

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	29/04/2025 8:53:12 AM AEST
Date Accepted for Filing:	15/05/2025 3:12:42 PM AEST
File Number:	NSD689/2023
File Title:	BEN ROBERTS-SMITH v FAIRFAX MEDIA PUBLICATIONS PTY LTD (ACN 003 357 720) & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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

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



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD 689 of 2023

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

**Ben Roberts-Smith VC MG**

Appellant

**Fairfax Media Publications Pty Limited** and others named in the schedule  
Respondents

Affidavit of: **Monica Helen Allen**  
Address: Level 17, 20 Martin Place, Sydney, New South Wales  
Occupation: Solicitor  
Date: 28 April 2025

### Contents

No.	Details	Paragraph	Page
1.	Affidavit of Monica Helen Allen sworn 28 April 2025	1-5	1-3
2.	Annexure MHA-4, being copies of Lists of Documents served on behalf of the Respondents	4	4-54
3.	Annexure MHA-5, being copies of correspondence between BlackBay Lawyers and Minter Ellison	5	55-60

I Monica Helen Allen, of Level 17, 20 Martin Place, Sydney, solicitor, say on oath:

1. I am a Special Counsel at BlackBay Group Pty Ltd trading as BlackBay Lawyers  
(**BlackBay**), the solicitors for the Appellant.

Filed on behalf of (name & role of party) Ben Roberts-Smith VC MG, Appellant

Prepared by (name of person/lawyer) Monica Allen

Law firm (if applicable) BlackBay Lawyers

Tel +61 2 8005 3077

Fax -

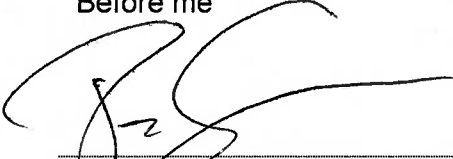
Email [monica.allen@blackbaylawyers.com](mailto:monica.allen@blackbaylawyers.com)

**Address for service** Level 17, 20 Martin Place, Sydney, New South Wales, 2000  
(include state and postcode)

2. The facts I depose to in this affidavit are true based on my knowledge. Where statements are not made from my own knowledge, I depose to the subject matter of those statements to the best of my information and belief after making reasonable enquiries, and on the basis of the sources of information set out in this affidavit.
3. This affidavit is made in support of the Appellant's interlocutory application to amend the Interlocutory Application filed on 27 March 2025 and proposed Amended Notice of Appeal.
4. Annexed hereto and marked **MHA-4** are the following Lists of Documents served on behalf of the Second Respondent during the proceedings below:
  - (a) List of Documents affirmed by the editorial counsel of the Respondents on 25 October 2019;
  - (b) List of Document affirmed by the Second Respondent on 13 November 2019;
  - (c) List of Documents affirmed by the Second Respondent on 28 April 2021;
  - (d) List of Documents served on behalf of the Respondents on or about 21 May 2021. I have been unable to locate a signed copy of this List of Documents; and
  - (e) List of Documents affirmed by the Second Respondent on 15 July 2021.
5. Annexed hereto and marked **MHA-5** are copies of correspondence between BlackBay Lawyers and Minter Ellison regarding a failure by the Respondents to produce a file note prepared by Dean Levitan, solicitor, of a meeting with Ms Emma Roberts and Ms Danielle Scott at Ms Roberts' home on 14 March 2021 in answer to a Notice to Produce:
  - (a) Letter from Minter Ellison to BlackBay Lawyers dated 15 April 2025;
  - (b) Letter from BlackBay Lawyers to Minter Ellison dated 17 April 2025;
  - (c) Letter from Minter Ellison to BlackBay Lawyers dated 22 April 2025.



Sworn by the deponent  
at Sydney  
in the state of New South Wales  
on 28 April 2025  
Before me



Signature of witness  
Dragan Gasic  
Solicitor

)  
)  
)  
)  
)



Signature of deponent

Form 59  
Rule 29.02(1)

## **Annexure Certificate**

No. NSD 689 of 2023

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


**Ben Roberts-Smith VC MG**

Appellant

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

Respondents

This is **Annexure MHA-4** to the affidavit of **Monica Helen Allen** sworn this 28<sup>th</sup> day of April  
2025 in Sydney, before me:

A handwritten signature in black ink, appearing to be 'D. Gasic', is written over a horizontal line.

Name: Dragan Gasic

Solicitor

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/10/2019 12:51:43 PM AEDT 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:	List of Documents - Form 38 - Rule 20.17(1)
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



A handwritten signature in blue ink, appearing to read "Wendy Soden", is written over the Registrar's name.

Dated: 25/10/2019 12:51:50 PM AEDT

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.



Form 38  
Rule 20.17(1)

## List of documents

No. NSD1485 of 2018

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

**Ben Roberts-Smith VC MG**

Applicant

**Fairfax Media Publications Pty Limited and others**


First Respondent

Pursuant to an order for discovery made on 2 August 2019, the Respondents provide this list of documents and affidavit:

### Affidavit

On 25 October 2019, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the Respondents and I am authorised to make this affidavit on behalf of the Respondents.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the Respondents, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in the control of the Respondents and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in the control of the Respondents but I claim privilege from production of each of these documents on the grounds set out in part 2.

  
.....  
Signature of witness

  
.....  
Signature of deponent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, Nick McKenzie, Chris Masters and David Wroe, the Respondents
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Form approved 01/08/2011

6. The documents set out in part 3 have been but are no longer the control of the Respondents.

Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 25 October 2019  
Before me:

  
\_\_\_\_\_  
Signature of witness


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)  
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)  
)  
\_\_\_\_\_  
Signature of deponent

**ANNABELLE PARVATI RITCHIE**  
of 525 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

#### Inspection of documents

The documents set out in part 1 may be inspected at Level 23, 525 Collins St, Melbourne 3000  
on business days between the hours of 9:00am and 5:00pm.

Date: 25 October 2019

  
\_\_\_\_\_  
Signed by Annabelle Ritchie  
MinterEllison  
Lawyer for the Respondent



## Part 1 - Documents in the control of the Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Transcript of interview with Ali Jan's relatives	1	unknown
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
7.	Article entitled 'Diggers facing police inquiry over 'war crimes' by Paul Maley in the Australian, page uncertain	1	30 November 2018
8.	Article entitled 'SAS soldiers committed war crimes: secret report' by Nick McKenzie and Chris Masters in the Sydney Morning Herald pages 1, 6	1	8 June 2018
9.	Article entitled 'Top SAS officer condemns culture' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 4 (with snippet introducing story entitled 'SAS scandal: Top officer talks tough on army elite' on unknown page)	1	4 August 2018
10.	Article entitled 'Culture warriors have it wrong' by Catherine McGregor in the Sydney Morning Herald, page 20	1	15 June 2018
11.	Article entitled 'Show the will to prosecute soldiers' by Ben Saul in the Sydney Morning Herald, page unknown	1	14 June 2018
12.	Article entitled 'What does the SAS stand for?' by Chris Masters and Nick McKenzie in the Sydney Morning Herald, page 26-27	1	5 August 2018
13.	Articles entitled 'Historians call our War Memorial director' by Michael Bachelard and 'VC winner filed defamation claim' by uncertain author in the Sydney Morning Herald on 18 August 2018, page uncertain	1	18 August 2018
14.	Article entitled 'Evidence will clear me: Roberts-Smith' by Paul Maley in the Australian, page 3	1	24 November 2018
15.	Article entitled 'VC War hero 'coached his victim to lie' by Deborah Cornwall in the Australian, page 3	1	23 November 2018

