the response to that question.
4	Email dated 3 July 2017 at 5:42pm, from Samuel Clark to Neil Mercer and Daniel Oakes, cc Mark Doman, with the subject line "RE: Legal note – Story 4"	The email chain discloses a communication made by Michael Martin (ABC Legal) for the dominant purpose of giving legal advice, and the response to that question.
5	Email dated 3 July 2017 at 5:56pm, from Mark Doman to Samuel Clark, Neil Mercer and Daniel Oakes, with the subject line "Re: Legal note – Story 4"	The email chain discloses a communication made by Michael Martin (ABC Legal) for the dominant purpose of giving legal advice, and the response to that



No	Description	Basis for claim of privilege
		question.
6	Excel document titled "16062017_Afghanistan_Checklist.xlsx"	The spreadsheet discloses the substance of a communication made for the dominant purpose of giving legal advice.
7	Email dated 10 July 2017 at 3:52pm, from Mark Doman to Daniel Oakes, Samuel Clark and Neil Mercer, with the subject line "Defence day 2"	A line in the email discloses the substance of a communication made for the dominant purpose of giving legal advice.
8	Draft email dated 11 July 2017 at 6:18pm from Neil Mercer to Daniel Oakes, cc Samuel Clark, with the subject line "Fwd: Request for immediate action with respect to unauthorised communication of classified Defence information", and attachment	The email chain discloses a communication made to Michael Martin (ABC Legal) and Grant McAvaney (ABC Legal) for the dominant purpose of receiving legal advice.
9	Draft email dated 12 July 2017 at 5:19pm, apparently from Kathryn Wilson (ABC Legal) to Neil Mercer and Gaven Morris, cc Craig McMurtrie, Gavin Fang and Michael Martin (ABC Legal), with the subject line "RE: Follow-up from our conversation this morning"	<p>The draft email is apparently a document prepared by Kathryn Wilson (ABC Legal) for the dominant purpose of giving legal advice.</p> <p>The email chain discloses a communication made to Kathryn Wilson (ABC Legal) for the dominant purpose of receiving legal advice.</p>
10	Email dated 13 July 2017 at 10:04am, from Samuel Clark to Neil Mercer and Daniel Oakes	The email discloses what appears to be an earlier form of wording subsequently sent to ABC Legal for the dominant purpose of receiving legal advice.
11	Email dated 13 July 2017 at 12:19pm, from Kathryn Wilson (ABC Legal) to Samuel Clark and Daniel Oakes, cc Neil Mercer, with the subject line "FW: Afghanistan – Proposed edits following ADF letter for your review and input"	The email chain discloses the substance of communications between Kathryn Wilson (ABC Legal) and others within the ABC made for the dominant purpose of giving and receiving legal advice.
12	Email dated 13 July 2017 at 12:45pm, from Samuel Clark to Kathryn Wilson (ABC Legal), Daniel Oakes and Neil Mercer, with the subject line "AFG_RevisedROE_13072017", and	The email and its attachment are a communication made to Kathryn Wilson (ABC Legal) for the dominant purpose of receiving legal advice.





No	Description	Basis for claim of privilege
	attachment	
13	Email dated 13 July 2017 at 5:58pm, from Kathryn Wilson (ABC Legal) to Gaven Morris, Craig McMurtrie, Gavin Fang, Neil Mercer, Samuel Clark, Daniel Oakes, cc Michael Martin (ABC Legal), with the subject line "RE: ADF response", and attachments	The email chain and its attachments disclose a communication made by Kathryn Wilson (ABC Legal) for the dominant purpose of giving legal advice.

8. To the extent that the seized material includes duplicates of any of the above documents, the claim made by the ABC in respect of the relevant document is also made in respect of each duplicate of the document.
9. I have been a solicitor within the legal department of the ABC since 2004.
10. In July 2017:
- (a) I held the role of Senior Lawyer within the legal department of the ABC;
  - (b) Kathryn Wilson held the role of Senior Lawyer within the legal department of the ABC;
  - (c) Michael Martin held the role of Deputy General Counsel within the legal department of the ABC; and
  - (d) Grant McAvaney held the role of Team Leader, Disputes within the legal department of the ABC.

#### Source protection claims

11. The ABC claims that the documents identified in the table below, which formed part of the seized material, have the capacity to identify informants to whom a journalist employed by the ABC made a promise not to disclose the informants' identity.

No	Description	Basis for claim
1	Email dated 3 July 2017 at 5:34pm, from Neil Mercer to Daniel Oakes, cc Samuel Clark and Mark Doman, with the subject line "Re: Legal note – Story 4"	The email chain contains an email dated 3 July 2017 at 5:27pm from Daniel Oakes that includes particular information followed by the sentence "A source also told me this happened".
2	Email dated 3 July 2017 at 5:42pm,	The email chain contains an email



No	Description	Basis for claim
	from Samuel Clark to Neil Mercer and Daniel Oakes, cc Mark Doman, with the subject line "RE: Legal note – Story 4"	dated 3 July 2017 at 5:27pm from Daniel Oakes that includes particular information followed by the sentence "A source also told me this happened".
3	Email dated 3 July 2017 at 5:56pm, from Mark Doman to Samuel Clark, Neil Mercer and Daniel Oakes, with the subject line "Re: Legal note – Story 4"	The email chain contains an email dated 3 July 2017 at 5:27pm from Daniel Oakes that includes particular information followed by the sentence "A source also told me this happened".
4	Excel document titled "100516_AfghanDocs_Folder A.xlsx"	Each of these documents is a spreadsheet that sets out a list of documents. The headings in each spreadsheet are: (a) Page # (b) Document Type (c) Security Classification (d) Date (e) Author (f) Interviewee (g) Description (h) Incident it relates to (i) Date of incident (j) Priority document
5	Excel document titled "100516_AfghanDocs_FolderB.xlsx"	
6	Excel document titled "180516_AfghanDocs_FolderC.xlsx"	
7	Excel document titled "180516_AfghanDocs_FolderD.xlsx"	
8	Excel document titled "180516_AfghanDocs_FolderE.xlsx"	
9	Excel document titled "Copy of 100516_AfghanDocs_FolderB.xlsx"	
10	Excel document titled "100516_AfghanDocs_Master Database.xlsx"	

12. To the extent that the seized material includes duplicates of any of the above documents, the claim made by the ABC in respect of the relevant document is also made in respect of each duplicate of the document.
13. If the Australian Federal Police (**AFP**) were to inspect these documents, they may be able to identify informants to whom a journalist employed by the ABC made a promise not to disclose the informants' identity.
14. If the AFP were able to identify those informants by inspecting the documents, that would render nugatory any attempt by a journalist or by his or her employer to rely on s 126K(1) of the *Evidence Act 1995* (Cth) in any future legal proceedings in which the journalist or his or her employer is required to answer a question or produce a document



that would disclose the identity of the informants or enable their identity to be ascertained.

Affirmed by the deponent  
at Ultimo  
in New South Wales  
on 24 September 2019  
Before me:

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Signature of deponent



Signature of witness

Kia Daley, Solicitor