

NOTICE OF FILING

Details of Filing

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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 that reads "Sia Lagos".

Registrar

Important Information

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

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



Form 59
Rule 29.02(1)

Affidavit

No. NSD689, 690 and 691 of 2023

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

BEN ROBERTS-SMITH

Appellant

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

Respondents

Affidavit of: **James Charles Beaton**

Address: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

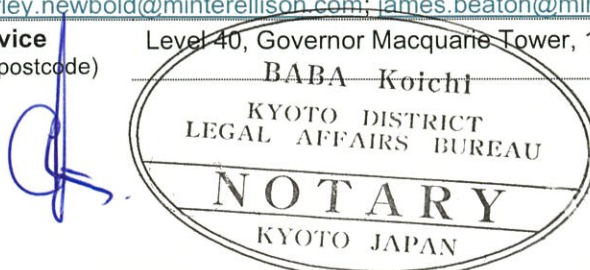
Occupation: Solicitor

Date: 22 April 2025


I, James Charles Beaton, partner at MinterEllison, say on oath:

1. I am a partner of MinterEllison, the solicitors for the Respondents in these proceedings. Together with my partner Beverley Ruth Newbold, I have the care and conduct of these proceedings on behalf of the Respondents in respect of the interlocutory application filed by the Appellant on 27 March 2025 (the **Appellant's Interlocutory Application**).
2. I am authorised to make this affidavit on behalf of the Respondents.
3. I was first admitted as a solicitor in the Supreme Court of Queensland in January 1996 and the High Court of Australia in March 1996. I was subsequently admitted as a solicitor in the Supreme Court of New South Wales in September 1998. Throughout my

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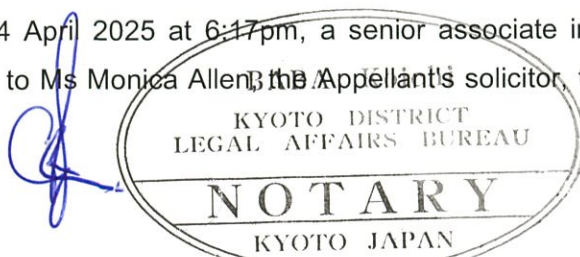


career I have practised in commercial litigation. I have been a partner of MinterEllison since 2003 and I have had the carriage of numerous complex matters at both a first instance and appellate level over that period. That experience has included supervising the review and production of documents in large discovery and document production exercises.

4. I make this affidavit on the basis of my own knowledge except where otherwise indicated. Where I depose to matters on information and belief, I believe them to be true. I do not intend, and have no authority, to waive privilege in any communication, or record of communication, that is subject to a claim for privilege by making this affidavit.
5. This affidavit is made in support of Respondent's interlocutory application dated 22 April 2025 (**Respondents' Interlocutory Application**), seeking to set aside:
 - (a) the notice to produce served on the Second Respondent on 17 April 2025 (**Notice to Produce**);
 - (b) the **Subpoenas**:
 - i. addressed to Mr Peter Bartlett and Mr Dean Levitan that were provided to MinterEllison on 17 April 2025 (together, the **ME Subpoenas**); and
 - ii. addressed to Ms Danielle Scott, Ms Emma Roberts, Person 17 and the Australian Broadcasting Corporation provided to MinterEllison on 19 April 2025 (together, the **Other Subpoenas**).
6. Shown to me at the time of swearing this affidavit is an electronic bundle of documents marked **Exhibit JCB-1**.
7. I make this affidavit in circumstances where I am currently traveling and outside Australia. However, the dates and times I refer to in this affidavit are the times when the matters referred to have occurred in Sydney, Australia.
8. Given the urgency of this matter, I have arranged for an unsworn form of this affidavit (together with Exhibit JCB-1) and an unfiled form of the Respondents' Interlocutory Application to be served on the Appellant in advance of receiving the sworn version of this affidavit and the filed form of the interlocutory application.

