

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/07/2019 9:37:59 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit of Service - Form 59 - Rule 29.02(1)
File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE &
ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 24/07/2019 9:43:09 AM AEST

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

Affidavit of: **Michael Antony Rippon**
Address: C/- ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
Occupation: Solicitor
Date: 3 July 2019

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4	Annexure "MR6", being copy of the New South Wales Email.	9	13
5	Annexure "MR7", being copy of the Queensland Email.	11	19

Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
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I, Michael Antony Rippon, affirm:

1. I am a solicitor in the employment of the Applicant and I am authorised to make this affidavit on the Applicant's behalf.
2. I presently have carriage of this matter on behalf of the Applicant.
3. The content of this affidavit is based on my own knowledge and belief unless otherwise indicated.
4. I make this affidavit in relation to the Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* (Cth) dated 24 June 2019 and filed on behalf of the Applicant in this proceeding (**Notice**).

Service of Notice on Attorney-General of the Commonwealth

5. On 26 June 2019, I caused to be served on the Attorney-General of the Commonwealth of Australia, the Honourable Christian Porter, a copy of the Notice by express post.
6. Annexed hereto and marked "**MR4**" is a copy of a letter addressed to the Honourable Christian Porter which I caused to be express posted on 26 June 2019, enclosing a copy of the Notice (**Commonwealth Letter**).
7. On 28 June 2019, I received an email from the Australian Government Solicitor, attaching a letter from Ms Emily Kerr, Senior Lawyer, acknowledging receipt of the Notice. Annexed hereto and marked "**MR5**" is a copy of the email and letter of acknowledgement.



Service of Notice on Attorney-General of New South Wales

8. On 26 June 2019, I caused to be served on the Attorney-General of New South Wales, the Honourable Mark Speakman, a copy of the Notice by email and by express post.
9. Annexed hereto and marked "**MR6**" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Mark Speakman and a copy of the Notice (**New South Wales Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of Queensland

10. On 26 June 2019, I caused to be served on the Attorney-General of Queensland, the Honourable Yvette D'Ath, a copy of the Notice by email and by express post.
11. Annexed hereto and marked "**MR7**" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Yvette D'Ath and a copy of the Notice (**Queensland Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of Victoria

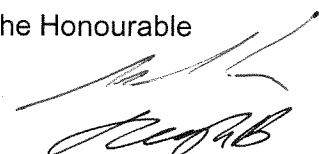
12. On 26 June 2019, I caused to be served on the Attorney-General of Victoria, the Honourable Jill Hennessy, a copy of the Notice by email and by express post.
13. Annexed hereto and marked "**MR8**" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Jill Hennessy and a copy of the Notice (**Victoria Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of Tasmania

14. On 26 June 2019, I caused to be served on the Attorney-General of Tasmania, the Honourable Elise Archer, a copy of the Notice by email and by express post.
15. Annexed hereto and marked "**MR9**" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Elise Archer and a copy of the Notice (**Tasmania Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of South Australia

16. On 26 June 2019, I caused to be served on the Attorney-General of South Australia, the Honourable Vickie Chapman, a copy of the Notice by email and by express post.
17. Annexed hereto and marked "**MR10**" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable



Vickie Chapman and a copy of the Notice (**South Australia Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of Western Australia

18. On 26 June 2019, I caused to be served on the Attorney-General of Western Australia, the Honourable John Quigley, a copy of the Notice by email and by express post.

19. Annexed hereto and marked "MR11" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable John Quigley and a copy of the Notice (**Western Australia Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of the Northern Territory

20. On 26 June 2019, I caused to be served on the Attorney-General of the Northern Territory, the Honourable Natasha Fyles, a copy of the Notice by email and by express post.

21. Annexed hereto and marked "MR12" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Natasha Fyles and a copy of the Notice (**Northern Territory Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Service of Notice on Attorney-General of the Australian Capital Territory

22. On 26 June 2019, I caused to be served on the Attorney-General of the Australian Capital Territory, the Honourable Gordon Ramsay, a copy of the Notice by email and by express post.

