

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Subpoena to Produce Documents - Form 43B - Rule 24.13(1)(b)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 17/04/2025 4:14:54 PM AEST
Date Accepted for Filing: 17/04/2025 4:23:56 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
Reason for Listing: Return of Subpoena
Time and date for hearing: 23/04/2025, 9:30 AM
Place: Court to be Advised (see Court Lists), Level 17, Law Courts Building 184
Phillip Street Queens Square, Sydney

Please produce documents to nswreg@fedcourt.gov.au



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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

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



Subpoena to Produce Documents

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

To: Person 17
c/- Giles / George Lawyers
Level 7, 135 King Street
SYDNEY NSW 2000

You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.

Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.

You should read all of the Notes set out in this subpoena.

You must complete the Declaration by Addressee (Subpoena Recipient) set out towards the end of this subpoena.

The last date for service of this subpoena is [date]. (See Note 1)

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



Date:

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

Issued at the request of Ben Roberts-Smith, whose address for service is:

Place: Level 17, 20 Martin Place, Sydney, New South Wales 2000

Email: monica.allen@blackbaylawyers.com

**Details of subpoena**

You must comply with this subpoena:

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

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

Date: 23 April 2025

Time: 9.30am

Place: 184 Phillip Street, Queens Square Sydney, New South Wales 2000

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

New South Wales District Registry

Locked Bag A6000

SYDNEY SOUTH NSW 1235



Schedule of documents

The documents and things you must produce are as follows:

1. All letters, emails, text messages, WhatsApp or Signal messages or notes of conversations between you, or any person acting on your behalf, and Nick McKenzie, or any person acting on his behalf, in relation to the Appellant in the period between 1 August 2020 and 27 July 2022.
2. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents exchanged between you, or any person acting on your behalf, and Nick McKenzie, or any person acting on his behalf from 21 March 2025 to date in relation to an audio recording of a conversation between you and Nick McKenzie.
3. All letters, emails, text messages, WhatsApp or Signal messages, notes of conversations or other documents exchanged between you, or any person acting on your behalf, and Linton Besser, or any other employee of the Australian Broadcasting Corporation from 21 March 2025 to date concerning an audio recording of a conversation between you and Nick McKenzie.



4. **Notes**

Last day for service

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

Informal service

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

Addressee a corporation

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

Conduct money

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

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

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



the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

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

Production of copy instead of original

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

- (a) a photocopy;
- (b) in an electronic form in any of the following electronic formats:
 - .doc and .docx – Microsoft Word documents
 - .pdf – Adobe Acrobat documents
 - .xls and .xlsx – Microsoft Excel spreadsheets
 - .jpg – image files
 - .rtf – rich text format
 - .gif – graphics interchange format
 - .tif – tagged image format; or
- (c) a digital link through which the documents can be downloaded.

Applications in relation to subpoena

10. You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
 - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court – arrest

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee



who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



Declaration by Addressee (Subpoena Recipient)

The **addressee** is the person to whom this subpoena is addressed, and who will be the recipient of this subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form that the issuing party (the party that issued the subpoena) has indicated to you will be acceptable.

You must sign and date this declaration and return it as part of this subpoena, with the documents or things you are required to provide to the Court under this subpoena.

Unless you declare that some or all of the documents that you are producing to the Court under this subpoena are original materials of which you seek return, by signing and dating this declaration (at the foot of this page), you acknowledge that those materials may be destroyed once they are no longer required by the Court, without further notice to you.

Return of documents or things
(Complete only if applicable)

- ☐ Some or all of the documents that I am producing to the Court under this subpoena are original materials of which I seek return. I request that the original materials identified in the **Schedule of documents or things to be returned** (on the following page) are returned to me at the following address:

- ☐ None of the documents that I am producing to the Court under this subpoena are original materials of which I seek return.



Date:

Signed by Addressee
Addressee

Schedule of documents or things to be returned

The documents and things I have declared to be originals and, thus, request to be returned are as follows:

[List the documents or things. Attach list if insufficient space.]

Schedule

No. NSD 689 of 2023

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

Respondents

Second Respondent: Nick McKenzie

Third Respondent: Chris Masters

Fourth Respondent: David Wroe

Date: 17 April 2025