

## NOTICE OF FILING

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### Details of Filing

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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 1/04/2021 1:48:57 PM AEDT

Registrar

### Important Information

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(Your ref)

(Our ref) 21RRG0130  
(Date) 23 March 2021  
(Sent by) By Email only

Mr Grant McAvaney  
Head of Disputes & Litigation Team  
Australian Broadcasting Corporation  
700 Harris Street  
Ultimo NSW 2007

Dear Mr McAvaney

**CHARLES CHRISTIAN PORTER v AUSTRALIAN BROADCASTING CORPORATION  
FEDERAL COURT PROCEEDINGS NSD206/2021**

- 1 We refer to the Orders dated 17 March 2021, and in particular Order 1 requiring Mr Porter to provide further particulars of identification, republication and/or aggravated damages on or before 23 March 2021.
- 2 Any defined terms in this letter and any future correspondence are defined by reference to the defined terms in the Statement of Claim dated 14 March 2021.

**Identification**

*Particulars of identification*

- 3 Further to the particulars of identification set out beneath paragraph 5 of the Statement of Claim:
  - (ao) On or shortly after 26 February 2021 after the publication of the Article, Google searches of Mr Porter's name increased significantly and much more so than any other senior male cabinet members.
  - (ap) On or shortly after 26 February 2021 after the publication of the Article, views of the LinkedIn profile of Mr Porter's wife, Jennifer Porter, significantly increased.
  - (aq) After the publication of the Article and by midday Wednesday 3 March 2021, in response to a Google search of 'who is the minister accused of rape' (or words to similar effect) the results named Mr Porter.
  - (ar) At about 9:00am on ABC's *Insiders* and then again at about 9:15 am on 28 February 2021, on ABC News Radio, Anthony Albanese stated there was a temporal connection between him learning of the allegations made in the Article and the November 4Corners.
  - (as) The ABC's admission during the ABC News by Andrew Probyn on 2 March 2021 (and before Mr Porter's press conference) that, in relation to the Article "*the Minister's identity was widely known in political and media circles*".

*Classes of persons*

- 4 Persons who identified Mr Porter as the senior cabinet minister the subject of the Article (and such identification was reasonable in the circumstances) fall into the following classes of identification:
  - (a) Persons who AB told;
  - (b) Persons to whom class (a) communicated the allegations to;



- (c) Persons who knew that Mr Porter was in Sydney in 1988;
- (d) Persons who received the Dossier;
- (e) Persons who were aware that an allegation had been made about Mr Porter concerning his conduct as a teenager against a woman;
- (f) Persons who were contacted by the ABC or Ms Milligan;
- (g) Persons who had watched the November 4Corners;
- (h) Persons who identified Mr Porter shortly after reading the Article from their own investigations;
- (i) Persons who were told by people in classes (b) - (h) that it was Mr Porter;
- (j) Persons who watched Mr Porter at his press conference at about 3pm AEST on 3 March 2021 or otherwise heard or read about it and thus identified him subsequent to reading the Article;
- (k) Persons who subsequently read the Article (which is still available for download on the ABC website and continues to be downloaded) knowing the cabinet minister was Mr Porter by reason of his press conference at 3pm AEST on 3 March 2021 and associated publicity.

5 There are persons in each class that are known and unknown to Mr Porter.

6 Part of Mr Porter's case will be inferential, based on the overwhelming material that we are continuing to collate. These materials are publicly available and generally known to your clients noting the admissions made by Paul Barry on behalf of the ABC as outlined at paragraph (al) of the particulars of identification beneath paragraph 5 of the Statement of Claim and the admission by Mr Probyn referred to in particular (as), above. In this regard, we also **enclose** Schedule 'A' being a number of tweets published before 2 March 2021 including a tweet by journalist Peter Fitzsimons on 2 March 2021.

7 We also **enclose**:

- (a) Schedule 'B' containing additional sample tweets identifying Mr Porter between 26 February 2021 and 1 March 2021;
- (b) Schedule 'C' containing sample Facebook posts published between 26 February 2021 and 1 March 2021;
- (c) Schedule 'D' containing sample Reddit posts published between 26 February 2021 and 2 March 2021.