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
16.	Article entitled 'Police inquiry into top soldier' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 1 and 6	1	29 November 2018
17.	Article entitled 'Our soldiers hung out to dry' by John Anon in the West Australian, page 17	1	26 June 2018
18.	Article entitled 'A note from the Editor' by Lisa Davies in the Sydney Morning Herald, online	1	Unknown
19.	Article entitled 'March and a quiet beer in store for VC hero' by Paul Maley in the Australian, page 2	1	24 April 2019
20.	Article entitled 'Special forces brace for a culture shock' by Paul Maley in the Australian, online	1	25 May 2019
21.	Article entitled 'There's much more at stake here than leaked information' by Brendan Nicholson in the Strategist, online	1	8 June 2019
22.	Article entitled 'Walking the line' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 27, 32-33	1	21 September 2019
23.	Article entitled 'Battle on the Home Front' by Paul Maley in the Australian, page 11	1	27 September 2019
24.	Article entitled 'Shining the spotlight: Why we reported that Ben Roberts-Smith was under investigation' by Carrie McDougall and Michael Bachelard in the Sydney Morning Herald, online	1	27 September 2019
25.	Article entitled 'Ben Roberts-Smith blasts Nine's abuse of power' by Paul Maley in the Australian	1	6 October 2019
26.	Article entitled 'The hunt for Ben Roberts-Smith steps up' by uncertain author in the Australian Morning Mail, online	1	13 May 2019
27.	Article entitled 'VC winner Ben Roberts-Smith speaks out' by uncertain author in the Australian Morning Mail, online	1	5 May 2019
28.	Comments on online forum the Australian Military Community entitled 'A Brief from CPL Ben Roberts Smith', various authors	1	2 October 2018
29.	'Looking at SASR Culture' Benchmark SASR Review Report, author unknown	1	2010
30.	Article entitled 'Special Forces: The Downside - Impossible missions out of country and out of culture' by Andrew Farran in the Australian War Powers Reform Bulletin issue 60, accessed 18 July 2018 online	1	11 July 2018
31.	Article by Chris Masters sent via email to Tanya Masters on 17 August 2018 entitled 'How, and why, do we go to war?' by Paul Barratt in Inside Story	1	17 August 2018

.....  
Signature of witness

.....  
Signature of deponent



No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
32.	Article entitled 'Greg Lockhart: Tearing down our heroes' by John Menadue on John Menadue on the website johnmenadue.com, accessed 28 August 2018	1	28 August 2018
33.	The First Casualty - unpublished response to Brendan Nelson by Chris Masters and Nick McKenzie	1	Unknown
34.	Photograph of executed man with prosthetic leg on Easter Sunday 2009	1	12 April 2009
35.	Photograph of SASR in Afghanistan with framed prosthetic leg	1	Unknown
36.	Photograph of framed prosthetic leg	1	Unknown
37.	Correspondence between Nick McKenzie, Mark O'Brien and Channel 7 representatives (prepublication)	1	June to August 2018
38.	Correspondence between Nick McKenzie and Defence Department re media enquiry	1	May 2018
39.	Email from Nick McKenzie to Brendan Nelson - Media inquiry	1	24 August 2018
40.	Photograph, Ben Roberts-Smith	1	January 2018
41.	Article by Paul Maley in the Australian, entitled 'Police clear Ben Robert-Smith after allegations of assault'	1	25 September 2018
42.	Photograph, Hassan	1	Unknown
43.	SOCOMD Culture and Interaction Study by Dr Sarah Crompvoets	1	February 2016
44.	Statement released by Ben Roberts-Smith after the Respondents' defence was filed	1	18 October 2018
45.	Article, Easter Sunday in West Dorafshan 2009, by Lieutenant Ash Judd, Officer Commanding 2 Platoon team "Rogue"	1	October 2010
46.	Ben Roberts-Smith Victoria Cross Citation	1	23 January 2011
47.	Ben Roberts-Smith Commendation for Distinguished Service Citation	1	26 January 2014
48.	MP3 file of Ben Robert-Smith interview with Peter Pederson, War Memorial (USB)	1	2011
49.	Article entitled 'You think I'm brave? Meet my mates: Ben Roberts-Smith' by Brendan Nicholson	1	21 April 2011
50.	Ben Roberts-Smith Medal for Gallantry Citation	1	Unknown

*A. K. White*  
Signature of witness

*Ben White*  
Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
51.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Canberra Times, pages 17-18	1	10 June 2018
52.	IGADF Inquiry Report – Reasons for Ruling on Complaint Concerning Conduct of a Lawyer said to be working for the Inspector-General of the ADF Afghanistan Inquiry	1	November 2018
53.	Unpublished letters regarding Ben Roberts-Smith sent to the Sydney Morning Herald	1	Various dates
54.	Unpublished letters regarding Ben Roberts-Smith sent to the Age	1	Various dates
55.	Published letters regarding Ben Roberts-Smith published in the Age	1	Various dates
56.	Published responses regarding Ben Roberts-Smith to Canberra Times articles	1	Various dates
57.	Text messages exchanged between Chris Masters and Nick McKenzie	1	Various dates
58.	Photo of Ali Jan	1	Unknown
59.	Photo of Baqir	1	Unknown
60.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC, MG'	1	5 July 2017
61.	Letter from Mark O'Brien Legal to Nick McKenzie, copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	4 July 2018
62.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC MG'	1	18 October 2017
63.	Letter from Mark O'Brien Legal to Nick McKenzie copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	14 June 2018
64.	Letter from Mark O'Brien Legal to David Wroe copy James Chessell with subject 'Ben Roberts-Smith VC MG'	1	3 August 2018
65.	Article entitled 'Court grants suppression of Ben Roberts-Smith accuser's identity' by Miklos Bolza in Lawyerly, online	1	29 January 2019
66.	Article entitled 'A law unto themselves' by Chris Masters in the Sunday Age, page 20-21	1	10 June 2018
67.	Article entitled 'Line of Fire' by Chris Masters in the Good Weekend, page 22-27	1	On or around 21 October 2017
68.	Article entitled 'VC winner files legal claim against Fairfax' by Simone Fox-Koob in the Sydney Morning Herald, page unknown	1	On or around 17 August 2018

Signature of witness

Signature of deponent



No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
69.	Article entitled 'Roberts-Smith inquiry findings should be made public' by Dana McCauley in the Sydney Morning Herald	1	On or around 12 August 2018
70.	Map entitled 'Darwan locator', date unknown	1	Unknown
71.	Photo of Hekmatullah, date unknown	1	Unknown
72.	Map entitled 'Darwan map', date unknown	1	Unknown
73.	Short video of Ali Jan's family	1	Unknown
74.	Article entitled "Abdul's brother went out to buy flour. He never came home" by Nick McKenzie and Chris Masters on the Sydney Morning Herald website	1	8 June 2018
75.	Article entitled "Special forces rookie 'blooded' by executing an unarmed man" by Chris Masters and Nick McKenzie on the Sydney Morning Herald website	1	10 June 2018
76.	Article entitled "SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 1	1	9 June 2018
77.	Article entitled "'Troops kept kill board': SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 10-13	1	9 June 2018
78.	Article entitled 'Special forces rookie 'blooded' by executing an unarmed man' by Chris Masters and Nick McKenzie in the Sun Herald on page 6	1	10 June 2018
79.	Article entitled 'War hero fires back over abuse claims' by Nick McKenzie, David Wroe and Chris Masters in the Sydney Morning Herald page 1	1	11 August 2018
80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018

**Part 2 - Documents in the control of the Respondents for which privilege from production is claimed**

No.	Description of document	Date of document	State grounds of privilege
81.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between any of the Respondents and a lawyer, or</li> <li>b) a confidential communication made between 2 or more lawyers acting for any of the Respondents, or</li> <li>c) the contents of a confidential document (whether delivered or not) prepared any of the Respondents, a lawyer or another person,</li> </ul> <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to any of the Respondents, and in respect of which privilege has not been waived.</p> <p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between any of the Respondents and another person, or between a lawyer acting for the Respondents and another person, or</li> <li>b) the contents of a confidential document (whether delivered or not),</li> </ul> <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which any of the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p> <p>The production of the documents would disclose the identity of a confidential source, the disclosure of which would cause the author of the matter complained of to disclose the confidential source's identity and/or enable their identity to be ascertained and would breach ethical duties under the Journalist Code of Ethics.</p>
82.	Various documents to which client legal privilege applies relating to litigation	Various	
83.	Various documents recording conversations with confidential sources and/or various documents provided by confidential sources	Various	

*[Signature]*  
Signature of witness

*[Signature]*  
Signature of deponent

## Part 3 - Documents that have been but are no longer in the control of the Respondents

No.	Description of document	Date of document	What became of document
84.	Various encrypted messages periodically deleted	N/A	Deleted



Signature of witness

14

ME\_165428343\_1



Signature of deponent

Form 38  
Rule 20.17(1)

### List of documents

No. NSD1485 of 2018

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

**Ben Roberts-Smith VC MG**

Applicant

**Fairfax Media Publications Pty Limited and others**

Respondents

Pursuant to an order for discovery made on 2 August p2019, the Second Respondent provides this list of documents and affidavit:

### Affidavit

On 13 November 2019, I NICK MCKENZIE, affirm and say:

1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I claim privilege from production of each of these documents on the grounds set out in part 2.
6. The documents set out in part 3 have been but are no longer in my control.