Background

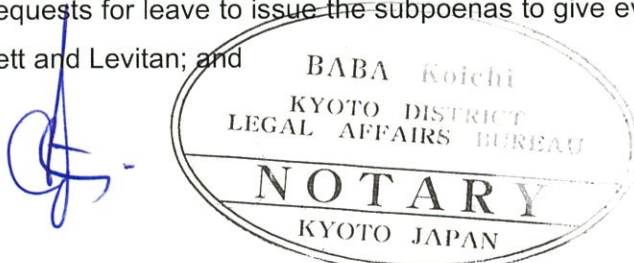
9. On 27 March 2025, the Appellant filed the Appellant's Interlocutory Application. By that interlocutory application, the Appellant seeks leave to file an amended notice of appeal, and to rely on the affidavit of Monica Allen sworn 27 March 2025 (**Allen Affidavit**).
10. On 14 April 2025 at 6:17pm, a senior associate in my employ, Rafael Aiolfi, sent an email to Ms Monica Allen, the Appellant's solicitor, that attached, by way of service, the





affidavit of Nicholas David McKenzie affirmed 14 April 2025 (**McKenzie Affidavit**). The McKenzie Affidavit is the only affidavit evidence on which the Respondents presently intend to rely in respect of the Appellant's Interlocutory Application.

11. On 17 April 2025 at 3:59pm, I received an email from Ms Allen that attached, by way of service, the Notice to Produce. Copies of this email and its attachment are at pages 3 to 6 of Exhibit JCB-1. The Notice to Produce requires Mr McKenzie to produce documents or things responsive to ten categories set out in the Notice to Produce before the Court at 9:30am on 23 April 2025.
12. Later that day, at 4:44pm, I received an email from Ms Allen that attached the ME Subpoenas. The ME Subpoenas were also expressed to be returnable at 9:30 am on 23 April 2025. Copies of this email and its attachments are at pages 7 to 31 of Exhibit JCB-1.
13. At 10:02pm, Ms Newbold sent an email to Ms Allen which, among other things, requested a copy of the Appellant's applications for leave to issue the ME Subpoenas. A copy of this email is at pages 32 to 33 of Exhibit JCB-1.
14. On Friday, 18 April 2025, I became aware that the Appellant had issued four additional subpoenas. At 7:43pm on the same day, Ms Newbold sent an email to Ms Allen reiterating her request for a copy of the Appellant's applications for leave to issue the ME Subpoenas and to request that Ms Allen identify the addressees of the four additional subpoenas. The Commonwealth Courts Portal was unavailable to users at this time. A copy of this email is at pages 34 to 35 of Exhibit JCB-1.
15. On 19 April 2025 at 7:03pm, Ms Newbold sent a further email to Ms Allen to request that Ms Allen provide the information sought in Ms Newbold's emails of 17 and 18 April 2025. A copy of this email is at pages 36 to 38 of Exhibit JCB-1.
16. Later that day, at 10:20pm, I received a response from Ms Allen that attached copies of the subpoenas addressed to Person 17, Ms Emma Roberts, Ms Danielle Scott, and the Australian Broadcasting Corporation. Ms Newbold responded to Ms Allen. Copies of this email and the attached subpoenas are at pages 39 to 86 of Exhibit JCB-1.
17. Ms Allen sent another email at 8:46am on 20 April 2025. Ms Newbold responded to this email at 7:06pm. A copy of that email chain is at pages 87 to 92 of Exhibit JCB-1.
18. On 21 April 2025 at 9.49am, I received a letter from Ms Allen enclosing:
 - (a) the subpoenas to give evidence addressed to Messrs Bartlett and Levitan;
 - (b) the requests for leave to issue the subpoenas to give evidence addressed to Messrs Bartlett and Levitan; and





(c) two copies of the request for leave to issue a subpoena to produce documents addressed to Mr Bartlett. I believe Ms Allen intended to enclose a copy of the request for leave to issue a subpoena to produce documents addressed to Mr Levitan, rather than a second copy of the application in respect of Mr Bartlett.

Copies of this letter and its enclosures are at pages 93 to 128 of Exhibit JCB-1.

19. On 21 April 2025, Mr Aiolfi sent a letter to Ms Allen that outlined the Respondents' concerns and objections in relation to each of the categories of the Notice to Produce and the Subpoenas (the **Letter**). A copy of this letter is at pages 129 to 136 of Exhibit JCB-1.
20. Later that day, at 9:35pm, I received a letter from Ms Allen that responded to the concerns and objections raised in the Letter (the **Responsive Letter**). A copy of this letter is at pages 137 to 142 of Exhibit JCB-1.

