

NOTICE OF FILING

Details of Filing

| | |
|---------------------------|---|
| Document Lodged: | Affidavit - Form 59 - Rule 29.02(1) |
| Court of Filing | FEDERAL COURT OF AUSTRALIA (FCA) |
| Date of Lodgment: | 14/04/2025 5:57:37 PM AEST |
| Date Accepted for Filing: | 15/04/2025 11:48:05 AM AEST |
| File Number: | NSD689/2023 |
| File Title: | BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) & ORS |
| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |



A handwritten signature in blue ink, reading "Sia Lagos".

Registrar

Important Information

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

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



Form 59
Rule 29.02(1)

Affidavit

No. NSD 689, 690 and 691 of 2023

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

Ben Roberts-Smith

Appellant

Fairfax Media Publications Pty Ltd and others

Respondents

Affidavit of: **Nicholas David McKenzie**
Address: Level 7, 717 Bourke Street, Docklands VIC 3008
Occupation: Journalist
Date: 14 April 2025

I, Nicholas David McKenzie, investigative journalist at The Age, affirm:

1. I am the Second Respondent in these proceedings.
2. I make this affidavit in response to the Appellant's Interlocutory Application filed 27 March 2025 (the **Interlocutory Application**). I have read the affidavit of Monica Allen sworn 27 March 2025 and the affidavit of Ms Allen sworn 30 March 2025. I respond to Ms Allen's two affidavits in this affidavit.
3. Exhibited to me at the time of affirming this affidavit is:
 - (a) a paginated bundle of documents marked **Exhibit NM-1**. I refer to documents in Exhibit NM-1 by reference to the page number of Exhibit NM-1 at which they appear. Where necessary, information in the documents contained in Exhibit NM-1 has been

| | |
|--|---|
| Filed on behalf of (name & role of party) | Fairfax Media Publications Pty Ltd and others, the Respondents |
| Prepared by (name of person/lawyer) | Beverley Newbold and James Beaton |
| Law firm (if applicable) | MinterEllison |
| Tel | +61 2 9921 4894 |
| Fax | +61 2 4072 9110 |
| Email | beverley.newbold@minterellison.com; james.beaton@minterellison.com |
| Address for service (include state and postcode) | Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 |

[Version 3 form approved 02/05/2019]

redacted in compliance with the orders made by Justice Besanko on 6 February 2019 pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) regarding the suppression of Person 17's identity, and the orders made by Justice Besanko on 15 July 2020 (as last amended on 26 September 2013) pursuant to sections 19(3A) and 38B of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth);

- (b) a paginated bundle of documents marked **Confidential Exhibit NM-2**. I refer to documents in Confidential Exhibit NM-2 by reference to the page number of Confidential Exhibit NM-2 at which they appear; and
- (c) an electronic folder of documents contained on a USB labelled **Confidential Exhibit NM-3**, which contains two audio recordings.

The Audio Recording

4. I understand that the Appellant's Interlocutory Application is based on the recording that Ms Allen refers to in paragraph 7 of her 27 March 2025 affidavit (the **Audio Recording**). I have listened to the Audio Recording. It appears to be a recording of part of a telephone conversation between me and Person 17 made without my knowledge or consent.
5. I know that the conversation is between me and Person 17 because I recognise my voice and Person 17's voice in the recording. I first met Person 17 in the months leading up to August 2018. Since that time, we have spoken on the phone many times and I have come to know her voice well.
6. I did not make the Audio Recording. I believe the Audio Recording was made by Person 17 as I do not think anyone else was on the call.
7. The conversation in the Audio Recording was made without my knowledge or consent. Person 17 has never asked me for my permission to record any of our conversations or told me that she was recording them. I do not know where the recording was made, but I know Person 17 lives in Queensland, and did in 2021.
8. Ms Allen purports to set out a transcript of the Audio Recording at paragraph 11 of her 27 March 2025 affidavit. Ms Allen purports to correct that transcript at paragraph 3 of her 30 March 2025 affidavit. Having listened to the recording, I do not think either of Ms Allen's attempts to transcribe the Audio Recording is completely accurate.
9. I have listened to the Audio Recording, I believe an accurate transcript is as follows:




NM: You [indecipherable] um Danielle and Emma like trying to tell ya yet again I know you won't burn me so .. do not tell Dean please or Monique [indecipherable] that I've told you this.

