

Form 59  
 Rule 29.02(1)

**AFFIDAVIT**

**FEDERAL COURT OF AUSTRALIA  
 DISTRICT REGISTRY: NEW SOUTH WALES  
 DIVISION: GENERAL**

**NO NSD1485 OF 2018  
 NO NSD1486 OF 2018  
 NO NSD1487 OF 2018**

**BEN ROBERTS-SMITH**  
 Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD** and others  
 Respondents

Affidavit of: Kristy Alexander  
 Address: Level 10, 60 Martin Place, Sydney  
 Occupation: Senior Executive Lawyer  
 Date affirmed: 9 March 2022

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2.	<b>Annexure KA-1</b> being a subpoena to produce to the AFP dated 6 May 2021.	3	4
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Filed on behalf of the Commonwealth of Australia  
 Prepared by: Kristy Alexander  
 AGS lawyer within the meaning of s 55I of the *Judiciary Act* 1903  
 Address for Service:  
 The Australian Government Solicitor,  
 Level 42, MLC Centre, 19 Martin Place, Sydney, NSW 2000  
 Kristy.Alexander@ags.gov.au

File ref: 18007526

Telephone: 02 9581 7640  
 Lawyer's Email:  
 Kristy.Alexander@ags.gov.au  
 DX 444 Sydney




Document Number	Details	Paragraph(s) of affidavit referring to annexure(s)	Page
7.	<b>Annexure KA-6</b> being a document which reproduces the text which appears in the contents of the envelopes responsive to paragraph 2 of the subpoena.	8	24

I, Kristy Alexander, of Level 10, 60 Martin Place, Sydney in the State of New South Wales, Senior Executive Lawyer, affirm:

1. I am an AGS Lawyer within the meaning of s 55I of the *Judiciary Act 1903* (Cth). I have overall responsibility for the conduct of this matter for and on behalf of the Australian Government Solicitor (**AGS**), legal representative for the Commonwealth (including the Australian Federal Police (**AFP**)) and the Attorney-General.
2. I make this affidavit on the basis of my own knowledge.
3. On 6 May 2021, the Respondents in these proceedings caused to be issued a subpoena to produce addressed to The Proper Officer, Australian Federal Police (**subpoena**). A copy of the subpoena is **Annexure KA-1**.
4. On 17 May 2021, the AFP (through AGS) notified the Respondents that it made a public interest immunity claim with respect to certain documents responsive to paragraph 2 of the subpoena. A copy of a letter from AGS to the Respondents dated 17 May 2021 is **Annexure KA-2**.
5. After the AFP had filed and served open evidence and submissions in support of the public interest immunity claim, the Respondents advised AGS that they no longer pressed their objection to the claim. Her Honour Justice Abraham's Associate was advised of this by email on 1 June 2021. A copy of the email from the Respondents to her Honour Justice Abraham's Associate dated 1 June 2021 is **Annexure KA-3**.
6. On 8 March 2022, the Respondents wrote to AGS (copying the legal representatives for the Applicant) calling for production of the contents of the envelopes referred to in paragraph 2 of the subpoena. A copy of a letter from the Respondents to AGS dated 8 March 2022 is **Annexure KA-4**.
7. On 8 March 2022, AGS wrote to the Respondents (copying the legal representatives for the Applicant) confirming that AGS was instructed to make a limited disclosure of information responsive to paragraph 2 of the subpoena. A copy of the letter from AGS to the Respondents dated 8 March 2022 is **Annexure KA-5**.
8. I have read copies of what I am instructed are the original contents of the envelopes responsive to paragraph 2 of the subpoena held by the AFP. I confirm that the text appearing in italic font at paragraph 3 of the letter from AGS to the Respondents dated 8 March 2022 (appearing at Annexure KA-5) is an accurate, complete and verbatim reproduction of the whole of the text which appears in the contents of each of the envelopes responsive to paragraph 2 of the subpoena. For convenience, I have




reproduced the text which appears in the contents of the envelopes responsive to paragraph 2 of the subpoena in a separate document. A copy of this document is **Annexure KA-6**.