The Notice to Produce

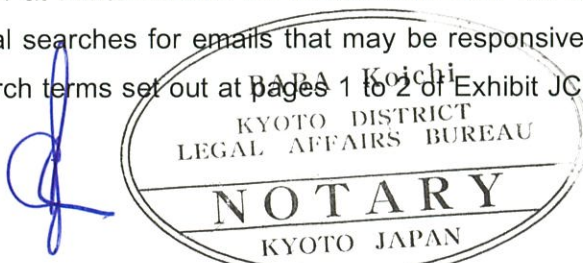
21. In the following paragraphs, I explain the bases on which the Second Respondent disputes each of the categories contained in the Notice to Produce.

Category 1

22. The first category of the Notice to Produce seeks all letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which Mr McKenzie received information from Emma Roberts or Danielle Scott in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
23. I refer to the objections raised in relation to this category in paragraphs 5 to 8 of the Letter.

Category 2

24. The second category of the Notice to Produce seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie and any employee or partner of Minter Ellison in relation to information obtained from or said to be derived from Danielle Scott or Emma Roberts in the period between 1 August 2020 and 27 July 2022.
25. I refer to the objections raised in relation to this category in paragraphs 9 to 10 of the Letter.
26. Ms Hast English and Mr Jack Carter are members of the Legal Technology Consulting team at MinterEllison. On instructions from me and my lawyers they have conducted initial searches for emails that may be responsive to category 2 based on the keyword search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 1,361





documents (including responsive documents and their families). A family of documents refers to a group of related documents that are connected through a common thread, such as a host email and its attachments. For example, if an email has several attachments, the host email and all its attachments together form a family of documents. The review of the entire family ensures that documents are reviewed in their full context, rather than in isolation. The number 1,361 does not include potentially responsive text messages and WhatsApp messages, which I discuss in further detail at paragraph 27 below.

27. I have also instructed Mr Carter to ascertain the number of text messages and WhatsApp messages between Mr McKenzie and/or Messrs Bartlett and Levitan, and that number is approximately 2,684. My team have not applied search terms to text messages and WhatsApp messages because they would not have captured screenshots photos and/or images that may have been exchanged between them. The effect of this is that all text messages and WhatsApp messages will each need to be individually reviewed.
28. For the reasons I explain in paragraphs 35 to 38, the time that will be involved in a review for category 2 responsiveness over a document set of this size will not be insignificant.

Category 3

29. The third category of the Notice to Produce seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie (or any person acting on his behalf), and any of Emma Roberts, Danielle Scott or Person 17 in relation to the Appellant, in the period between 1 August 2020 and 27 July 2022.
30. I refer to the objections raised in relation to this category in paragraphs 11 to 13 of the Letter.
31. Ms English and Mr Carter have conducted initial searches for documents that may be responsive to category 3 based on the Appellant's proposed date range and a number of keyword search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 1,502 responsive documents. This number does not include potentially responsive text messages and WhatsApp messages. For the reasons I explain in paragraphs 35 to 38, the cost and time that would be involved in conducting a review for category 3 responsiveness over a document set of this size will not be insignificant.

Category 4

32. The fourth category seeks all documents, images, recordings, notes, emails, letters, text messages, WhatsApp or Signal messages, or other communications comprising or



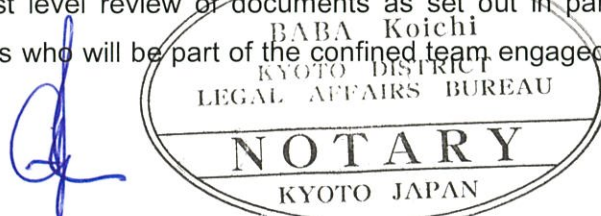


evidencing any information, documents, or images provided to Mr McKenzie by Danielle Scott, or any person acting on her behalf, which Mr McKenzie subsequently provided or forwarded to MinterEllison, or any employee or partner of that firm, as referred to in paragraph 43 of the McKenzie Affidavit.

33. I refer to the objections raised in relation to this category in paragraph 14 of the Letter.
34. Ms English and Mr Carter have conducted initial searches for documents that may be responsive to category 4 based on a number of keyword search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 1,113 responsive documents (including families). This number does not include potentially responsive text messages and WhatsApp messages. For the reasons I explain in paragraphs 35 to 38, the time that will be involved in conducting a review for category 4 responsiveness over a document set of this size will not be insignificant.