You know they, they've actively like briefing us on his legal strategy in respect of you like this this and yeah we're not learning like like we anticipated most of it. One or two things now we know, which is which is helpful. But it's. uh. The point. The reason I told you that was to say like you know we've got this, and uh and they're not hostile to you despite your worst fears. They're not. But I've told you that so many times now as well. And I had to tell you that extra bit to sort of prove it in your mind.

P17: yeah Maybe that's what has to happen like so uh like –

NM: [voice raised] I shouldn't - I shouldn't tell you. I've just breached my fucking ethics in doing that like this is where like, this has put me in a shit position now like. If if Dean knew that and Peter knew that I'd get my arse fucking handed to me on a platter like –

P17: [talking over] oh and that's where I say you know you've got to trust me as well and I've not done [NM talks over "well I do"] anything –

NM: [talking over] that's why I told you.

P17: [talking over] I know I know so –

NM: [talking over] I wouldn't tell anyone else. I haven't told anyone like no one else I tell this. No one knows about the police investigation. It's a sensitive ongoing police investigation. Phone taps, task force, there's a new - there's a whole new task force is being stood up in Brisbane. An entire new task force. There's police living in his apartment block under assumed identities as we speak. Like. The guy is fucked.

10. The Audio Recording is only a part of the conversation as it does not capture the start or end of the call. My conversations with Person 17 were frequently lengthy, usually ranging from 15 to 45 minutes. I do not recall what Person 17 or I said on the rest of the phone call.

Circumstances in which the conversation occurred

11. I do not recall precisely when the conversation recorded in the Audio Recording occurred, but, based on the nature of what is being discussed, I think it was around March or April 2021. I explain this in paragraphs 12 to 36 below.




12. Person 17 is a woman who had an intimate relationship with Ben Roberts-Smith (**Roberts-Smith**) during the time that he was married to Emma Roberts (**Emma**).
13. When I met with Person 17 in 2018, she alleged that she had been subjected to an act of domestic violence by Roberts-Smith in the Hotel Realm in Canberra in March 2018. I reported on that allegation in August 2018 in articles that are referred to as the "Group 3 articles" in Besanko J's judgment in these proceedings.
14. After I first met Person 17, I continued to communicate with her. At times, we communicated very frequently and, at other times, less so. We mainly communicated by conversation or text using the app Signal, but we also communicated by email on occasion.
15. Person 17 often raised concerns with me about the litigation and its potential consequences for her. Early in the proceedings, Person 17 said words to the effect that she was concerned her identity would be made public, and was concerned this would lead to unfair or unsafe repercussions for her. Person 17 frequently also said words to the effect that she was concerned she would be portrayed in the litigation as a "mistress" or "whore" rather than someone who had a more meaningful relationship with Roberts-Smith. Many of our conversations involved me trying to comfort Person 17 and address the fears and concerns she had expressed.
16. Person 17 was often extremely upset and anxious when she called me. I refer to the document at pages 1 - 2 of **Confidential Exhibit NM-2**, which is an email I sent Person 17's husband in September 2019. However, I believed Person 17's account of what happened during her relationship with Roberts-Smith and there were periods when Person 17 seemed calm, confident and eager to push ahead and remain involved in the case.
17. One of the things Person 17 raised a number of times with me were emails she received after the breakdown of her relationship with Roberts-Smith from someone using the name "Danielle Kennedy". Person 17 said words to the effect that she believed those emails were sent to intimidate her.
18. I now know the "Danielle Kennedy" emails were drafted by Roberts-Smith and sent by a friend of Emma, Danielle Scott (**Danielle**), from an email address she created in the name of "Danielle Kennedy". I do not recall precisely when I learned that.
19. In the period before I learned the true identity of the person who had sent the "Danielle Kennedy" emails, I remember Person 17 asked me repeatedly what steps were being