Signature of witness

Signature of deponent

Filed on behalf of (name & role of party)	Nick McKenzie, Second Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Form approved 01/08/2011

**15**



Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 13 November 2019  
Before me:

)  
)  
)  
)  
)

Signature of deponent

*Al Ritchie*

Signature of witness

**ANNABELLE PARVATI RITCHIE**

of 525 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

### Inspection of documents

The documents set out in part 1 may be inspected at Level 23, 525 Collins St, Melbourne 3000  
on business days between the hours of 9:00am and 5:00pm.

Date: 13 November 2019

*[Signature]*

Signed by Dean Levitan

MinterEllison

Lawyer for the Second Respondent

## Part 1 - Documents in the control of the Second Respondent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Translation of transcript of interview with Ali Jan's relatives	1	28 September 2018
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
7.	Article entitled 'Diggers facing police inquiry over 'war crimes' by Paul Maley in the Australian, page uncertain	1	30 November 2018
8.	Article entitled 'SAS soldiers committed war crimes: secret report' by Nick McKenzie and Chris Masters in the Sydney Morning Herald pages 1, 6	1	8 June 2018
9.	Article entitled 'Top SAS officer condemns culture' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 4 (with snippet introducing story entitled 'SAS scandal: Top officer talks tough on army elite' on unknown page)	1	4 August 2018
10.	Article entitled 'Culture warriors have it wrong' by Catherine McGregor in the Sydney Morning Herald, page 20	1	15 June 2018
11.	Article entitled 'Show the will to prosecute soldiers' by Ben Saul in the Sydney Morning Herald, page unknown	1	14 June 2018
12.	Article entitled 'What does the SAS stand for?' by Chris Masters and Nick McKenzie in the Sydney Morning Herald, page 26-27	1	5 August 2018
13.	Articles entitled 'Historians call our War Memorial director' by Michael Bachelard and 'VC winner filed defamation claim' by uncertain author in the Sydney Morning Herald on 18 August 2018, page uncertain	1	18 August 2018
14.	Article entitled 'Evidence will clear me: Roberts-Smith' by Paul Maley in the Australian, page 3	1	24 November 2018
15.	Article entitled 'VC War hero 'coached his victim to lie' by Deborah Cornwall in the Australian, page 3	1	23 November 2018

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
16.	Article entitled 'Police inquiry into top soldier' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 1 and 6	1	29 November 2018
17.	Article entitled 'Our soldiers hung out to dry' by John Anon in the West Australian, page 17	1	26 June 2018
18.	Article entitled 'A note from the Editor' by Lisa Davies in the Sydney Morning Herald, online	1	Unknown
19.	Article entitled 'March and a quiet beer in store for VC hero' by Paul Maley in the Australian, page 2	1	24 April 2019
20.	Article entitled 'Special forces brace for a culture shock' by Paul Maley in the Australian, online	1	25 May 2019
21.	Article entitled 'There's much more at stake here than leaked information' by Brendan Nicholson in the Strategist, online	1	8 June 2019
22.	Article entitled 'Walking the line' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 27, 32-33	1	21 September 2019
23.	Article entitled 'Battle on the Home Front' by Paul Maley in the Australian, page 11	1	27 September 2019
24.	Article entitled 'Shining the spotlight: Why we reported that Ben Roberts-Smith was under investigation' by Carrie McDougall and Michael Bachelard in the Sydney Morning Herald, online	1	27 September 2019
25.	Article entitled 'Ben Roberts-Smith blasts Nine's abuse of power' by Paul Maley in the Australian	1	6 October 2019
26.	Article entitled 'The hunt for Ben Roberts-Smith steps up' by uncertain author in the Australian Morning Mail, online	1	13 May 2019
27.	Article entitled 'VC winner Ben Roberts-Smith speaks out' by uncertain author in the Australian Morning Mail, online	1	5 May 2019
28.	Comments on online forum the Australian Military Community entitled 'A Brief from CPL Ben Roberts Smith', various authors	1	2 October 2018
29.	'Looking at SASR Culture' Benchmark SASR Review Report, author unknown	1	2010
30.	Article entitled 'Special Forces: The Downside - Impossible missions out of country and out of culture' by Andrew Farran in the Australian War Powers Reform Bulletin issue 60, accessed 18 July 2018 online	1	11 July 2018
31.	Article by Chris Masters sent via email to Tanya Masters on 17 August 2018 entitled 'How, and why, do we go to war?' by Paul Barratt in Inside Story	1	17 August 2018

Signature of witness

Signature of deponent



No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
32.	Article entitled 'Greg Lockhart: Tearing down our heroes' by John Menadue on the website johnmenadue.com, accessed 28 August 2018	1	28 August 2018
33.	The First Casualty - unpublished response to Brendan Nelson by Chris Masters and Nick McKenzie	1	Unknown
34.	Photograph of executed man with prosthetic leg on Easter Sunday 2009	1	12 April 2009
35.	Photograph of SASR in Afghanistan with framed prosthetic leg	1	Unknown
36.	Photograph of framed prosthetic leg	1	Unknown
37.	Correspondence between Nick McKenzie, Mark O'Brien and Channel 7 representatives (prepublication)	1	June to August 2018
38.	Correspondence between Nick McKenzie and Defence Department re media enquiry	1	May 2018
39.	Email from Nick McKenzie to Brendan Nelson - Media inquiry	1	24 August 2018
40.	Photograph, Ben Roberts-Smith	1	January 2018
41.	Article by Paul Maley in the Australian, entitled 'Police clear Ben Robert-Smith after allegations of assault'	1	25 September 2018
42.	Photograph, Hassan	1	Unknown
43.	SOCOMD Culture and Interaction Study by Dr Sarah Compvoets	1	February 2016
44.	Statement released by Ben Roberts-Smith after the Respondents' defence was filed	1	18 October 2018
45.	Article, Easter Sunday in West Dorafshan 2009, by Lieutenant Ash Judd, Officer Commanding 2 Platoon team "Rogue"	1	October 2010
46.	Ben Roberts-Smith Victoria Cross Citation	1	23 January 2011
47.	Ben Roberts-Smith Commendation for Distinguished Service Citation	1	26 January 2014
48.	MP3 file of Ben Robert-Smith interview with Peter Pederson, War Memorial (USB)	1	2011
49.	Article entitled 'You think I'm brave? Meet my mates: Ben Roberts-Smith' by Brendan Nicholson	1	21 April 2011
50.	Ben Roberts-Smith Medal for Gallantry Citation	1	Unknown