Affirmed by the deponent

at SYDNEY



in the STATE OF NSW

on 9 MARCH 2022

Before me:

Signature of witness:



Name of witness:

STACEY HAHN

Qualification of witness:

AGS Lawyer within the meaning of s 55I  
of the *Judiciary Act 1903* (Cth)

ANNEXURE NOTE KA-1

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 9 pages is the annexure marked **KA-1** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:



.....  
Signature

.....  
Qualification

AGS Lawyer pursuant to s551 of  
the Judiciary Act

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/05/2021 2:46:23 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:	19/05/2021, 9:30 AM
Place:	Court Room 19B, Level 17, Law Courts Building 184 Phillip Street Queens Square, Sydney



*Sia Lagos*

Dated: 6/05/2021 11:39:59 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 11 May 2021



## Subpoena – Declaration by addressee Notice to addressee

No. NSD 1485 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

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	Fairfax Media Publications Pty Limited, Nick McKenzie, Chris Masters and David Wroe, Respondents
Prepared by	Peter Bartlett
Law firm	MinterEllison
Tel +61 3 8608 2037	Fax +61 3 8608 1088
Email	Peter.Bartlett@minterellison.com
<b>Address for service</b>	Level 20, Collins Arch, 447 Collins Street Melbourne VIC 3000



**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



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**

Applicant

**Fairfax Media Publications Pty Limited** and others named in the Schedule

Respondents

To: The Proper Officer  
Australian Federal Police  
ACT Policing Information Access Team  
c/- City Station, 16-18 London Circuit  
Canberra City ACT 2601

**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 11 May 2021. (See Note 1)

Date: 5 May 2021

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

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

Place: MinterEllison, Collins Arch, 447 Collins Street, Melbourne VIC 3000

Email: Dean.Levitan@minterellison.com



### Details of subpoena

You must comply with this subpoena:

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

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

Date: 19 May 2021

Time: 9:30 am

Place: Federal Court of Australia, Law Courts Building, 184 Phillip Street, 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  
Level 17, Law Courts Building  
184 Phillip St  
Queens Square, Sydney  
NSW 2000

## Schedule of documents



In this schedule “document” has the meaning ascribed to it in the *Evidence Act 1995* (Cth).

The documents and things you must produce are as follows:

1. One copy of any handwritten note and/or envelope and its contents, provided by Mr John McLeod to the Australian Federal Police in or around March – April 2021, in connection with an investigation concerning Mr Ben Roberts-Smith.
2. One copy of any envelope addressed to Person 18, and its contents, provided to the Australian Federal Police in or around March – April 2021 in connection with an investigation concerning Mr Ben Roberts-Smith.



## **Notes**

### **Last day for service**

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

### **Informal service**

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

### **Addressee a corporation**

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

### **Conduct money**

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

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

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

**Production of a number of documents or things**

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

**Production of copy instead of original**

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 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: 5 May 2021

ANNEXURE NOTE KA-2

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 2 pages is the annexure marked **KA-2** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:



.....  
Signature

AGS lawyer pursuant to  
Qualification .....  
5551 of Judiciary Act



Your ref. PLB: 1183220  
Our ref. 21000717

**Australian Government Solicitor**  
Level 34, 600 Bourke Street Melbourne VIC 3000  
GPO Box 2853 Melbourne VIC 3001  
T 03 9242 1222 F 03 9242 1333  
www.ags.gov.au

17 May 2021

Mr Dean Levitan  
Minter Ellison  
GPO Box 769  
MELBOURNE VIC 3001

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

Dear Mr Levitan

**Ben Roberts-Smith v Fairfax Media Publication & Ors | NSD 1485, 1486 & 1487 of 2018 | subpoena issued to the Commissioner of the Australian Federal Police**

---

1. We refer to the subpoena issued at the request of the Respondents to the Commissioner of the Australian Federal Police (**AFP**) on 6 May 2021 (the **Subpoena**). We refer also to your letter dated 6 May 2021.