8 We give the following names **by way of sample only**. In some classes there will be hundreds of names and in others, possibly thousands. We are continuing to collate these materials that will be served as evidence in the proceedings. The name examples for each class adopted the sub-paragraphs numbered in paragraph 4 above:

- (a) Malcolm and Lucy Turnbull, Senator Penny Wong, Dhanya Mani, Michael Bradley, Tory Shepherd, persons named in the cover letter to Dossier;
- (b) Suzanne Peters, employees of the ABC working on the Four Corners programme;
- (c) Clayton Long;
- (d) Prime Minister Scott Morrison, Senator Sarah Hanson Young, Senator Penny Wong and Celia Hammond MP and unknown officers of the Australian Federal Police, NSW Police and South Australian Police;

- (e) Paul Kelly, Chris Dore, Nick Tabakoff, Michael Stutchbury, Joe Aston, Anthony Albanese, Peter Van Onselen, Richard Holden and Elena Douglas.
- (f) Tony Barry;
- (g) Richard Douglas and further, see **enclosed** sample emails (Schedule 'E');
- (h) Hundreds or thousands of persons who were searching on the internet, see enclosed sample documents referred to below;
- (i) Ministerial staff, members of the Canberra press gallery, members of mainstream media;
- (j) The Australian public;
- (k) The Australian public.

9 In addition to the classes of persons, there was an overwhelming number of members of the public who named Mr Porter as the minister the subject of the Article but did not specify how they came to that knowledge. Some of those people contacted our client. A sample is enclosed of email communications of this nature in Schedule 'F'. The sheer number of such persons leads to the conclusion that his identification was reasonable even without knowing how each such person came to that conclusion.

10 Relevant to the reasonableness of identification is the extent of publication of the Article. We request prompt compliance with paragraph 4.7 of the Federal Court Practice Note in relation to admissions as to extent of publication. We require you to differentiate between publications before 3pm on 3 March 2021 and those after that time.

11 Also relevant to the reasonableness of identification is the extent of publication of the November 4Corners, by way of broadcast over ABC television and online. We request that you also provide us with those viewer numbers.

12 In relation to the question of identification, you have now had an opportunity to consider these matters. Many tens of thousands of dollars have already been and will be expended on the question of identification. It is obvious that Mr Porter was reasonably identified as the subject of the Article. We request, in accordance with your clients' obligations under s 37M of the *Federal Court of Australia Act 1976* (Cth), that you give an early indication as to your clients' position on the issue of identification before extensive further time and costs are wasted.

13 We also understand that it is agreed between the parties that the ABC is subject to the Legal Services Direction 2017 in so far as it is required to adhere to Appendix B, being the obligations of model litigants. We note that requires the ABC (amongst other obligations) to not cause unnecessary delay or cost, and to avoid, prevent and limit the scope of legal proceedings wherever possible. In particular the ABC is required to minimise costs by not requiring our client to prove any matter that it knows to be true. In our view the question of the identification of Mr Porter plainly falls into this category.

#### ***Extent of publication***

14 We are instructed that the Article has been amended at least once - the ABC website indicates at least one change. So that time and costs are not wasted we request that you now produce any earlier versions of the Article as they appeared on the ABC website.

15 We **enclose** the following documents in relation to republication, by way of particularisation:

- (a) **Schedule 'G'** containing republications on news reporting websites of the Article (**Schedule of Republications**);
- (b) **Schedule 'H'** containing republications of the Article on social media.

- 16 Mr Porter relies on the republications only on the question of damage caused by the publication of the Article (as opposed to separate causes of action). The republications, which repeat the sense and substance of the Article, were the natural and probable consequence of the publication of the Article.
- 17 You will see that the schedule includes the URL for each instance of republication. We presently estimate that it will take a paralegal at least 100 hours to manually image and prepare electronic copies of each republication. At a rate of \$200 per hour, the cost of this exercise is significant and potentially unnecessary. It is obvious that the allegations in the Article were republished throughout Australia and overseas many hundreds of times. That figure does not include the republications on social media. Again, we invite your clients to make appropriate admissions on this topic as soon as possible.
- 18 On the question of the form of the Schedule of Republications, please indicate whether your clients object to the evidence being adduced in the form provided to you under cover of this letter. In considering this request you should have regard to section 37(M) and 37(N) of the *Federal Court Act 1976* and section 40 of the *Defamation Act 2005* and the conduct of parties in litigation, noting that our client is an individual and your clients are utilising the unlimited funds of the taxpayer. We also note the provisions of s50 of the *Evidence Act 1995* (Cth). In our view the provision of the URLs to you satisfies this provision.