*CP R. Pederson*  
Signature of witness

*W. J. Judd*  
Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
51.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Canberra Times, pages 17-18	1	10 June 2018
52.	IGADF Inquiry Report – Reasons for Ruling on Complaint Concerning Conduct of a Lawyer said to be working for the Inspector-General of the ADF Afghanistan Inquiry	1	November 2018
53.	Unpublished letters regarding Ben Roberts-Smith sent to the Sydney Morning Herald	1	Various dates
54.	Unpublished letters regarding Ben Roberts-Smith sent to the Age	1	Various dates
55.	Published letters regarding Ben Roberts-Smith published in the Age	1	Various dates
56.	Published responses regarding Ben Roberts-Smith to Canberra Times articles	1	Various dates
57.	Text messages exchanged between Chris Masters and Nick McKenzie	1	Various dates
58.	Photo of Ali Jan	1	Unknown
59.	Photo of Baqir	1	Unknown
60.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC, MG'	1	5 July 2017
61.	Letter from Mark O'Brien Legal to Nick McKenzie, copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	4 July 2018
62.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC MG'	1	18 October 2017
63.	Letter from Mark O'Brien Legal to Nick McKenzie copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	14 June 2018
64.	Letter from Mark O'Brien Legal to David Wroe copy James Chessell with subject 'Ben Roberts-Smith VC MG'	1	3 August 2018
65.	Article entitled 'Court grants suppression of Ben Roberts-Smith accuser's identity' by Miklos Bolza in Lawyerly, online	1	29 January 2019
66.	Article entitled 'A law unto themselves' by Chris Masters in the Sunday Age, page 20-21	1	10 June 2018
67.	Article entitled 'Line of Fire' by Chris Masters in the Good Weekend, page 22-27	1	On or around 21 October 2017
68.	Article entitled 'VC winner files legal claim against Fairfax' by Simone Fox-Koob in the Sydney Morning Herald, page unknown	1	On or around 17 August 2018

Signature of witness

Signature of deponent



No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
69.	Article entitled 'Roberts-Smith inquiry findings should be made public' by Dana McCauley in the Sydney Morning Herald	1	On or around 12 August 2018
70.	Map entitled 'Darwan locator', date unknown	1	Unknown
71.	Photo of Hekmatullah, date unknown	1	Unknown
72.	Map entitled 'Darwan map', date unknown	1	Unknown
73.	Short video of Ali Jan's family	1	Unknown
74.	Article entitled "Abdul's brother went out to buy flour. He never came home" by Nick McKenzie and Chris Masters on the Sydney Morning Herald website	1	8 June 2018
75.	Article entitled "Special forces rookie 'blooded' by executing an unarmed man" by Chris Masters and Nick McKenzie on the Sydney Morning Herald website	1	10 June 2018
76.	Article entitled "SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 1	1	9 June 2018
77.	Article entitled "Troops kept kill board": SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 10-13	1	9 June 2018
78.	Article entitled 'Special forces rookie 'blooded' by executing an unarmed man' by Chris Masters and Nick McKenzie in the Sun Herald on page 6	1	10 June 2018
79.	Article entitled 'War hero fires back over abuse claims' by Nick McKenzie, David Wroe and Chris Masters in the Sydney Morning Herald page 1	1	11 August 2018
80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018
81.	Photograph, executed Afghan man on Easter Sunday 2009	1	12 April 2009
82.	Some of the recordings of the interview with Ali Jan's relatives (translations at document 2)	Numerous	On or around September 2018

**Part 2 - Documents in the control of the Second Respondent for which privilege from production is claimed**

No.	Description of document	Date of document	State grounds of privilege
83.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and a lawyer, or</li> <li>b) a confidential communication made between 2 or more lawyers acting for the First, Second, Third and/or Fourth Respondent, or</li> <li>c) the contents of a confidential document (whether delivered or not) prepared by the First, Second, Third and/or Fourth Respondent, a lawyer or another person,</li> </ul> <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to the Respondents, and in respect of which privilege has not been waived.</p> <p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and another person, or between a lawyer acting for the First, Second, Third and/or Fourth Respondent and another person, or</li> <li>b) the contents of a confidential document (whether delivered or not),</li> </ul> <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p> <p>Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.</p>
84.	Various documents to which client legal privilege applies relating to litigation	Various	
85.	Various documents recording conversations with confidential sources and/or various documents provided by confidential sources	Various	

*A. R. K. K. K.*  
Signature of witness

*W. K. S.*  
Signature of deponent

**Part 3 - Documents that have been but are no longer in the control of the Second Respondent**

No.	Description of document	Date of document	What became of document
86.	Various encrypted messages periodically deleted	N/A	Deleted
87.	Recordings of interview with Ali Jan's relatives	On or around September 2018	Some of the recordings were deleted in the ordinary course of business after the translation of the transcript (document 2) was prepared

*Ali Jan*  
Signature of witness

ME\_65922726\_1

*Ali Jan*  
Signature of deponent



Form 38  
Rule 20.17(1)

### Supplementary List of documents

No. NSD1487 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

Pursuant to an order for discovery made on 2 August 2019, the Respondents provides this supplementary list of documents and affidavits:

#### **Affidavit of the First Respondent**

On 28 April 2021, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the First Respondent and I am authorised to make this affidavit on behalf of the First Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the list of documents dated 25 October 2019 and in this supplementary list of documents.
4. The documents set out in part 1 are in the control of the First Respondent and I do not claim privilege from production for any of these documents.

*Tess McGuire*  
**TESS DIANA COTTER MCGUIRE**

of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
Signature of the Legal  
Professional Uniform Law (Victoria)

*S. White*  
Signature of deponent


Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

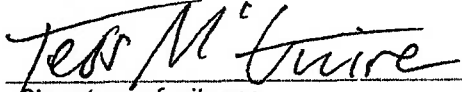
Form approved 01/08/201

5. The documents set out in part 2 are in the control of the Second Respondent but he is prohibited from disclosing them on the grounds set out in part 2.

Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 28 April 2021  
Before me:

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\_\_\_\_\_  
Signature of deponent

  
\_\_\_\_\_  
Signature of witness

**TESS DIANA COTTER MCGUIRE**  
of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)


**Affidavit of the Second Respondent**

On 28 April 2021, I NICK MCKENZIE, affirm and say:


1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in the list of documents dated 25 October 2019 and in this supplementary list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I am prohibited from disclosing them on the grounds set out in part 2.


Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 28 April 2021  
Before me:

)  
)  
)  
)  
)   
Signature of deponent

  
Signature of witness

**TESS DIANA COTTER MCGUIRE**  
of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

  
**TESS DIANA COTTER MCGUIRE**  
of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)  
Signature of witness

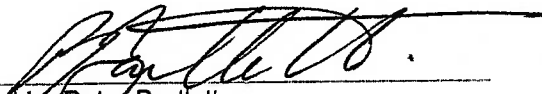
  
Signature of deponent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Rialto Towers, 525 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

**Inspection of documents**

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 28 April 2021

  
Signed by Peter Bartlett  
MinterEllison  
Lawyer for the Respondents

## Part 1 - Documents in the control of the First and Second Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
S1.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	8 April 2018
S2.	Email from the Applicant to Danielle Scott	1	22 April 2018
S3.	Email from the Applicant to Danielle Scott	1	24 April 2018
S4.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	27 April 2018
S5.	Screenshot, text message exchange between Danielle Scott and John McLeod	1	22 October 2018
S6.	Screenshot, text message exchange between Danielle Scott and Emma Roberts	1	9 May 2018
S7.	Email from Emma Roberts to Danielle Scott containing photograph of Valpam medication	1	17 August 2018
S8.	Email from Emma Roberts to Danielle Scott containing photograph of diary pages	2	17 August 2018
S9.	Email from Emma Roberts to Danielle Scott containing screenshot of 'Jenny Hosey' text message	1	17 August 2018
S10.	Photographs, area where lunchbox had been buried	4	5 June 2020
S11.	Screenshots, file names	Numerous	Unknown
S12.	Photograph, Applicant and the prosthetic leg at Fat Lady's Arms	2	Unknown
S13.	Video of Person 17	1	6 March 2018
S14.	Text message exchange between Danielle Scott and Emma Roberts	1	26 April 2018
S15.	Text message, Emma Roberts to Danielle Scott	1	5 June 2020
S16.	Email correspondence, Applicant and Emma Roberts	2	5 June 2020

**Part 2 - Documents in the control of the Second Respondent which cannot be disclosed**

No.	Description of document	Date of document	State grounds upon which disclosure is prohibited
S17.	One or more documents copied from six USB sticks located in the backyard of the Applicant's former home in Ilkley Road, Ilkley QLD which fall within the categories of documents for discovery.	Various	The documents likely contain national security information within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth) (the <i>NSI Act</i> ). A notice pursuant to section 38D of the <i>NSI Act</i> has been issued.