- taken to identify "Danielle Kennedy". I recall Person 17 saying words to the effect that she wanted there to be legal action against the sender of the "Danielle Kennedy" emails.
20. In around April 2019, the solicitors for Roberts-Smith filed an outline of evidence for Emma (**Emma's April 2019 Outline**). A copy of Emma's April 2019 Outline appears at pages 1 to 41 of Exhibit NM-1. Emma's April 2019 Outline stated that Emma would give evidence that Ben and Emma were separated in the period from October 2017 to April 2018, during which time Ben had moved out of their home. The Outline also said Emma's evidence would be that Emma was aware that Ben had had a relationship with another woman during this time (paragraph 20).
 21. In around June 2019, the solicitors for the Respondents filed an outline of evidence for Person 17 (**Person 17's Outline**). A copy of Person 17's Outline of Evidence appears at pages 42 to 57 of Exhibit NM-1. Person 17's Outline indicated that, on Person 17's account, her relationship with Roberts-Smith was an extramarital affair of which Emma was unaware (paragraph 14). Person 17's Outline of Evidence also said that Person 17 would give evidence in relation to the emails from "Danielle Kennedy". The outline stated that Person 17's evidence would be that she considered that "Danielle Kennedy" was acting on Roberts-Smith's behalf in sending the emails in an attempt to intimidate her (paragraph 65).
 22. In around July 2019, Roberts-Smith's solicitors filed a second outline of evidence from Emma (**Emma's July 2019 Outline**) at pages 58 to 63 of Exhibit NM-1. That outline restated that Emma's evidence would be that Ben and Emma had separated in October 2017. It also stated that Emma knew from April 2018 that, during the period of separation, Roberts-Smith had been seeing someone who had Person 17's name (paragraphs 3 and 5).
 23. I knew the general substance or effect of the evidence that Emma and Person 17 had foreshadowed in the outlines I refer to in paragraph 20 to 22 above, but I do not recall reading the outlines at or around the time they were filed.
 24. I knew from my many conversations with Person 17 in the period 2019 to 2020 (inclusive) that Person 17 viewed Emma as "the enemy". At that time, I had not met or spoken with Emma. In this period, I recall Person 17 saying to me words to the effect that Emma had assisted in a cover-up to discredit Person 17 by saying Emma had separated from Roberts-Smith at the time of his relationship with Person 17.
 25. In January 2020, Roberts-Smith and Emma separated. I learned that fact sometime later in 2020, but cannot recall precisely when or how I learned it.



26. On 12 April 2021, the solicitors for the Respondents served outlines of evidence for Danielle and Emma. A copy of Emma's April 2021 Outline of Evidence (**Emma's April 2021 Outline**) appears at pages 64 to 65 of Exhibit NM-1. A copy of the Outline of Evidence served in respect of Danielle (**Danielle's Outline**) appears at pages 66 to 148 of Exhibit NM-1. A copy of the covering letter appears at pages 149 to 150 of Exhibit NM-1.
27. On 27 April 2021, the Respondents filed a Further Amended Interlocutory Application seeking leave to file outlines of evidence from Emma and Danielle as witnesses in the proceeding. A copy of that Further Amended Interlocutory Application appears at pages 151 to 154 of Exhibit NM-1.
28. On 29 April 2021, Besanko J made orders granting the Respondents leave to file outlines of evidence on behalf of Emma and Danielle. A copy of those orders appears at pages 155 to 156 of Exhibit NM-1.
29. I knew at around the time the Respondents served outlines of evidence for Danielle and Emma that Emma's evidence would be that Roberts-Smith asked Emma to lie and say they were separated at the time of his affair with Person 17 to protect him if the matter became public. I also knew around this time that Danielle's evidence would be that Roberts-Smith had drafted the "Danielle Kennedy" emails and she had sent them.
30. Emma subsequently gave evidence at the trial. Danielle was not ultimately called as a witness for the Respondents.
31. I cannot now recall precisely when Person 17 learned that the Respondents would file, or had filed, statements from Emma and Danielle, but it was around the time the Respondents served Emma's April 2021 Outline and Danielle's Outline.
32. After Person 17 learned that Danielle and Emma were assisting the Respondents in defending the litigation, she became very agitated and concerned. I know this because I had numerous conversations with Person 17. In those conversation she frequently said words to the effect that Emma would now emerge, unfairly, as a more credible and likeable witness than Person 17. She said that Person 17 would emerge as, in her words, the "scorned mistress". I received calls from Person 17 to that effect on many occasions. When Person 17 raised these concerns, I would try to reassure her. I frequently said words to the effect that it was my belief that Emma's account of being made to lie about the separation would in fact validate Person 17 as a witness and make her more believable not less. That was what I believed.



Handwritten signature of Nick Allen.