**Partial production**

2. We are instructed that, subject to the PII claim referred to below, the AFP intends to produce envelopes and notes falling within the scope of the subpoena as their existence has already been disclosed to the media, and the amended outline of evidence from Mr John McLeod identifies the recipient of that material.
3. As requested, we will redact any identifying information (names and addresses) from the material.

**Public interest immunity claim**

4. We are instructed that the AFP intends to make a public interest immunity (**PII**) claim in respect of documents responsive to the Subpoena insofar as the Subpoena seeks production of material pertaining to ongoing criminal investigations (**Responsive Documents**).
5. We are instructed that disclosure of the Responsive Documents will give rise to a real risk that the public interest will be harmed on the basis that such disclosure will prejudice and frustrate the conduct of ongoing criminal investigations and any prosecution of offences flowing from such investigations.
6. The principles are as set out by Hunt CJ and CL when giving the leading judgment in *Attorney-General (NSW) v Stuart* (1994) 34 NSWCLR 667 at 675:

... it is essential that noting used by police in their pursuit of criminals should be disclosed which may give any useful information concerning continuing inquiries to those who organise criminal activities: *Conway v Rimmer* (at 953-954); or which may impede or frustrate the police in that pursuit: *ibid* (at 972); or which may reveal matters to the prejudice of future police activities: *Young v Quin* (1985) 4 FCR 483 at 492; 59

ALR 225 at 234; *Beneficial Finance Corporation Ltd v Commissioner of Australian Federal Police* (1991) 52 A Crim R 423 at 436-437; and on appeal (1991) 31 FCR 523 at 527-528; 103 ALR 167 at 172; 58 A Crim R 1 at 5. Its rationale is that, if such information were disclosed prior to charges being laid (so that criminals would know what information the police have about them), they will be able to tailor their stories to facts which cannot be disputed, to organise their responses to questions and to arrange alibis. Harm may come or be threatened to prospective witnesses before being interviewed by police, particularly in relation to inquiries about crimes of violence.

7. There are numerous other cases where it has been held that it is against the public interest to reveal matters which might prejudice present and future law enforcement activities.<sup>1</sup>
8. These principles apply with no less force to the extant proceedings and the investigative processes being undertaken by the AFP, particularly in light of our instructions that those investigative processes are ongoing. In these circumstances, we invite the Respondents to withdraw the Subpoena insofar as it seeks material pertaining to the AFP's ongoing criminal investigations.
9. In the event that the Respondents intend to press for production of the Responsive Documents, we confirm that the AFP will require further time to prepare a formal objection to that course and evidence in support of a PII claim.

#### Costs

10. We confirm that the AFP reserves the right to rely on this correspondence on the question of costs with respect to any PII claim relating to the Responsive Documents.
11. We would be grateful if you could please indicate the Respondents position by **close of business today.**

Yours sincerely



#### **Evan Evagorou**

Senior Executive Lawyer

T 03 9242 1246 F 03 9242 1333

M 0417 694 714

evan.evagorou@ags.gov.au

<sup>1</sup> *Attorney General of NSW v Stuart* (1994) 34 NSWLR 667 at 674-6 Hunt CJ at CL; *Young v Quin* (1985) 4 FCR 483 at 492; *Beneficial Finance Corporation Ltd v Commissioner of Australian Federal Police* (1991) 52 ACrim R 423 at 436-437 and on appeal (1991) 31 FCR 523 at 527-528.

**ANNEXURE NOTE KA-3**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL**

**NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018**

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 1 page is the annexure marked **KA-3** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:

  
.....  
Signature

AGS lawyer pursuant to  
.....  
Qualification § 551 Judiciary Act

From: [Jeremy Forbes](#)  
Associate [Redacted]  
To: [Peter Bartlett](#); [Derek Leighton](#); [Tess McGuire](#); [Evan Parker](#); [Jessica Alexander](#); [Katie Hahn](#); [Stacey Bell](#); [Emily Paul](#); [Sulhus Mark O'Brien](#); [Mackie Allen](#)  
Cc: [Roberto-Smith v Fairfax \(NSD 1485, 1486 and 1487\) - AFP PII Listing \(ME-ME-PID4106433\)](#)  
Subject: [Roberto-Smith v Fairfax \(NSD 1485, 1486 and 1487\) - AFP PII Listing \(ME-ME-PID4106433\)](#)  
Date: Tuesday, 1 June 2021 8:02:10 PM

CAUTION: This email originated from outside of the organisation. Do not follow guidance, click links, or open attachments unless you recognise the sender and know the content is safe.