**TESS DIANA COTTER MCGUIRE**

of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

Signature of witness

Signature of deponent



Form 38  
Rule 20.17(1)

### Updated list of further documents

No. NSD1485 of 2018

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

**Ben Roberts-Smith VC MG**

Applicant

**Fairfax Media Publications Pty Limited and others**

Respondents

Pursuant to an order for discovery made on 2 August 2019, the Second Respondent provides this list of documents and affidavit:

#### Affidavit

On 21 May 2021, I NICK MCKENZIE, affirm and say:

1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in my control, other than the documents specified in this list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.
5. The documents set out in part 2 are in my control but I claim privilege from production of each of these documents on the grounds set out in part 2.
6. The documents set out in part 3 have been but are no longer in my control.

.....  
Signature of witness

.....  
Signature of deponent

Filed on behalf of (name & role of party)	Nick McKenzie, Second Respondent		
Prepared by (name of person/lawyer)	Peter Bartlett		
Law firm (if applicable)	MinterEllison	Fax	(03) 8608 1088
Tel	(03) 8608 2677		
Email	peter.bartlett@minterellison.com		
Address for service	Level 20, 447 Collins Street, MELBOURNE VIC 3000		
(include state and postcode)	Our reference: DYL PLB 1183220		

Form approved 01/08/2011 **30**

Affirmed by the deponent  
 at Melbourne in the State of Victoria  
 on 21 May 2021  
 Before me:

)  
 )  
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 )  
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\_\_\_\_\_  
 Signature of deponent

\_\_\_\_\_  
 Signature of witness

### **Inspection of documents**

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 21 May 2021

\_\_\_\_\_  
 Signed by  
 MinterEllison  
 Lawyer for the Second Respondent



## Part 1 - Documents in the control of the Second Respondent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
1.	Note, Chris Masters, Chora Pass incident in 2006	1	2006
2.	Translation of transcript of interview with Ali Jan's relatives	1	28 September 2018
3.	Note, Chris Masters to Nick McKenzie and editors	1	2018
4.	Notes, Chris Masters	1	unknown
5.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Sun Herald on pages 30 - 31	1	10 June 2018
6.	Article entitled 'Should we really hear the truth about our war in Afghanistan?' by Chris Masters in Sydney Morning Herald online	1	3 November 2017
7.	Article entitled 'Diggers facing police inquiry over 'war crimes' by Paul Maley in the Australian, page uncertain	1	30 November 2018
8.	Article entitled 'SAS soldiers committed war crimes: secret report' by Nick McKenzie and Chris Masters in the Sydney Morning Herald pages 1, 6	1	8 June 2018
9.	Article entitled 'Top SAS officer condemns culture' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 4 (with snippet introducing story entitled 'SAS scandal: Top officer talks tough on army elite' on unknown page)	1	4 August 2018
10.	Article entitled 'Culture warriors have it wrong' by Catherine McGregor in the Sydney Morning Herald, page 20	1	15 June 2018
11.	Article entitled 'Show the will to prosecute soldiers' by Ben Saul in the Sydney Morning Herald, page unknown	1	14 June 2018
12.	Article entitled 'What does the SAS stand for?' by Chris Masters and Nick McKenzie in the Sydney Morning Herald, page 26-27	1	5 August 2018
13.	Articles entitled 'Historians call our War Memorial director' by Michael Bachelard and 'VC winner filed defamation claim' by uncertain author in the Sydney Morning Herald on 18 August 2018, page uncertain	1	18 August 2018
14.	Article entitled 'Evidence will clear me: Roberts-Smith' by Paul Maley in the Australian, page 3	1	24 November 2018
15.	Article entitled 'VC War hero 'coached his victim to lie' by Deborah Cornwall in the Australian, page 3	1	23 November 2018

32

Signature of witness  
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Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
16.	Article entitled 'Police inquiry into top soldier' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 1 and 6	1	29 November 2018
17.	Article entitled 'Our soldiers hung out to dry' by John Anon in the West Australian, page 17	1	26 June 2018
18.	Article entitled 'A note from the Editor' by Lisa Davies in the Sydney Morning Herald, online	1	Unknown
19.	Article entitled 'March and a quiet beer in store for VC hero' by Paul Maley in the Australian, page 2	1	24 April 2019
20.	Article entitled 'Special forces brace for a culture shock' by Paul Maley in the Australian, online	1	25 May 2019
21.	Article entitled 'There's much more at stake here than leaked information' by Brendan Nicholson in the Strategist, online	1	8 June 2019
22.	Article entitled 'Walking the line' by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 27, 32-33	1	21 September 2019
23.	Article entitled 'Battle on the Home Front' by Paul Maley in the Australian, page 11	1	27 September 2019
24.	Article entitled 'Shining the spotlight: Why we reported that Ben Roberts-Smith was under investigation' by Carrie McDougall and Michael Bachelard in the Sydney Morning Herald, online	1	27 September 2019
25.	Article entitled 'Ben Roberts-Smith blasts Nine's abuse of power' by Paul Maley in the Australian	1	6 October 2019
26.	Article entitled 'The hunt for Ben Roberts-Smith steps up' by uncertain author in the Australian Morning Mail, online	1	13 May 2019
27.	Article entitled 'VC winner Ben Roberts-Smith speaks out' by uncertain author in the Australian Morning Mail, online	1	5 May 2019
28.	Comments on online forum the Australian Military Community entitled 'A Brief from CPL Ben Roberts Smith', various authors	1	2 October 2018
29.	'Looking at SASR Culture' Benchmark SASR Review Report, author unknown	1	2010
30.	Article entitled 'Special Forces: The Downside – Impossible missions out of country and out of culture' by Andrew Farran in the Australian War Powers Reform Bulletin Issue 60, accessed 18 July 2018 online	1	11 July 2018
31.	Article by Chris Masters sent via email to Tanya Masters on 17 August 2018 entitled 'How, and why, do we go to war?' by Paul Barratt in Inside Story	1	17 August 2018

Signature of witness

Signature of deponent

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No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
32.	Article entitled 'Greg Lockhart: Tearing down our heroes' by John Menadue on John Menadue on the website johnmenadue.com, accessed 28 August 2018	1	28 August 2018
33.	The First Casualty - unpublished response to Brendan Nelson by Chris Masters and Nick McKenzie	1	Unknown
34.	Photograph of executed man with prosthetic leg on Easter Sunday 2009	1	12 April 2009
35.	Photograph of SASR in Afghanistan with framed prosthetic leg	1	Unknown
36.	Photograph of framed prosthetic leg	1	Unknown
37.	Correspondence between Nick McKenzie, Mark O'Brien and Channel 7 representatives (prepublication)	1	June to August 2018
38.	Correspondence between Nick McKenzie and Defence Department re media enquiry	1	May 2018
39.	Email from Nick McKenzie to Brendan Nelson - Media inquiry	1	24 August 2018
40.	Photograph, Ben Roberts-Smith	1	January 2018
41.	Article by Paul Maley in the Australian, entitled 'Police clear Ben Robert-Smith after allegations of assault'	1	25 September 2018
42.	Photograph, Hassan	1	Unknown
43.	SOCOMD Culture and Interaction Study by Dr Sarah Crompvoets	1	February 2016
44.	Statement released by Ben Roberts-Smith after the Respondents' defence was filed	1	18 October 2018
45.	Article, Easter Sunday in West Dorafshan 2009, by Lieutenant Ash Judd, Officer Commanding 2 Platoon team "Rogue"	1	October 2010
46.	Ben Roberts-Smith Victoria Cross Citation	1	23 January 2011
47.	Ben Roberts-Smith Commendation for Distinguished Service Citation	1	26 January 2014
48.	MP3 file of Ben Robert-Smith interview with Peter Pederson, War Memorial (USB)	1	2011
49.	Article entitled 'You think I'm brave? Meet my mates: Ben Roberts-Smith' by Brendan Nicholson	1	21 April 2011
50.	Ben Roberts-Smith Medal for Gallantry Citation	1	Unknown