Conducting the review

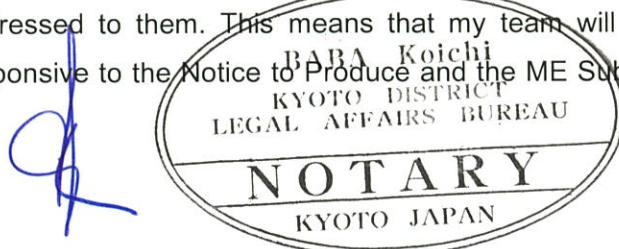
35. I have given consideration to the time required to review the responsive documents referred to at paragraphs 26, 27, 31 and 34. For completeness, the numbers of responsive email documents indicated at paragraphs 26, 31 and 34 include overlaps (for example, a document responsive to one category may also be responsive to other categories). Taking into account the overlap, conservatively, I expect a review of at least 4,246 unique documents (comprising emails, text messages and WhatsApp messages) will be necessary to comply with the Notice to Produce. The challenges I currently foreshadow with this review are as follows:
- (a) Only lawyers who have been approved by the Commonwealth as Respondent Representatives in accordance with 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) (the **NSI Orders**), will be able to join the review. I am concerned with avoiding any breach of the NSI Orders or the orders made by Justice Besanko on 6 February 2019 pursuant to s 37AF of the *Federal Court of Australia Act 1976* (Cth) (the **Suppression Orders**). MinterEllison has recently needed to seek approval for additional persons to be approved by the Commonwealth and that process took 9 days. It is therefore not possible to expand the team of lawyers able to review the documents quickly.
- (b) I believe it is appropriate to keep a relatively small team of reviewers, specifically to a total of five lawyers. Of this total number, three are junior lawyers who will conduct the first level review of documents as set out in paragraph 36(a) and two senior lawyers who will be part of the confined team engaged in second level review as set





out in paragraph 36(b). Further, and in any event, many lawyers in my team are currently on leave due to the proximity of the Easter and Anzac Day public holidays, although some are already working through or cancelling previously planned holidays.

- (c) Further, based on the breadth and vagueness of the currently proposed categories, in my experience, reviewers will be required to make potentially complex relevance decisions based on judgments about the subject matter contained in the documents. This may lead to different reviewers exercising their judgment in different ways and making different assessments about relevance. It is therefore preferable to have a smaller, focussed team of solicitors conducting the review. In my experience, this will more readily lead to a qualitatively more consistent review process.
- (d) The review team will also have responsibilities independently of reviewing documents in response to the Notice to Produce, for example assisting counsel with submissions, reviewing the court book, reviewing documents in response to any categories of Subpoenas that might survive the Respondents' application to set them aside, and other tasks in preparation for the upcoming hearing of the Appellant's Interlocutory Application on 1 and 2 May.
- (e) The document review will also require reviewers to make assessments regarding the legally privileged nature of certain communications and to seek ongoing instructions from the clients on privilege issues. This is due to the nature of the categories as drafted, which seek communications between the Second Respondent and MinterEllison, as well as communications with witnesses. All of this will require careful consideration and ongoing instructions to ensure that privileged information is appropriately identified and protected.
- (f) The Sydney-based MinterEllison lawyers who report to Ms Newbold and me and who are assisting with the Respondents' response to the Appellant's Interlocutory Application, including the review of relevant documents, were not involved in the proceedings at first instance in *Roberts-Smith v Fairfax Media Publications Pty Limited (No 40) [2022] FCA 1614* (Proceedings No. NSD 1485, 1486 and 1487 of 2018). There is therefore a necessary learning curve in relation to the issues relevant to assessing the relevance and/or privileged status of potentially responsive documents.
- (g) If the ME Subpoenas are not set aside, I expect that my team will assist Messrs Bartlett and Levitan in reviewing documents responsive to each of the subpoenas addressed to them. This means that my team will be reviewing both documents responsive to the Notice to Produce and the ME Subpoenas simultaneously. To the





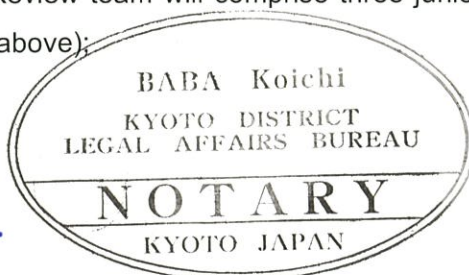
extent that there is some overlap (for example, if a document responds to both an ME Subpoena and a Notice to Produce category), it will be reviewed by my team only once. Consequently, the work required to review documents in response to the ME Subpoenas may not be entirely additional.