33. Person 17 also expressed agitation and concern about Danielle on these calls. Around this time, Person 17 learned that Danielle had sent the "Danielle Kennedy" emails. I know this because we had conversations in which she repeated her statements to the effect that the sender of the "Danielle Kennedy" emails should be held to account and in which she said she was concerned that that would now not occur because Danielle was assisting the Respondents.
34. During my conversations with Person 17 at this time she said words to the effect that she was concerned she had been "frozen out" by the Respondents because Emma and or Danielle would give evidence to harm her. On those calls, I tried to reassure her that that was not the case. Again, I thought Person 17's fears in relation to Emma and Danielle in 2021 were misplaced because their evidence validated much of her account.
35. I refer to the document at pages 3 to 7 of **Confidential Exhibit NM-2**, which is an email chain containing emails between me and Person 17's husband. I do not recall whether these emails were sent and received before or after the conversation leading to the Audio Recording, but I believe it was around the same time.
36. I can tell that the conversation in the Audio Recording is one of the conversations that I had with Person 17 at around the time it became known that the Respondents had filed, or would file, outlines of evidence from Emma and Danielle. I say that because the things I say in the Audio Recording indicate to me that Person 17 is aware that Danielle and Emma are assisting the Respondents. I also make statements in the Audio Recording of the kind I recall using in my discussions with Person 17 to try to calm her fears about the fact that Emma and Danielle would give evidence for the Respondents. That is what leads me to believe the conversation in the Audio Recording occurred sometime around March or April 2021.

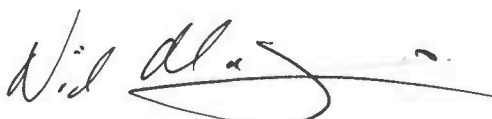
The words said by me in the recording

37. I do not now have a detailed recollection of the conversation recorded in the Audio Recording. Nevertheless, I have a sufficient recollection of the events at around the time the Audio Recording was made to be relatively confident about what I was referring to in parts of the recording, and why I was talking to Person 17 in the manner captured in the Audio Recording.
38. In the Audio Recording, I refer to "Danielle", "Emma", "Dean", "Monique" and "Peter". "Danielle" is Danielle Scott and "Emma" is Emma Roberts. "Dean" is Dean Levitan, a solicitor at MinterEllison, the Respondents' solicitors in the litigation. "Monique" is Monique Cowden, Person 17's barrister. "Peter" is Peter Bartlett, the partner at MinterEllison acting for the Respondents.



"briefing us on his legal strategy in respect of you"

39. In the Audio Recording, I say that Emma and Danielle are *"actively like briefing us on his legal strategy in respect of you"*. The *"his"* is a reference to Roberts-Smith. The *"you"* is a reference to Person 17.
40. My words *"briefing us"* suggest to me that I was referring to things that Emma and Danielle had said to me or in my presence.
41. By *"legal strategy"*, I do not believe I meant to refer to any confidential legal advice given to Roberts-Smith from his lawyers or confidential legal strategy devised by Roberts-Smith's lawyers because I have never, to my knowledge, had information of that kind. Nor, so far as I am aware, have any of the Respondents, their solicitors or barristers had information of that kind. To the extent my words suggest I (or any of the Respondents or their lawyers) had any confidential legal advice given to Roberts-Smith from his lawyers or confidential legal strategy devised by Roberts-Smith's lawyers, that was not true and not what I believed.
42. One thing I had learned from my dealings with Danielle was that, before they separated, Roberts-Smith had asked Emma to lie in her evidence and to say that they were separated at the time of the affair with Person 17. Another thing I learned was that Roberts-Smith thought Person 17 had lied about being pregnant during their relationship. Danielle had told me Roberts-Smith had a video of Person 17 outside the hospital where she was supposed to get an abortion but, in Danielle's opinion, Person 17's physical appearance on this video suggested she had not gotten an abortion as claimed. I recall I was surprised to learn this when Danielle first told me as I did not know about either the pregnancy or the video. I later learned that the fact of the video is referred to in Person 17's Outline (which was filed over a year before I first spoke to Danielle). I do not recall if these were the things I had in mind when I referred to *"legal strategy in respect of you"* at the time, but I recall that they were the matters that I thought were significant that we learnt from Danielle in relation to Person 17.
43. As appears from the balance of this affidavit, I had very limited dealings with Emma in the period March-April 2021, and no dealings with her before that. I had more dealings with Danielle. I recorded two of my earliest conversations with Danielle and sent the recordings to MinterEllison. It was my practice thereafter to send to MinterEllison all of the information I learned from Danielle that I thought was relevant, along with any documents or images Danielle provided to me that I believed were relevant. I did not believe that the material I obtained from Danielle was privileged to Roberts-Smith or that I was acting improperly by obtaining it. No one ever suggested to me that any of the

material I obtained from Danielle and provided to MinterEllison was or might be privileged to Roberts-Smith or that I had acted improperly in obtaining that material because it was or might be privileged to Roberts-Smith.