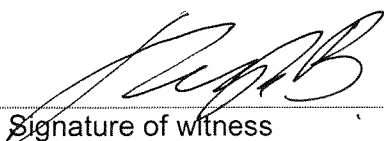
23. Annexed hereto and marked "MR13" is a copy of an email I caused to be sent on 26 June 2019, attached to which was a copy of a letter addressed to the Honourable Gordon Ramsay and a copy of the Notice (**Australian Capital Territory Email**). I also caused a copy of that letter and the Notice to be express posted on 26 June 2019.

Affirmed by the deponent
at Ultimo
in New South Wales
on 3 July 2019
Before me:

)
)
)
)
)



Signature of deponent


Signature of witness

Hugh Bennett, Solicitor

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR4**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Christian Porter MP
Attorney-General of the Commonwealth
4 National Circuit
BARTON ACT 2600

By express post

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/06/2019 3:18:00 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in black ink, appearing to read 'Warwick Soden'.

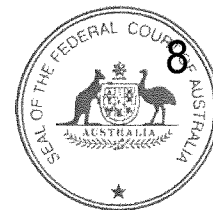
Dated: 25/06/2019 9:43:06 AM AEST

Registrar

Important Information

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. _____ of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

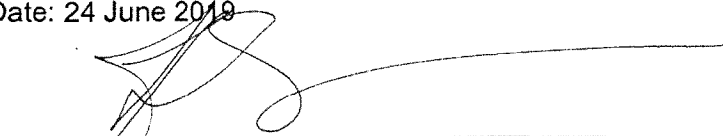
Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696 Fax _____
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant.

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR5**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Mills, Cassandra <Cassandra.Mills@ags.gov.au>
Sent: Friday, 28 June 2019 4:47 PM
To: Michael Rippon
Subject: 20190628 ABC v KANE - ack letter 19004731 [SEC=UNCLASSIFIED]
Attachments: 20190628 ABC v KANE - ack letter 19004731.PDF

FilingDate: 1/07/2019 10:51:06 AM

Dear Mr Rippon,

Australian Broadcasting Corporation v KANE, Martin – Federal Court of Australia – Proceeding no. NSD 989/2019

Please find attached our correspondence in relation to the above proceeding.

Kind Regards,

Cassandra Mills

Senior Legal Assistant

Australian Government Solicitor

T 02 6253 7110

cassandra.mills@ags.gov.au

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.



Our ref: 19004731

28 June 2019

Mr Michael Rippon
Australian Broadcasting Corporation, Legal Department
ABC Ultimo Centre
700 Harris Street
Ultimo NSW 2007

Australian Government Solicitor
4 National Circuit, Barton ACT 2600
Locked Bag 35, Kingston ACT 2604
T 02 6253 7000 DX 5678 Canberra
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

By email: rippon.michael@abc.net.au

Dear Mr Rippon

**Australian Broadcasting Corporation v KANE, Martin – Federal Court of
Australia – Proceeding no. NSD 989/2019**

We act for the Commonwealth Attorney-General and acknowledge receipt of your notice dated 24 June 2019 giving him notice pursuant to s 78B of the *Judiciary Act 1903* of a constitutional issue in the above proceeding.

We will write to you again when a decision has been made on the question of intervention.

Yours sincerely

Emily Kerr
Senior Lawyer
T 02 6253 7354 F 02 6253 7303
emily.kerr@ags.gov.au

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR6**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:01 PM
To: office@speakman.minister.nsw.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General NSW 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear Attorney-General

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Mark Speakman SC MP
Attorney-General of New South Wales
GPO Box 5341
SYDNEY NSW 2001

By express post and email: office@speakman.minister.nsw.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



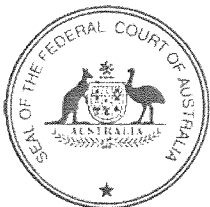
Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in black ink, appearing to read 'Warwick Soden'.