36. Based on my experience with the conduct of document review exercises in complex litigation, I believe that responding to the Notice to Produce will likely involve the following process:

- (a) once the 'review set' has been determined, documents will be reviewed at first instance by a junior lawyer (**First Level Reviewers**). First level reviewers will review each document for responsiveness to the categories, privilege and confidentiality, and apply the relevant coding (ie they will code each document as either responsive or not responsive to the categories; privileged, part privileged or not privileged; confidential, part-confidential or not confidential). In cases where a document is part-privileged or contains confidential or sensitive information within the meaning of the NSI Orders or the Suppression Orders, the First Level Reviewer will also have to apply the relevant redactions;
- (b) documents coded as responsive by the First Level Reviewers then flow through to more senior lawyers, who then undertake a second level review (**Second Level Reviewers**); and
- (c) Second Level Reviewers review all documents identified as responsive to the categories and make a determination on whether they agree with the coding by the First Level Reviewer (including for responsiveness, privilege and confidentiality). In addition, Second Level Reviewers also review any documents that the First Level Reviewers are unsure about and "spot check" documents coded as non-responsive to the categories by the First Level Reviewers to ensure that the review is conducted in accordance with the instructions, the NSI Orders, and the Suppression Orders.

37. In light of the considerations, requirements and limitations set out in paragraph 35 above, and based on my experience, I believe that the review will take approximately 9 business days to complete. This estimate is based on the following assumptions:

- (a) the total number of documents to be reviewed is approximately 4,200 documents (as set out in further detail at pages 1 to 2 of Exhibit JCB-1);
- (b) the First Level Review team will comprise three junior lawyers (refer to paragraphs 35(a) and 35(b) above);

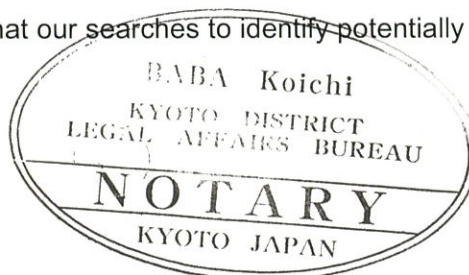




- (c) it will take at least half a working day, or 3.5 hours, for the First Level Reviewers to receive a briefing, read the materials, and understand the issues relevant to the review (in particular, I refer to paragraphs 35(c), 35(e), 35(f) above);
- (d) each First Level Reviewer will be able to review between 50-60 documents per hour, on average;
- (e) if each First Level Reviewer undertakes document review for the majority of their working day, assuming 5 hours per day (taking into consideration paragraph 35(d) above), they could each review approximately 750 documents per day, which means the First Level Review could be completed in 6 business days;
- (f) if approximately 30 per cent of documents are marked as responsive by the First Level Reviewers, the Second Level Review team will need to review approximately 1,260 documents;
- (g) the Second Level Review team will comprise two senior lawyers. The number of Second Level Reviewers is necessarily limited by the considerations set out in paragraph 35 above, but particularly paragraph 35(a). In addition, these two senior lawyers with the requisite approvals under the NSI Orders also play a key role in all aspects of the Respondents' defence of the Appellant's Interlocutory Application;
- (h) the rate of review for Second Level Reviewers is typically slower than for First Level Reviewers due to the additional checks and redactions Second Level Reviewers are required to undertake. Based on my experience, if each Second Level Reviewer will be able to review 45 documents per hour for 4 hours per day, on average, then the Second Level Review will be completed in 4 days.

38. I make the following qualifications in relation to my estimate of 9 business days:

- (a) The number of documents does not include email threading. Email threading refers to the grouping of related email messages that are part of the same conversation or thread. In a typical review, once the responsive set of documents is settled, email threading is applied. I expect the total number of documents may reduce once threading is applied;
- (b) The number is based on the number of documents currently available in the database. Not all records sent to and from every MinterEllison lawyer involved in the first instance proceedings have yet been collated and processed into the database. If required, that process is likely to elongate response time by several days; and
- (c) I also note that our searches to identify potentially relevant documents are ongoing.





39. Based on the matters I refer to in paragraphs 35 to 38, I do not believe that Mr McKenzie could properly comply with Categories 1 to 4 of the Notice to Produce as presently framed by 1 or 2 May 2025.