Signature of witness

Signature of deponent

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
51.	Article entitled 'Australia's ugly turn in Afghanistan' by Chris Masters in the Canberra Times, pages 17-18	1	10 June 2018
52.	IGADF Inquiry Report – Reasons for Ruling on Complaint Concerning Conduct of a Lawyer said to be working for the Inspector-General of the ADF Afghanistan Inquiry	1	November 2018
53.	Unpublished letters regarding Ben Roberts-Smith sent to the Sydney Morning Herald	1	Various dates
54.	Unpublished letters regarding Ben Roberts-Smith sent to the Age	1	Various dates
55.	Published letters regarding Ben Roberts-Smith published in the Age	1	Various dates
56.	Published responses regarding Ben Roberts-Smith to Canberra Times articles	1	Various dates
57.	Text messages exchanged between Chris Masters and Nick McKenzie	1	Various dates
58.	Photo of Ali Jan	1	Unknown
59.	Photo of Baqir	1	Unknown
60.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC, MG'	1	5 July 2017
61.	Letter from Mark O'Brien Legal to Nick McKenzie, copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	4 July 2018
62.	Letter from Mark O'Brien Legal to Nick McKenzie with subject 'Ben Roberts-Smith VC MG'	1	18 October 2017
63.	Letter from Mark O'Brien Legal to Nick McKenzie copy to Larina Mullins with subject 'Ben Roberts-Smith VC MG'	1	14 June 2018
64.	Letter from Mark O'Brien Legal to David Wroe copy James Chessell with subject 'Ben Roberts-Smith VC MG'	1	3 August 2018
65.	Article entitled 'Court grants suppression of Ben Roberts-Smith accuser's identity' by Miklos Bolza in Lawyerly, online	1	29 January 2019
66.	Article entitled 'A law unto themselves' by Chris Masters in the Sunday Age, page 20-21	1	10 June 2018
67.	Article entitled 'Line of Fire' by Chris Masters in the Good Weekend, page 22-27	1	On or around 21 October 2017
68.	Article entitled 'VC winner files legal claim against Fairfax' by Simone Fox-Koob in the Sydney Morning Herald, page unknown	1	On or around 17 August 2018

Signature of witness

Signature of deponent

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No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
69.	Article entitled 'Roberts-Smith inquiry findings should be made public' by Dana McCauley in the Sydney Morning Herald	1	On or around 12 August 2018
70.	Map entitled 'Darwan locator', date unknown	1	Unknown
71.	Photo of Hekmatullah, date unknown	1	Unknown
72.	Map entitled 'Darwan map', date unknown	1	Unknown
73.	Short video of Ali Jan's family	1	Unknown
74.	Article entitled "Abdul's brother went out to buy flour. He never came home" by Nick McKenzie and Chris Masters on the Sydney Morning Herald website	1	8 June 2018
75.	Article entitled "Special forces rookie 'blooded' by executing an unarmed man" by Chris Masters and Nick McKenzie on the Sydney Morning Herald website	1	10 June 2018
76.	Article entitled "SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, page 1	1	9 June 2018
77.	Article entitled "'Troops kept kill board': SAS's day of shame" by Nick McKenzie and Chris Masters in the Sydney Morning Herald, pages 10-13	1	9 June 2018
78.	Article entitled 'Special forces rookie 'blooded' by executing an unarmed man' by Chris Masters and Nick McKenzie in the Sun Herald on page 6	1	10 June 2018
79.	Article entitled 'War hero fires back over abuse claims' by Nick McKenzie, David Wroe and Chris Masters in the Sydney Morning Herald page 1	1	11 August 2018
80.	Article entitled "Beneath the bravery of our most decorated soldier" by Nick McKenzie, David Wroe and Chris Masters on the Sydney Morning Herald website	1	11 August 2018
81.	Photograph, executed Afghan man on Easter Sunday 2009	1	12 April 2009
82.	Some of the recordings of the interview with Ali Jan's relatives (translations at document 2)	Numerous	June/July 2018

Signature of witness

Signature of deponent



**Part 2 - Documents in the control of the Second Respondent for which privilege from production is claimed**

No.	Description of document	Date of document	State grounds of privilege
83.	Various documents to which client legal privilege applies relating to legal advice	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and a lawyer, or</li> <li>b) a confidential communication made between 2 or more lawyers acting for the First, Second, Third and/or Fourth Respondent, or</li> <li>c) the contents of a confidential document (whether delivered or not) prepared by the First, Second, Third and/or Fourth Respondent, a lawyer or another person,</li> </ul> <p>that was made or prepared for the dominant purpose of the lawyer, or one or more of the lawyers, providing legal advice to the Respondents, and in respect of which privilege has not been waived.</p>
84.	Various documents to which client legal privilege applies relating to litigation	Various	<p>Documents that constitute and/or record:</p> <ul style="list-style-type: none"> <li>a) a confidential communication made between the First, Second, Third and/or Fourth Respondent and another person, or between a lawyer acting for the First, Second, Third and/or Fourth Respondent and another person, or</li> <li>b) the contents of a confidential document (whether delivered or not),</li> </ul> <p>that was made or prepared for the dominant purpose of the Respondents being provided with professional legal services relating to proceedings (including these proceedings), or anticipated or pending proceedings, in which the Respondents are or may be, or were or might have been, a party, and in respect of which privilege has not been waived.</p>

37  
Signature of witness

Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85a.	Copy of document obtained from a confidential source	17 February 2014	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85b.	Document obtained from a confidential source	7 November 2014	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85c.	Chris Masters' notes of meeting with confidential source	18 March 2016	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85d.	Chris Masters' notes of meeting with confidential source	20 April 2016	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85e.	Chris Masters' notes of meeting with confidential source	7-8 February 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85f.	Chris Masters' notes of meeting with confidential source	27 February 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85g.	Chris Masters' notes of meeting with confidential source	3 March 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85h.	Document obtained from a confidential source	22 March 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85i.	Email correspondence between Chris Masters and a confidential source	7 April 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

**38** Signature of witness

Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85j.	Email from a Fairfax journalist in relation to an interview with a confidential source	11 August 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85k.	Nick McKenzie's notes of meeting with a confidential source	28 August 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85l.	Chris Masters' notes of information obtained from various confidential sources	3 September 2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85m.	Chris Masters' notes of information obtained from various confidential sources	2018	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85n.	Nick McKenzie's notes of meeting with a confidential source	10 September 2019	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85o.	Copy of document obtained from a confidential source	2019	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85p.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85q.	Chris Masters' notes of meeting with confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85r.	Email correspondence between Chris Masters and a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

39  
Signature of witness

ME\_184243559\_1

Signature of deponent



No.	Description of document	Date of document	State grounds of privilege
85s.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85t.	Chris Masters' notes of meeting with confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85u.	Nick McKenzie's notes of meeting with a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85v.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85w.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85x.	Document obtained from a confidential source	various	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85y.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85z.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aa.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

**40** Signature of witness

ME\_184243559\_1

Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85ab.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ac.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ad.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ae.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85af.	Chris Masters' notes of meeting with confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ag.	Document obtained by Chris Masters from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ah.	Chris Masters' notes of information obtained from various confidential sources	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ai.	Chris Masters' notes of meeting with confidential source with handwritten annotations	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aj.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.



No.	Description of document	Date of document	State grounds of privilege
85ak.	Transcript of conversation between Nick McKenzie and a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85al.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85am.	Copy of document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85an.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ao.	Recording of a conversation between a Fairfax journalist and an interview with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ap.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aq.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85ar.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85as.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

42  
ME\_184243559\_1

Signature of witness

Signature of deponent

No.	Description of document	Date of document	State grounds of privilege
85at.	Copy of Nick McKenzie's handwritten notes of meeting with a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85au.	Document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85av.	Copy of document obtained from a confidential source	undated	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.
85aw.	Document obtained from a confidential source	date withheld under <i>Evidence Act</i> 1995 (Cth) section 126K(1)	Privilege is claimed in respect of these documents pursuant to section 126K of the <i>Evidence Act</i> on the basis that the First, Second, Third and/or Fourth Respondent has promised each confidential source that they would not disclose their identity.