### **Aggravated damages**

- 19 In addition to the matters presently particularised beneath paragraph 8 of the Statement of Claim, Mr Porter's hurt and harm arising from the publication of the Article was aggravated by his knowledge of the following conduct:
- (l) The failure of the ABC and Milligan to disclose in the Article that AB's "statement" was unsigned.
  - (m) The failure of the ABC and Milligan to disclose in the Article that AB's parents were concerned that "*she may have confected or embellished the allegations*" against Mr Porter and that they believed that her call to the police before her suicide "*possibly represented [AB] retracting her allegations*".
  - (n) The conduct of the ABC and Milligan in publicising the content of the Dossier where it was marked "*Private & Personal & Confidential*" and it had limited distribution to three people in order to apparently "*preserve [the] rights of the Attorney-General*" and its stated purpose was "*a discrete preliminary investigation*" having regard to Mr Porter's "*right to protect his name*".
  - (o) The conduct of the ABC and Milligan in leaving the Article online, where it has been continuously published after Mr Porter has been plainly identified.
  - (p) The hypocrisy of Milligan by criticising ABC Media Watch host Paul Barry for not giving her an opportunity to respond to a story broadcast on 1 March 2021 when she made a deliberate decision to give no such consideration to Mr Porter.
  - (q) The conduct of the ABC and Milligan, prior to the press conference on 3 March, in lobbying for an inquiry into the cabinet minister the subject of the Article and calling for him to be stood down which would have had the immediate effect of publicly naming him.
  - (r) The conduct of Milligan, and other servants or agents of the ABC, in retweeting the despicable, unjustified and improper comment made by the former Prime Minister Malcolm Turnbull stating that there was a need for an inquest to question the complainant's cause of death and suggesting that her death may not have been caused by suicide and had something to do with the cabinet minister the subject of the Article.

- (s) The conduct of Milligan in retweeting the comment by the West Australian that the ex-wife of Mr Porter attended a protest of gender discrimination and violence inferring that Mr Porter had perpetrated gender discrimination and violence on her.
- (t) The conduct of Milligan, shortly after publication of the Article and before the 3 March 2021 press conference, in directing her twitter followers by the use of #cabinetminister to a Twitter thread which named Mr Porter over 500 times.
- (u) The conduct of the ABC in making continuous calls for an inquiry into Mr Porter during various ABC media broadcasts following the commencement of these proceedings, despite being aware that the matter was now being dealt with in a court of law.
- (v) The conduct of the ABC in publishing statements subsequent to the commencement of these proceedings to the effect that, even with a defamation claim, Mr Porter would not be able to clear his name.
- (w) The disingenuous conduct of the ABC and Milligan in claiming that they acted properly in their failure to put the allegations to Mr Porter prior to publication because he was not named in the Article, in circumstances where they knew and intended that he would be identified.
- (x) The conduct of the ABC and Milligan in publishing the Article knowing that there was insufficient material to charge Mr Porter with the crimes alleged, thus with the knowledge that it was false to accuse him of being reasonably suspected of the offence or of their being reasonable ground to suspect him. Milligan and the ABC knew that in the circumstances the police had no basis to investigate further.
- (y) The ABC and Milligan were aware that Senator Penny Wong, the leader of the opposition in the Senate, had been spoken to by AB in 2019 during which AB made the allegations about Mr Porter. Senator Wong did not take steps to make those allegations public, seek an inquiry or call for Mr Porter to step down as Attorney-General, even when AB was alive and able to give evidence. Despite that, the ABC persisted in its calls for an inquiry and for Mr Porter to stand down.
- (z) The ABC and Milligan were aware that the conduct of Senator Penny Wong referred to in the preceding particular had the support of opposition leader and head of the Labor Party Anthony Albanese. In those circumstances their calls that Mr Porter step down were baseless and unjustified.
- (aa) The conduct of the ABC in seeking to have Mr Porter removed from his position as Attorney- General in persistently publishing and publicising views that he should be stood down or otherwise be the subject of an inquiry, such publications and calls continuing after the commencement of these proceedings.
- (ab) The conduct of the ABC in persistently and continually publishing statements to the effect that AB was telling the truth and describing her as "*the victim*".
- (ac) The ABC's conduct in broadcasting an assertion on 4 March 2021 on ABC Radio National's the Party Room programme that AB was under extreme pressure to withdraw her police complaint when there was no basis to make that suggestion.
- (ad) The ABC's conduct in broadcasting an assertion on 4 March 2021 on ABC News Radio that the serious allegations made against Mr Porter are supported by evidence collected when AB was 16 years old when there was no basis to make that suggestion.

**Documents and obligations to retain documents**

- 20 It has come to our attention that Ms Milligan and perhaps the ABC have been deleting social media posts relevant to these proceedings which could go to issues of identification, aggravation, and malice, if it becomes relevant. In our view this is a serious matter that requires your urgent attention. Over the last two weeks we have captured the social media pages of your clients. Any deletions will be immediately apparent. We request you let us know your position in relation to this matter.
- 21 We have also been informed that Ms Milligan uses encrypted messaging apps that have the capacity to automatically delete communications after a set period of time. This is also of significant concern to us. We request that any such communications that have since been automatically deleted that are relevant to these proceedings be sought to be identified. We will expect such communications to be specifically listed in any list of documents and in answers to interrogatories.

Yours faithfully  
**COMPANY GILES**



**Rebekah Giles**  
(Principal Director)

Enclosures – Dropbox link

<https://www.dropbox.com/sh/hnkycon0ufxfpzn/AAANtQGgCWwF7ml9li2d10KQa?dl=0>