Category 5

40. I now address the remaining categories of the Notice, being categories 5 to 10. At this time MinterEllison has not extracted from the mailboxes of Mr McKenzie, Mr Levitan or Mr Bartlett documents created after 21 March 2025. Therefore, I am unable to ascertain at present the number of documents that would be responsive to those categories.
41. The fifth category seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie, or any person acting on his behalf, and Person 17, or any person acting on her behalf, in relation to the Audio Recording from 21 March to 17 April 2025.
42. As set out the Responsive Letter, the Appellant no longer presses this category.

Category 6

43. The sixth category seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie, or any person acting on his behalf, and Lynton Besser, or any other producer or researcher for the ABC's program *Media Watch*, in relation to Person 17 or the Audio Recording from 21 March 2025 to date.
44. I refer to the objections raised in relation to this category in paragraph 16 of the Letter.

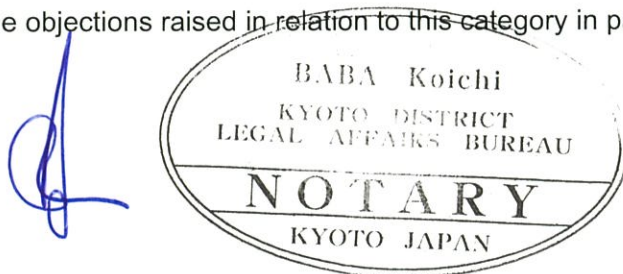
Categories 7 and 8

45. The seventh and eighth categories seek all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie and Dean Levitan or Peter Bartlett in relation to these proceedings from 21 March to 17 April 2025.
46. I refer to the objections raised in relation to this category in paragraphs 17 to 18 of the Letter.

Categories 9 and 10

47. The ninth and tenth categories seek all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr McKenzie and Emma Roberts or Danielle Scott, or any persons acting on their behalf, in relation to these proceedings from 21 March to 17 April 2025.
48. I refer to the objections raised in relation to this category in paragraph 19 of the Letter.

The Subpoenas





49. In the following paragraphs, I explain the bases on which the Respondents dispute each of the categories contained in the Subpoenas.

ME Subpoenas

Category 1

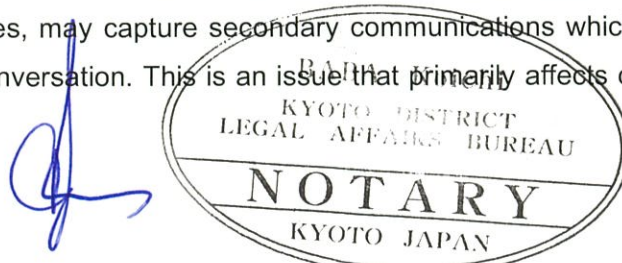
50. The first category seeks all letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents by which Mr McKenzie provided Mr Bartlett or Mr Levitan with information in relation to the Appellant obtained from Emma Roberts or Danielle Scott in the period between 1 August 2020 and 27 July 2022.
51. I refer to the objections raised in relation to this category in paragraphs 22 to 23 of the Letter.

Category 2

52. The second category seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr Bartlett or Mr Levitan and Mr McKenzie in relation to information obtained from Danielle Scott or Emma Roberts in the period between 1 August 2020 and 27 July 2022.
53. I refer to the objections raised in relation to this category in paragraphs 24 to 25 of the Letter.
54. Ms English has conducted initial searches for documents that may be responsive to either category 1 or 2 of the ME Subpoenas, based on a number of key word search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 1,361 responsive documents (including families). I note that there is also likely to be duplication of responsive documents across the categories of the Subpoenas and the Notice to Produce.

Category 3

55. The third category seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr Bartlett or Mr Levitan and any of Emma Roberts, Danielle Scott or Person 17 in relation to the Appellant, in the period between 1 August 2020 and 27 July 2022.
56. I refer to the objections raised in relation to this category in paragraphs 26 to 29 of the Letter.
57. A particular difficulty raised by this category is the inclusion of the phrase "notes of conversations" which, in addition to capturing files notes of the conversations themselves, may capture secondary communications which record some aspect of the earlier conversation. This is an issue that primarily affects categories 3 and 4 of the ME





Subpoenas, but also may apply to any category of the Notice to Produce or ME Subpoenas calling for “notes of conversations”.