Dear Associate,

The Respondents no longer press their objection to the AFP's claim of public interest immunity. On this basis, the Respondents and AFP consider that Friday's listing is no longer required, and respectfully ask the Court for it to be vacated.

The Respondents and the AFP would respectfully ask that her Honour consider making the following orders in chambers:

1. The listing on 4 June 2021 be vacated;
2. There be no order as to costs in relation to the Australian Federal Police's claim for public interest immunity concerning the Respondent's subpoena to the Australian Federal Police dated 6 May 2021, or the Respondents' objection to that claim for public interest immunity.

We confirm that this email is sent with the AFP's consent, and that the Applicant and Commonwealth's legal representatives are copied.

Kind regards

Jeremy

Jeremy Forbes  
Lawyer  
T +61 2 9921 4620  
[jeremy.forbes@minterellison.com](mailto:jeremy.forbes@minterellison.com)  
MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000  
[minterellison.com](#) Follow us on [LinkedIn](#) and [Twitter](#)

**IMPORTANT INFORMATION, PLEASE READ**

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Sensitive: Legal

ANNEXURE NOTE KA-4

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 1 page is the annexure marked **KA-4** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:

  
.....  
Signature

AGS lawyer pursuant to  
Qualification s551 Judiciary Act

# MinterEllison.

8 March 2022

Email: [Kristy.Alexander@ags.gov.au](mailto:Kristy.Alexander@ags.gov.au)

Kristy Alexander  
Senior Executive Lawyer  
Australian Government Solicitor  
Level 10,  
60 Martin Place,  
Sydney NSW 2000

Copy to:  
Mark O'Brien Legal  
[mark.obrien@markobrienlegal.com.au](mailto:mark.obrien@markobrienlegal.com.au)

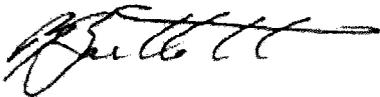
Dear Colleagues

**Fairfax Media, The Age and The Federal Capital Press ats Ben Roberts-Smith  
Federal Court proceeding numbers NSD 1485, 1486 and 1487 of 2018**

We refer to the subpoena addressed to the Proper Officer of the Australian Federal Police dated 6 May 2021 (**Subpoena**). A copy of that subpoena is **enclosed** for your convenience.

The Respondents press categories 1 and 2 of the Subpoena to the extent that they call for the production of the contents of the envelopes referred to in the Subpoena.

Yours faithfully  
**MinterEllison**



Peter Bartlett  
Partner

Contact: Peter Bartlett T: +61 2 9921 2677  
F: +61 2 9921 03 8608 1088 [Peter.Bartlett@minterellison.com](mailto:Peter.Bartlett@minterellison.com)  
Partner: Peter Bartlett T: +61 3 8608 2677  
OUR REF: DAL PLB 1183220

ANNEXURE NOTE KA-5

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 2 pages is the annexure marked **KA-5** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:



.....  
Signature

Qualification

AGS lawyer pursuant to  
s 551 Judiciary Act.



Our ref. 18007526

8 March 2022

Mr Peter Bartlett  
MinterEllison

By email: [peter.bartlett@minterellison.com](mailto:peter.bartlett@minterellison.com)  
[dean.levitan@minterellison.com](mailto:dean.levitan@minterellison.com)  
[jeremy.forbes@minterellison.com](mailto:jeremy.forbes@minterellison.com)

Cc: Mr Mark O'Brien  
Mark O'Brien Legal

By email: [mark.obrien@markobrienlegal.com.au](mailto:mark.obrien@markobrienlegal.com.au)  
[monica.allen@markobrienlegal.com.au](mailto:monica.allen@markobrienlegal.com.au)  
[paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)