Dated: 25/06/2019 9:43:06 AM AEST

Registrar

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. _____ of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696 Fax _____
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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


Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR7**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness	
Name of witness	Hugh Bennett
Qualification of witness	Solicitor
Address of witness	C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:06 PM
To: attorney@ministerial.qld.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General QLD 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear Attorney-General

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Yvette D'Ath
Attorney-General of Queensland
1 William Street
BRISBANE QLD 4000

By express post and email to: attorney@ministerial.qld.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



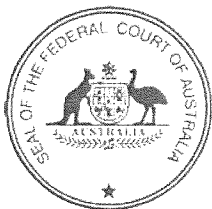
Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Warrick Soden

Dated: 25/06/2019 9:43:06 AM AEST

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Form 18
Rule 8.11(2)



**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. _____ of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696 Fax _____
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

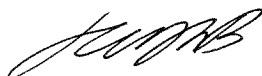
Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR8**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:04 PM
To: attorney-general@justice.vic.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General VIC 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear Attorney-General

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Jill Hennessy
Attorney-General of Victoria
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000


By express post and email to: attorney-general@justice.vic.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



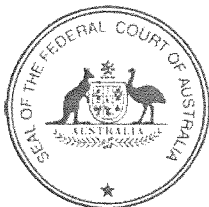
Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

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Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in black ink that reads 'Warwick Soden'.

Dated: 25/06/2019 9:43:06 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.

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.


Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696 Fax _____
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR9**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:12 PM
To: [REDACTED]
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General TAS 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear [REDACTED]

Please find **attached** letter and enclosure for the attention of the Attorney-General.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Elise Archer MP
Attorney-General of Tasmania
Level 10, 15 Murray Street
HOBART TAS 7000

By express post and email to: [REDACTED]

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



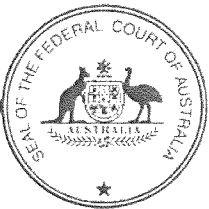
Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

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Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in cursive script that reads 'Warwick Soden'.

Dated: 25/06/2019 9:43:06 AM AEST

Registrar

Important Information

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. _____ of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer)	Michael Rippon
Law firm (if applicable)	Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696	Fax
Email	rippon.michael@abc.net.au
Address for service (include state and postcode)	ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR10**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:08 PM
To: AttorneyGeneral@sa.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General SA 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Attention: Ministerial Office

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Vickie Chapman
Attorney-General of South Australia
GPO Box 464
ADELAIDE SA 5001

By express post and email to: AttorneyGeneral@sa.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

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File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in cursive script, reading 'Warwick Soden'.

Dated: 25/06/2019 9:43:06 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.

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer)	Michael Rippon
Law firm (if applicable)	Australian Broadcasting Corporation, Legal Department
Tel	(02) 8333 1696
Fax	
Email	ripon.michael@abc.net.au
Address for service (include state and postcode)	ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

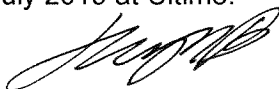
Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR11**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:11 PM
To: Minister.Quigley@dpc.wa.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General WA 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Attention: Office of the Attorney-General

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. John Quigley
Attorney-General of Western Australia
5th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

By express post and email to: Minister.Quigley@dpc.wa.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

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File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in cursive script, reading 'Warwick Soden'.