44. I was first contacted by Danielle in around August 2020 when she telephoned me out of the blue and told me she was a friend of Emma. I spoke to the person I now know to be Danielle at least twice in August. At that time, I was not entirely sure of Danielle's intentions. Given the nature of this litigation, I was very cautious when dealing with an unknown person. For this reason, I recorded my conversations with Danielle. After the calls, I passed the recordings to Dean Levitan of MinterEllison. Copies of the recordings titled 'Recording 1' and 'Recording 2' can be found in **Confidential Exhibit NM-3**. Until this matter arose, and I was reminded those recordings existed, I had forgotten making those recordings.
45. In 'Recording 1', Danielle says that *"they think that Fairfax isn't gonna pursue that line"* and *"they thought that the DV thing wasn't important. There was some tactic that either Bruce McWilliam or Arthur Moses, one of them came up with that nuh, it's really not important here"*. I have no recollection of her making that statement. It was not a statement I recall placing any importance on at the time, and I do not recall the information ever being used or relied on by the Respondents in any way. At the time, I was wary of the caller and did not know the veracity of what she was telling me.
46. I continued to correspond with the person I now know to be Danielle in late 2020 and early 2021, principally by text using Signal.
47. I cannot recall speaking with Danielle again before March 2021 but I may have done so.
48. On around 3 March 2021, I participated in a call with Danielle, Dean Levitan, Peter Bartlett and Dylan Dexter of MinterEllison. I did not keep a note of this meeting.
49. On 5 March 2021, I travelled to Cairns to meet Danielle. In Cairns, Danielle had the contents of 5 USBs that Danielle said she and Emma had found buried in the backyard of the house Emma shared with Roberts-Smith. Danielle showed me their contents on her computer. They included horrific photos of dead people. In my mind, they were really importance evidence of war crimes. I copied the material to a hard drive, which I then took back to Melbourne.
50. While I do not remember the words Danielle said, my recollection is that most if not all of our dealings on 5 March 2021 were to do with the buried USBs. I do not recall Danielle saying anything that made me believe she had obtained any information or documents from Roberts-Smith's email accounts.



51. After I went to Cairns on 5 March 2021, I do not believe I met with Danielle again prior to the service of Danielle's Outline. I likely had some further communication with her before Danielle's Outline was filed but I do not recall any such communications specifically. It is my recollection that Danielle provided all, or almost all, of the information that she provided to me prior to Danielle's Outline being filed.
52. I do not recall any of the Respondents' barristers being present for, or participating in, any discussions that I attended with Danielle at any time.
53. On 10 March 2021, I sent Dean Levitan a series of images and screenshots I had obtained from Danielle. A copy of those images and screenshots is at pages 158 to 208 of Exhibit NM-1. I do not recall the details of when I obtained these images, but it would have been around the time I sent them to Dean.
54. On 12 March 2021, I sent an email to Dean Levitan and Peter Bartlett that summarised the facts and evidence as I understood them relating to a range of matters. Some of the information in this email was from Danielle (who is referred to as "D" in the email) and some was from other sources. In this email, I refer to Roberts-Smith as "RS" and Emma as "ERS". A copy of this email is at pages 209 to 214 of Exhibit NM-1.
55. My 12 March 2021 email includes two entries (which are repeated) that commence with the words, "Monica writes to ERS". Each refers to correspondence between Monica Allen and Emma. I did not think those communications were privileged to Roberts-Smith. It was information from Danielle that she had learned from Emma. I thought Emma was free to tell others about things she knew, particularly in relation to the separation lie and requests made of her to try to substantiate that lie.
56. On 22 March 2021, I sent an email to Dean Levitan and Peter Bartlett that was an expanded version of my 12 March 2021 email and which included my summary of the material of interest on the USBs that were buried in Emma and Roberts-Smith's back yard. The 22 March 2021 email includes the two "Monica to ERS" entries that were in my 12 March 2021 email. Again, I did not believe those entries to be privileged. A redacted copy of this email is at pages 215 to 222 of Exhibit NM-1, and an unredacted copy is at pages 8 to 17 of Confidential Exhibit NM-3.
57. The document at pages 215 to 222 of Exhibit NM-1 and pages 8 to 17 of Confidential Exhibit NM-3 includes a redaction of the body of an email I sent to my lawyers on 10 March 2021. That email does not record or discuss information obtained from Danielle or Emma. It was an earlier email I had sent to MinterEllison for purposes of the litigation relating to a different matter.