**Part 3 - Documents that have been but are no longer in the control of the Second Respondent**

No.	Description of document	Date of document	What became of document
86.	Various encrypted messages periodically deleted	N/A	Deleted
87.	Recordings of interview with Ali Jan's relatives	June/July 2018	Some of the recordings were deleted in the ordinary course of business after the translation of the transcript (document 2) was prepared

43  
Signature of witness

ME\_184243559\_1

Signature of deponent

Form 38  
Rule 20.17(1)

### Supplementary List of documents

No. NSD1485 of 2018

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

**Ben Roberts-Smith**

Applicant

**Fairfax Media Publications Pty Limited and others**

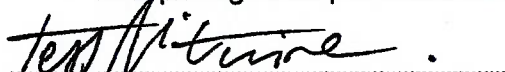
Respondents

Pursuant to an order for discovery made on 2 August 2019, the Respondents provides this supplementary list of documents and affidavits:

#### Affidavit of the First Respondent

On 14 July 2021, I SAMUEL JAMES RICHARDS WHITE, affirm and say:

1. I am editorial counsel of the First Respondent and I am authorised to make this affidavit on behalf of the First Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the Further Updated List of Documents dated 8 June 2021, the Supplementary List of Documents dated 28 April 2021 and in this supplementary list of documents.
4. The documents set out in part 1 are in the control of the First Respondent and I do not claim privilege from production for any of these documents.

  
Signature of witness

  
Signature of deponent

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Collins Arch, 447 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Form approved 01/08/2011

Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 14 July 2021  
Before me:

)  
)  
)  
)  
)

Signature of deponent

Signature of witness

Tess M<sup>c</sup>GUIRE  
of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)


**Affidavit of the Second Respondent**

On 15.7.21, I NICK MCKENZIE, affirm and say:

1. I am the Second Respondent.
2. I have caused reasonable enquiries as to the existence and location of the documents specified in the order.
3. To the best of my knowledge, information and belief, there are no documents specified in the order that are or have been in the control of the First Respondent, other than the documents specified in the Further Updated List of Documents dated 8 June 2021, the Supplementary List of Documents dated 28 April 2021 and in this supplementary list of documents.
4. The documents set out in part 1 are in my control and I do not claim privilege from production for any of these documents.


Affirmed by the deponent  
at Melbourne in the State of Victoria  
on 15.7.21  
Before me:

  
Signature of witness

)  
)  
)  
)  
)  
  
Signature of deponent  
15.7.21

Tess MCGUIRE  
of 447 Collins Street, Melbourne  
An Australian Legal Practitioner  
within the meaning of the Legal  
Profession Uniform Law (Victoria)

  
Signature of witness

  
Signature of deponent 15.7.21

Filed on behalf of (name & role of party)	Fairfax Media Publications Pty Limited, First Respondent
Prepared by (name of person/lawyer)	Peter Bartlett
Law firm (if applicable)	MinterEllison
Tel (03) 8608 2677	Fax (03) 8608 1088
Email	peter.bartlett@minterellison.com
Address for service	Collins Arch, 447 Collins Street, MELBOURNE VIC 3000
(include state and postcode)	Our reference: DYL PLB 1183220

Form approved 01/08/2011

46

**Inspection of documents**

The documents set out in part 1 may be inspected at Level 20, 447 Collins St, Melbourne 3000 on business days between the hours of 9:00am and 5:00pm.

Date: 15 July 2021



Signed by Peter Bartlett  
Minter Ellison  
Lawyer for the Respondents



## Part 1 - Documents in the control of the First and Second Respondents

No.	Description of document(s) / category	Number of documents in category (if applicable)	Date/period
S1.	Screenshot, text message from Nick McKenzie to member of the Australian Federal Police	1	12 March 2021
S2.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	4	7 April 2021
S3.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	12 April 2021
S4.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	5	13 April 2021
S5.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	24 May 2021
S6.	Screenshot, text message exchange between Nick McKenzie and member of the Australian Federal Police	2	28 June 2021

*TenHuis*  
 of 447 Collins Street, Melbourne  
 An Australian Legal Practitioner  
 within the meaning of the Legal  
 Profession Uniform Law (Victoria)

*Nick McKenzie*  
 15.7.21

*Ben*

4:14



Anita >

iMessage  
Fri, 12 Mar, 5:16 pm

Dear Anita  
My name is Nick McKenzie. I'm known to the AFP. My lawyers and I wish to make a formal confidential verbal complaint about various sensitive matters relating to a POI. What is the best way to arrange a meeting in Canberra?  
Thanks  
Nick McKenzie

Wed, 7 Apr, 12:25 pm

Hi Anita  
I've left the hearing and am back on the phone. Nick

Wed, 7 Apr, 1:32 pm

Hi Anita,  
I'm speaking to the lawyers about how best I hand the potentially classified material to the AFP. Preliminary advice is I will return it with a short statement explaining my interaction with it, including



4:14



< 261



Anita >

Wed, 7 Apr, 1:32 pm

Hi Anita,  
I'm speaking to the lawyers about  
how best I hand the potentially  
classified material to the AFP.  
Preliminary advice is I will return it  
with a short statement explaining  
my interaction with it, including  
my reporting of its existence to  
police. Can I do this in Canberra  
next week?  
Nick

Yes no problem. I'm off Monday  
but available any other day

Great, thanks

Mon, 12 Apr, 11:29 am

Hi Nick, I'm on leave today. Back  
tomorrow. I'll give you a call then

Ok

Tue, 13 Apr, 1:14 pm

Dear Anita

iMessage



4:14



< 261



Anita >

Dear Anita  
My lawyers spoke to AFP legal  
this morning.  
AFP legal have said that I should  
write to you and notify you that I  
have been advised by my lawyers  
not to hand the files back at this  
stage because you have  
discovery obligations in the  
defamation proceedings. I will  
give them to my lawyers and they  
will store them in their secure  
room and safe used for storing  
classified material.  
Nick

Sorry, withdraw last message.  
Here is message  
Dear Anita  
My lawyers spoke to AFP legal  
this morning.  
AFP legal have said that I should  
write to you and notify you that I  
have been advised by my lawyers  
not to hand the files back at this  
stage because I have discovery  
obligations in the defamation  
proceedings. I will give them to



iMessage





4:14



< 261



Anita >

this morning.  
AFP legal have said that I should write to you and notify you that I have been advised by my lawyers not to hand the files back at this stage because I have discovery obligations in the defamation proceedings. I will give them to my lawyers and they will store them in their secure room and safe used for storing classified material. They are in continuing discussions with AFP legal.  
Nick

Noted, thanks Nick

Anita  
Lawyers now tell me not to put them in lawyers secure room but keep them on me (I presume to avoid unintended 'transmission' of material). I have locked them in a cupboard in my office awaiting further advice.  
Nick

Received, thank you



4:14



< 261



Anita >

Mon, 24 May, 9:13 am

Hi Anita  
I am giving over to the AGS at the  
commonwealth law offices today  
the material on the USBs as per  
arrangements organised by my  
lawyers/court.  
Nick

Ok thank you

Monday 9:01 pm

Hi Anita  
I just wanted to confirm I do not  
possess any USB material. The  
commonwealth law office (AGS)  
has given the USB material I gave  
the AGS back to our lawyers as  
per the court discovery NSI  
regime. Mr Roberts-Smith's  
lawyers have the same copies I  
provided by the AGS (although he  
never produced many of the  
classified docs etc on his USBs  
and has given no explanation  
what he did with them).  
Nick



iMessage



4:15



< 261



Anita >

the material on the USBs as per  
arrangements organised by my  
lawyers/court.  
Nick

Ok thank you

Monday 9:01 pm

Hi Anita  
I just wanted to confirm I do not  
possess any USB material. The  
commonwealth law office (AGS)  
has given the USB material I gave  
the AGS back to our lawyers as  
per the court discovery NSI  
regime. Mr Roberts-Smith's  
lawyers have the same copies I  
provided by the AGS (although he  
never produced many of the  
classified docs etc on his USBs  
and has given no explanation  
what he did with them).  
Nick

Delivered

Thanks Nick. I'll pass this on to  
the relevant people.