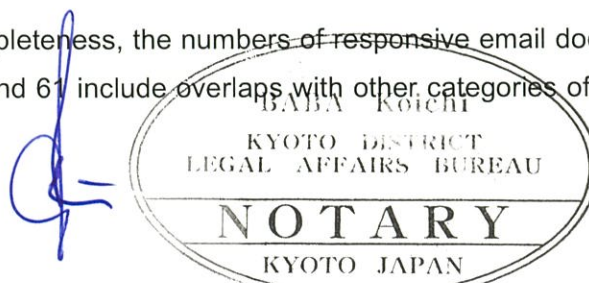
58. Ms English has conducted initial searches for documents that may be responsive to this category, based on a number of key word search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 12,359 responsive documents (including families). I note that it is also possible that there is duplication of responsive documents across the categories of the Subpoenas and the Notice to Produce, although production would need to be made separately by reference to each court order requiring production. As I explain in paragraphs 35 to 38, the time that would be involved in conducting a review of that size will not be insignificant.

Category 4

59. The fourth category seeks all notes of any meeting attended by Emma Roberts or Danielle Scott, on the one hand, and Mr McKenzie and any employee or partner of Minter Ellison, as well as any counsel briefed on the matter, on the other hand in the period between 1 August 2020 and 27 July 2022, including but not limited to the meeting on 14 March 2021.
60. I refer to the objections raised in relation to this category in paragraphs 30 to 31 of the Letter.
61. Ms English has conducted initial searches for documents that may be responsive to this category, based on a number of keyword search terms set out at pages 1 to 2 of Exhibit JCB-1. Those search terms return 6,890 responsive documents (including families). I recognise that keyword searches may not ultimately be the most efficient means of locating documents responsive to this category and that it may be appropriate to commence with the dates on which meetings occurred. That is because the number of responsive documents captured by keyword searches vastly exceeds the likely universe of documents responsive to the category.
62. I also note that it is also possible that there is duplication of responsive documents across the categories of the Subpoenas and the Notice to Produce, although production would need to be made separately by reference to each court order requiring production. As I explain in paragraphs 35 to 38, the time that will be involved in conducting a review of that size will not be insignificant.

Estimated time to complete review of categories 1 to 4 of the ME Subpoenas, and categories 2 to 4 of the Notice to Produce

63. For completeness, the numbers of responsive email documents indicated at paragraphs 54, 58 and 61 include overlaps with other categories of the ME Subpoenas. Taking into





account the overlap, conservatively, I expect a review of at least 15,721 documents will be necessary to comply with the ME Subpoenas, comprising 12,417 email documents and 3,304 text messages or WhatsApp messages.

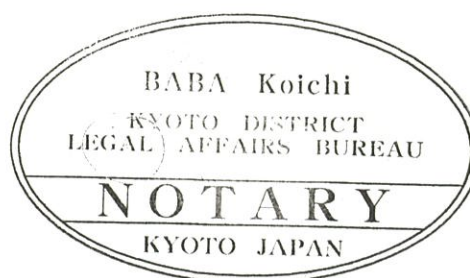
64. In addition to the time consuming review required to be undertaken by First Level Reviewers and Second Level Reviewers, Mr Bartlett and Mr Levitan may also wish to review the documents that are proposed to be produced by them, noting that the Subpoenas are directed to them personally. This will add to the time and workload required to respond to the ME Subpoenas.
65. The total number of documents (including families) responsive to the search terms we have used to ascertain the preliminary number of documents to be reviewed in compliance with categories 2-4 of the Notice to Produce, and categories 1-4 of the ME Subpoenas, adjusted to account for documents that respond to multiple categories across the Notice to Produce and the ME Subpoenas, is 15,741. Based on the matters, assumptions and qualifications I refer to in paragraphs 35 to 38, I believe that the review of both the Notice to Produce and ME Subpoenas will take at least 27 days to complete.

Category 5

66. The fifth category seeks all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr Bartlett or Mr Levitan and Person 17, or any person acting on her behalf, in relation to the Audio Recording in the period between 1 August 2020 and 27 July 2022.
67. As set out the Responsive Letter, the Appellant no longer presses this category.