**Australian Government Solicitor**

Level 10  
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GPO Box 2727 Sydney NSW 2001  
T 02 9581 7777 F 02 9581 7778  
[www.ags.gov.au](http://www.ags.gov.au)

Canberra  
Sydney  
Melbourne  
Brisbane  
Perth  
Adelaide  
Hobart  
Darwin

Dear Colleagues

**Ben Roberts-Smith v Fairfax Media Publication & Ors and related proceedings (NSD1485/2018, NSD1486/2018 and NSD 1487/2018) – AFP subpoena**

1. We refer to the subpoena to produce documents issued to the Commissioner, Australia Federal Police (**AFP**) at the request of the Respondents in these proceedings on 6 May 2021 (**subpoena**) and called upon in their letter dated 8 March 2022. We refer also to the open affidavit of Commander Andrew Donoghoe dated 1 June 2021 (**affidavit**), which was served on the parties that day in respect of public interest immunity (**PII**) claims asserted by the AFP over certain material responsive to the subpoena.
2. As noted in the affidavit, a PII claim was advanced over the contents of envelopes responsive to the subpoena (see paragraph [17]). We note the Respondents have indicated that they press categories 1 and 2 of the subpoena to the extent they call for the production of the contents of the envelopes referred to in the subpoena.
3. We are now instructed to make a further, limited disclosure of the text (but not the form, or copies) of the contents of the envelopes responsive to category 2 of the subpoena only. I confirm that on instructions from the AFP, I have reviewed copies of the original documents responsive to category 2, and that the whole of the text set out in those documents (being two documents of which the textual contents are identical) is as follows:

*You and others have worked together to spread lies and rumours to the media and the IGADF inquiry. You have one chance to save yourself. You must approach the inquiry and admit that you have colluded with others to spread these rumours and lies about certain individuals or you will become their focus. We are very aware of your murderous*

*actions over many tours in Afghanistan and we have specific mission details, dates and witnesses who now are willing to expose you to the authorities so you are criminally investigated. Just like when you participated in the execution of 2 PUCs from the Taliban's makeshift medical compound following the battle in Tizak. You know what you have done and so do we. Approach the inquiry and admit to working with others to concoct lies about other SAS members. You have until the end of the month to tell them the truth, and don't ignore this because it will not go away. You will go down. Better to take a reprimand than murder charges*

*A friend of the regiment*

4. For the avoidance of doubt, we are instructed that the AFP otherwise maintains its PII claim over the contents of envelopes responsive to the subpoena, including a claim over the original form and any copies of the documents from which the above text has been copied.
5. We confirm that if required by either party, a solicitor's affidavit can be provided to the Court and the parties annexing a copy of the text extracted above.

Yours sincerely



**Kristy Alexander**  
Senior Executive Lawyer  
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ANNEXURE NOTE KA-6

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

NO NSD 1485 OF 2018  
NO NSD 1486 OF 2018  
NO NSD 1487 OF 2018

**BEN ROBERTS-SMITH**

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD & ORS**

Respondents

The following 1 page is the annexure marked **KA-6** referred to in the affidavit of Kristy Alexander made 9 March 2022 before me:

  
.....  
Signature

AGS lawyer pursuant to  
Qualification  
s551 Judiciary Act.

*You and others have worked together to spread lies and rumours to the media and the IGADF inquiry. You have one chance to save yourself. You must approach the inquiry and admit that you have colluded with others to spread these rumours and lies about certain individuals or you will become their focus. We are very aware of your murderous actions over many tours in Afghanistan and we have specific mission details, dates and witnesses who now are willing to expose you to the authorities so you are criminally investigated. Just like when you participated in the execution of 2 PUCs from the Taliban's makeshift medical compound following the battle in Tizak. You know what you have done and so do we. Approach the inquiry and admit to working with others to concoct lies about other SAS members. You have until the end of the month to tell them the truth, and don't ignore this because it will not go away. You will go down. Better to take a reprimand than murder charges*

*A friend of the regiment*