58. The information from Danielle that I recorded in my 22 March 2021 email was all of the information I obtained from Danielle that I considered useful or important. I do not recall Danielle providing any further information or documents that I considered to be important or significant. I continued to correspond with Danielle, on occasion, but believe that the 22 March 2021 email contains a very comprehensive summary of what I learned from Danielle that I considered relevant to the proceedings.
59. In the case of Emma, I sent Emma a text message in late 2020 seeking to initiate communications with her but she had never responded to that message.
60. My first interaction with Emma was when I met with her at her house at Indooroopilly in Queensland on 14 March 2021. Dean and Peter were also present, together with Danielle and another of Emma's friends. I did not keep a note of this meeting. I do not recall Emma then, or at any other time, sharing any communications or documents exchanged between Roberts-Smith and his lawyers. Nor do I recall her saying anything to me that suggested she was sharing information she had obtained from looking at communications or documents exchanged between Roberts-Smith and his lawyers.
61. After the meeting at Indooroopilly on 14 March 2021, I cannot remember meeting Emma again, other than one occasion when I met her in Sydney and Emma, Danielle, Dean Levitan and I had dinner. That dinner was not for the purpose of Emma or Danielle sharing any information or material relevant to the case and I do not recall them doing so. Emma and I corresponded occasionally by text on Signal in the lead up to trial, and during the trial, but Emma never shared with me information or documents that I believed came from Roberts-Smith's communications with his lawyers.
62. I do not recall any of the Respondents' barristers being present for, or participating in, any discussion that I had with Emma or Danielle at any time.

"The reason I told you that was to say like you know we've got this"

63. In the Audio Recording, I say *"The point. The reason I told you that was to say like you know we've got this, and uh and they're not hostile to you despite your worst fears. They're not."* The "they" I refer to is Emma and Danielle.
64. I believe I was trying to convey that Emma and Danielle did not hate Person 17, and that their evidence would actually validate hers, rather than attacking her. I thought Danielle and Emma's evidence would prove that Roberts-Smith was lying when he said that the relationship with Person 17 wasn't an affair. It was also helpful that Danielle would give evidence that the Danielle Kennedy emails were directed by Roberts-Smith.
65. When I say, *"we've got this"*, I believe I meant that we would win the case.



Two handwritten signatures are visible at the bottom of the page. The signature on the left is written in dark ink and appears to be 'M. G. S.'. The signature on the right is written in blue ink and appears to be 'N. J. C.'.

66. When I say in the recording *"I've told you that so many times now"* I believe I am referring to the fact that I had told Person 17 a number of times that Emma and Danielle's evidence would help validate Person 17's evidence.

"I've just breached my fucking ethics in doing that"

67. In the Audio Recording, I say that *"I shouldn't tell you"* and *"I've just breached my fucking ethics in doing that"*.
68. When I said I had *"breached my fucking ethics in doing that"*, I believe I was referring to the disclosure I had just made to Person 17. My understanding was that anything I told her wouldn't be subject to privilege and could be used against me or disclosed by Person 17 to any party she wished. I knew I should not to tell her anything about Danielle or Emma's evidence or to have any substantive conversations with her without a lawyer present. That is why I think I said, *"if Dean knew that and Peter knew that I'd get my arse fucking handed to me on a platter"*.
69. When I said the words, *"I've just breached my fucking ethics in doing that"*, I was not referring to me having any information regarding Roberts-Smith's legal advice or regarding his lawyers' legal strategy.
70. In the same portion of the recording, I say, *"this has put me in a shit position now"*. I do not recall what I had in mind when I said those words. That said, having heard the recording, I believe it is something I said to try to build rapport with Person 17 and to get her to trust me that Emma and Danielle were not secretly planning on attacking her. I think I was attempting to explain that, by telling her what I had told her, I had exposed myself, so that she would feel we had a shared vulnerability.

"I wouldn't tell anyone else. I haven't told anyone like no one else I tell this"

71. In the Audio Recording, I said the words, *"I wouldn't tell anyone else. I haven't told anyone like no one else I tell this"*.
72. I do not recall using these words but, having listened to the recording, I believe I again said this to build trust and rapport with Person 17.