Dated: 25/06/2019 9:43:06 AM AEST

Registrar

Important Information

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**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

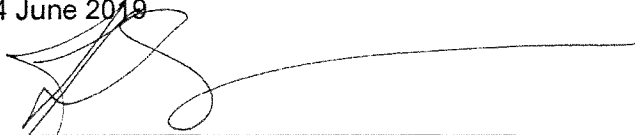
Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer)	Michael Rippon
Law firm (if applicable)	Australian Broadcasting Corporation, Legal Department
Tel	(02) 8333 1696
Fax	
Email	rippon.michael@abc.net.au
Address for service (include state and postcode)	ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
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 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR12**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:10 PM
To: Minister.Fyles@nt.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General NT 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear Raven

Further to our telephone conversation this morning, please find **attached** letter and enclosure for the attention of the Attorney-General.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Natasha Fyles
Attorney-General of the Northern Territory
GPO Box 3146
Darwin NT 0801

By express post and email to: Minister.Fyles@nt.gov.au

Dear Attorney-General

**Australian Broadcasting Corporation v Martin Kane & Ors – Federal Court of Australia
File Number NSD989/2019**

We refer to the above proceeding and **enclose**, by way of service, Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* which was filed on 25 June 2019.

Yours sincerely



Michael Rippon
Senior Lawyer
ABC Legal
E: rippon.michael@abc.net.au

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/06/2019 3:18:00 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)
File Number: NSD989/2019
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in black ink that reads 'Warwick Soden'.

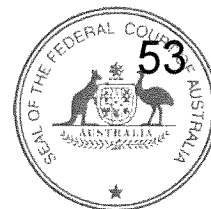
Dated: 25/06/2019 9:43:06 AM AEST

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 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.



**Notice of a Constitutional matter
under section 78B of the *Judiciary Act 1903***

No. _____ of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

Nature of Constitutional matter

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer)	Michael Rippon
Law firm (if applicable)	Australian Broadcasting Corporation, Legal Department
Tel	(02) 8333 1696
	Fax
Email	rippon.michael@abc.net.au
Address for service (include state and postcode)	ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007

[Form approved 01/08/2011]

Facts showing that section 78B Judiciary Act 1903 applies

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
 - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
 - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
 - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant

No. NSD989 of 2019

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

Australian Broadcasting Corporation

Applicant

Martin Kane and others

Respondents

This is the annexure marked "**MR13**" referred to in the affidavit of Michael Antony Rippon affirmed before me on 3 July 2019 at Ultimo.

Signature of witness



Name of witness

Hugh Bennett

Qualification of witness

Solicitor

Address of witness

C/- 700 Harris Street, Ultimo NSW 2007

Genevieve Hartney

From: Genevieve Hartney <Hartney.Genevieve@abc.net.au>
Sent: Wednesday, 26 June 2019 5:03 PM
To: ramsay@act.gov.au
Cc: Michael Rippon
Subject: Australian Broadcasting Corporation v Martin Kane & Ors - Section 78B Notice [ABC-Legal.FID59449]
Attachments: Letter to Attorney-General ACT 26.06.2019.pdf; Notice of a Constitutional matter under section 78B of the Judiciary Act 1903.PDF

Dear Attorney-General

Please refer to the **attached** letter and enclosure.

Kind regards



Genevieve Hartney
Legal Assistant, Disputes

P 02 8333 5867
E hartney.genevieve@abc.net.au
A 700 Harris Street Ultimo NSW 2007

Our Ref: 18435
Your Ref:

26 June 2019

The Hon. Gordon Ramsay MLA
Attorney-General of the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

By express post and email to: ramsay@act.gov.au

Dear Attorney-General

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File Number NSD989/2019**

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A handwritten signature in cursive script, reading 'David Soden'.

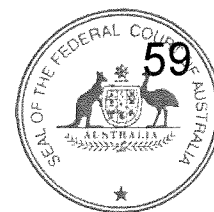
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District Registry: New South Wales
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Australian Broadcasting Corporation

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Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant
Prepared by (name of person/lawyer) Michael Rippon
Law firm (if applicable) Australian Broadcasting Corporation, Legal Department
Tel (02) 8333 1696 Fax _____
Email rippon.michael@abc.net.au
Address for service ABC Ultimo Centre, 700 Harris Street, Ultimo NSW 2007
(include state and postcode)

[Form approved 01/08/2011]

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Date: 24 June 2019



Signed by Constance Bernadette Carnabuci
Lawyer for the Applicant