Form 59  
Rule 29.02(1)

## **Annexure Certificate**

No. NSD 689 of 2023

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

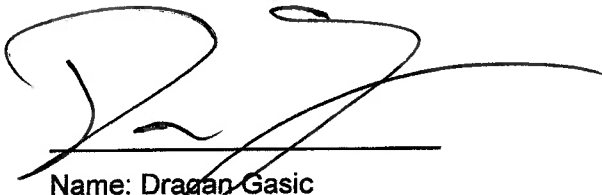
**Ben Roberts-Smith VC MG**

Appellant

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

Respondents

This is Annexure **MHA-5** to the affidavit of **Monica Helen Allen** sworn this 28<sup>th</sup> day of April  
2025 in Sydney, before me:

  
Name: Dragan Gasic  
Solicitor



# MinterEllison.

15 April 2025

## BY EMAIL

[monica.allen@blackbaylawyers.com](mailto:monica.allen@blackbaylawyers.com)

Ms Monica Allen  
Special Counsel  
BlackBay Lawyers  
Level 17, 20 Martin Place  
Sydney NSW 2000

Dear Ms Allen

### **Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others; Federal Court of Australia Case No NSD689/2023**

1. We refer to the Notice to Produce addressed to the Respondents dated 15 February 2022 (2022 NTP), which was served at 12:31pm on 15 February 2022 and required production of documents by 10:15am the next day.
2. The 2022 NTP was called upon in Court on 16 February 2022. The Respondents did not produce any documents in response to it.
3. In preparing for the current application before the Court, the Respondents have identified a document that is responsive to the 2022 NTP, being a handwritten file note of the meeting held at the home of Emma Roberts at 10 Hunter Street, Indooroopilly, Queensland on 14 March 2021. The file note was prepared by Dean Levitan, a solicitor for MinterEllison, for the dominant purpose of MinterEllison providing professional legal services to the Respondents in relation to this litigation. The meeting was attended by Peter Bartlett of MinterEllison, Dean Levitan, Nick McKenzie, Emma Roberts, Danielle Scott and another friend of Emma Roberts.
4. The meeting is referred to in paragraph [60] of the affidavit of Nicholas David McKenzie affirmed on 14 April 2025.
5. The Respondents claim privilege over the document in accordance with the objection schedule enclosed with this letter, in the same way they would have done at the time the Appellant called upon the 2022 NTP.

Yours faithfully  
MinterEllison



Contact: Rafael Aiolfi T: +61 2 9921 8693  
[rafael.aiolfi@minterellison.com](mailto:rafael.aiolfi@minterellison.com)  
Michelle Nguyen T: +61 2 9921 8874  
[michelle.nguyen@minterellison.com](mailto:michelle.nguyen@minterellison.com)  
Partner: Beverley Newbold T: +61 2 9921 4894  
James Beaton T: +61 2 9921 4063 OUR REF: 1456957

Level 40 Governor Macquarie Tower Sydney  
GPO Box 521 Sydney NSW 2001 Australia  
T +61 2 9921 8888 F +61 2 4072 9110 [minterellison.com](http://minterellison.com)

ME\_952315554\_1

## Objection Schedule

Type of document	Date	Author	Basis
Handwritten file note	14 March 2021	Dean Levitan	Legal professional privilege Litigation Privilege

Our ref: BBL:MA:1326

17 April 2025

Ms Beverley Newbold  
Minter Ellison  
Level 40, Governor Macquarie Tower  
SYDNEY NSW 2000

By email: [beverley.newbold@minterellison.com](mailto:beverley.newbold@minterellison.com)

Dear Ms Newbold

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors**  
**Federal Court of Australia Proceedings No. NSD 689, 690 and 691 of 2023**

We refer to your letter dated 15 April 2025 and the subsequent email from your colleague, Mr Aiolfi, sent at 2.37 pm on 16 April 2025, in which it is asserted that the failure to produce the handwritten file note in response to the 2022 Notice to Produce “was not deliberate” and that “its existence was not revealed by the inquiries undertaken”.

With respect, that explanation is unsatisfactory. The file note was authored by Mr Levitan, who was in Court on the day the Notice to Produce was called upon. Mr Bartlett, who also attended the relevant meeting, was likewise present for most of the trial. That both solicitors, each personally involved in the creation and receipt of the document, were unaware of its existence at the relevant time strains credulity which is why we require an explanation rather than a conclusory assertion that it was not deliberate. There is a serious concern as to how such a grave omission could have been made by an officer of the Court. This omission has resulted in the failure to produce the document and instructions given which resulted in a false representation being made to the Court.

We note that you have not identified:

- the persons consulted in the course of complying with the 2022 Notice to Produce;
- what records were searched;
- what inquiries were made of Mr Levitan or Mr Bartlett at the time;

- when the document was ultimately located and by whom; and
- how it came to be rediscovered.

That omission is significant given the centrality of the 14 March 2021 meeting to the evidence given by Emma Roberts, and the fact that the meeting was specifically referred to in support of the 2022 Notice to Produce. We again ask that you provide a comprehensive account of the steps taken in response to the 2022 Notice to Produce and the basis for the previous representation to the Court that no responsive documents existed.

We also reject the self-serving suggestion that the failure to produce the document was harmless because privilege would have been claimed in any event. Whether or not a valid claim for privilege could ultimately have been maintained, the fact remains that the Court was misinformed, affirmatively, about the non-existence of a document, that plainly did exist. The existence of that document was known to Mr Levitan (at the very least) and no explanation is provided as to how he did not ensure that this document was produced. That misstatement deprived our client of the opportunity to contest the claim in accordance with law. It also potentially affected the way in which the trial was run, and evidence was led.

Accordingly, we reserve all rights on this issue, including a subpoena being issued to your firm which seeks the production of documents concerning the recent discovery of the file note as well as bringing this issue to the Full Court's attention or to further amend our client's proposed amended Notice of Appeal.

Please provide a full and candid explanation of the matters identified above no later than close of business Tuesday, 22 April 2025.

Yours sincerely  
BlackBay Lawyers



**Monica Allen**  
Special Counsel  
[monica.allen@blackbaylawyers.com](mailto:monica.allen@blackbaylawyers.com)



# MinterEllison.

22 April 2025

## BY EMAIL

monica.allen@blackbaylawyers.com

Ms Monica Allen  
Special Counsel  
BlackBay Lawyers  
Level 17, 20 Martin Place  
Sydney NSW 2000

Dear Ms Allen

**Ben Roberts-Smith v Fairfax Media Publications Pty Ltd and others**  
**Federal Court of Australia Case No. NSD 689, 690 and 691 of 2023 (Proceedings)**

1. We refer to your letter of 17 April 2025, regarding the Notice to Produce issued 15 February 2022 and returnable 16 February 2022 (the **Notice**).
2. We reject the statement in your letter that correspondence from this firm "strains credulity". In this regard, we note that the Notice was made returnable the day after it was issued, in the course of an extremely complex trial, and that relevantly it concerned a conversation which had occurred nearly a year previously. That mistakes are made in such a context is regrettable, but by no means incredible. As you know, your client and his representatives were guilty of such errors (see eg J[2546]). Indeed, it is not in contention that your client was guilty of repeated failures in relation to his primary discovery obligations (see J[2468]-[2553]).
3. We have rectified the error regarding production of the Notice. We did so of our own instigation upon discovery of the error. We have confirmed the error was not deliberate. We have explained that the error arose because the document was not revealed by the inquiries undertaken to comply with the Notice.
4. You assert that the omission was significant. We do not agree. You have not explained the suggested significance beyond mere assertion. Your statement that the error "potentially affected the way in which the trial was run, and the evidence was led" does not rise above bare speculation.
5. We note your reservation of rights. We also note that the Notice has no apparent relevance to the issues raised by your client's Interlocutory Application and proposed Amended Notice of Appeal. The subpoena and amendment you foreshadow will be resisted.

Yours faithfully  
MinterEllison

*Minter Ellison*

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