"No one knows about the police investigation"

73. Towards the end of the Audio Recording, I refer to a police investigation into Roberts-Smith. I believe I was referring to an investigation in Queensland into whether Roberts-Smith had perverted the course of justice.
74. I do not recall saying this, but, having listened to the Audio Recording, I believe I said it because I was trying to comfort Person 17's fears and concerns. I say this because I had




many conversations with Person 17 in which I tried to calm her anxieties and assure her that the allegations against Roberts-Smith were being taken seriously. My statements about the police investigation sound to me to be an example of me doing that. That is also true of my statement, "*the guy is fucked*".

No access to RS Group email accounts

75. I have read Roberts-Smith's affidavits filed in proceedings NSD 511 of 2021, which are referred to in paragraphs 13(a), (f) and (h) of the affidavit of Monica Allen sworn 27 March 2025.
76. I have never had access to, or accessed, any of the RS Group email accounts referred to in Roberts-Smith's 10 June 2021 affidavit in proceedings NSD 511 of 2021 or any of Roberts-Smith's other email accounts.
77. I have never requested that any person access Roberts-Smith's email accounts. Nor have I ever requested that any person obtain documents or information from Roberts-Smith's email accounts.
78. No one ever said to me that the documents or information they provided or would provide to me (or any of the other Respondents or their lawyers) was or would be obtained by accessing Roberts-Smith's email accounts.

Affirmed by the deponent
at Sydney
in New South Wales
on 14 April 2025
Before me:

Signature of deponent

Signature of witness

Michelle Nguyen, Solicitor
MinterEllison
Level 40, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Exhibit Certificate

No. NSD 689, 690 and 691 of 2023

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

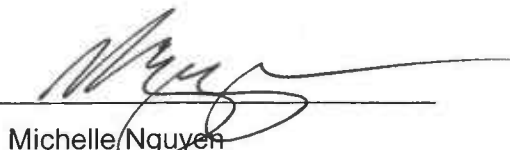
Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others

Defendants

This is the exhibit marked '**NM-1**' now produced and shown to Nicholas David McKenzie at the time of affirming his affidavit on 14 April 2025 before me:


Michelle Nguyen
Solicitor

| | |
|---|--|
| Filed on behalf of (name & role of party) | Fairfax Media Publications Pty Ltd and others, the Respondents |
| Prepared by (name of person/lawyer) | Beverley Newbold and James Beaton |
| Law firm (if applicable) | MinterEllison |
| Tel (02) 9921 4894 | Fax +61 2 4072 9110 |
| Email | beverley.newbold@minterellison.com; james.beaton@minterellison.com |
| Address for service (include state and postcode) | Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000 |

Confidential Exhibit Certificate

No. NSD 689, 690 and 691 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others

Defendants

This is the confidential exhibit marked '**NM-2**' now produced and shown to Nicholas David McKenzie at the time of affirming his affidavit on 14 April 2025 before me:



Michelle Nguyen
Solicitor

| | |
|---|--|
| Filed on behalf of (name & role of party) | Fairfax Media Publications Pty Ltd and others, the Respondents |
| Prepared by (name of person/lawyer) | Beverley Newbold and James Beaton |
| Law firm (if applicable) | MinterEllison |
| Tel (02) 9921 4894 | Fax +61 2 4072 9110 |
| Email | beverley.newbold@minterellison.com; james.beaton@minterellison.com |
| Address for service (include state and postcode) | Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000 |

Confidential Exhibit Certificate

No. NSD 689, 690 and 691 of 2023

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

Ben Roberts-Smith VC MG

Appellant

Fairfax Media Publications Pty Limited and others

Defendants

The contents of the USB marked '**NM-3**' contain the audio recordings comprising Confidential Exhibit NM-3, now produced and shown to Nicholas David McKenzie at the time of affirming his affidavit on 14 April 2025 before me:



Michelle Nguyen
Solicitor

| | |
|---|--|
| Filed on behalf of (name & role of party) | Fairfax Media Publications Pty Ltd and others, the Respondents |
| Prepared by (name of person/lawyer) | Beverley Newbold and James Beaton |
| Law firm (if applicable) | MinterEllison |
| Tel (02) 9921 4894 | Fax +61 2 4072 9110 |
| Email | beverley.newbold@minterellison.com; james.beaton@minterellison.com |
| Address for service (include state and postcode) | Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000 |