Categories 6 – 8

68. I now move to the remaining categories of the ME Subpoenas, being categories 6 to 8. MinterEllison has not extracted from the mailboxes of Mr McKenzie, Mr Levitan or Mr Bartlett documents created after 21 March 2025. Therefore, I am unable to ascertain the number of documents that would be responsive to those categories.
69. The sixth to eighth categories seek all letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between Mr Bartlett or Mr Levitan and any of Mr McKenzie, Ms Roberts or Ms Scott in relation to these proceedings from 21 March to 17 April 2025.
70. I refer to the objections raised in relation to this category in paragraphs 35 to 37 of the Letter.



**Other Subpoenas**

71. In respect of the Subpoena addressed to the Australian Broadcasting Corporation, I refer to the objections raised in paragraph 38 of the Letter.
72. In respect of the Subpoena addressed to Person 17, I refer to the objections raised in paragraphs 39 to 41 of the Letter.
73. In respect of the Subpoena addressed to Ms Roberts and the Subpoena addressed to Ms Scott, I refer to the objections raised in paragraphs 43 to 48 of the Letter.

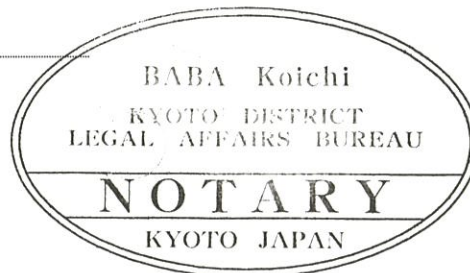
Sworn by the deponent at Kyoto, Japan

on 22 April 2025
Before me:

)
)
)
)
)
Signature of deponent

Signature of witness

馬場浩一





Schedule

No. NSD689, 690 and 691 of 2023

Federal Court of Australia

District Registry: New South Wales Registry

Division: General

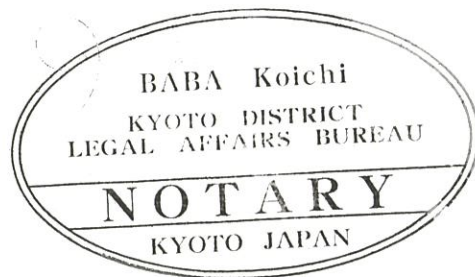
Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 22 April 2025





令和 7 年 第 1 8 5 号

1

認 証

2

囑託人ビートン ジェームス チャールスは、法定
の手續に従って、本公証人の面前で、この証書の記載
が真実であることを宣誓した上、これに署名した。

5

よって、これを認証する。

6

令和 7 年 4 月 2 2 日、本公証人役場において。

7

京都市中京区東洞院通御池下る笹屋町 4 3 6 番地の 2

8

シカタ ディス ビル 5 階

9

京都地方法務局所属

10

公証人

馬場 浩一



12

13

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公証人役場



Registered No.185

Certificate

This is to certify that Beaton James Charles,swore
before me, in accordance with legal procedure,that the
statement in the attached document is truthful, and he signed
the document in my presence on this 22nd day of Apr.2025.

Baba Koichi

B A B A K o i c h i

N o t a r y

436-2 Sasayamachi, Oike-sagaru,
Higashinotoin dori,Nakagyo-ku Kyoto
Kyoto District Legal Affairs Bureau

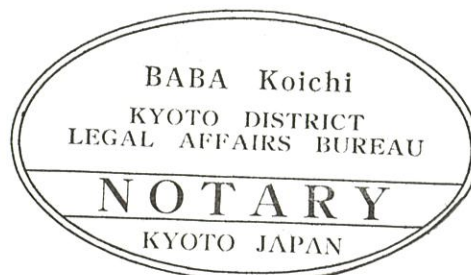




Exhibit Certificate

No. NSD 689, 690 and 691 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

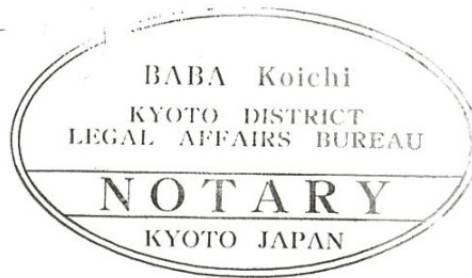
Appellant

Fairfax Media Publications Pty Limited and others

Defendants

This is the exhibit marked '**JCB-1**' now produced and shown to James Charles Beaton at the time of affirming his affidavit on 22 April 2025 before me:

馬場浩一



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
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