

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/09/2018 5:20:02 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD1826/2018  
File Title: BEN ROBERTS-SMITH v JOHNATHAN PEARLMAN  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 28/09/2018 11:54:59 AM AEST

Registrar

### Important Information

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

The 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.



## Statement of Claim

No. \_\_\_\_\_ of 2018

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

**Ben Roberts-Smith**

Applicant

**Jonathan Pearlman**

Respondent

The Applicant relies on the following facts and assertions:

### THE APPLICANT

- 1 The Applicant is a former soldier and member of the Special Air Service Regiment (**SASR**) who was deployed on multiple occasions to Afghanistan.

### THE RESPONDENT

- 2 The Respondent is journalist employed or engaged by Singapore Press Holdings Limited or one of its related corporations.
- 3 Singapore Press Holdings Limited is:
  - (a) the publisher of The Straits Times newspaper; and
  - (b) the publisher of material on the website located at the URL address [www.straitstimes.com](http://www.straitstimes.com) (**the Straits Times Website**).

### FIRST MATTER COMPLAINED OF

- 4 On or about 6 September 2018 the Respondent published and/or caused to be published of and concerning the Applicant an article on the Straits Times Website

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Filed on behalf of (name & role of party) Ben Roberts-Smith, Applicant  
Prepared by (name of person/lawyer) Paul Svilans  
Law firm (if applicable) Mark O'Brien Legal  
Tel +61 2 9216 9828 Fax \_\_\_\_\_  
Email [mark.obrien@markobrienlegal.com.au](mailto:mark.obrien@markobrienlegal.com.au); [paul.svilans@markobrienlegal.com.au](mailto:paul.svilans@markobrienlegal.com.au)  
**Address for service** Level 3, 44 Martin Place, Sydney NSW 2000  
(include state and postcode)

entitled "*Aussie war hero accused of misconduct and abuse*" a copy of which is set out in Annexure "A" hereto (**the first matter complained of**).

***Particulars of Publication***

- (a) The Respondent was the author of the first matter complained of;
- (b) The first matter complained of was published and/or caused to be published by the Respondent by:
  - (i) providing a copy of the first matter complained of to the Straits Times for uploading to the Straits Times website; and/or
  - (ii) uploading and/or causing the uploading of the first matter complained of to the Straits Times website

and thereby making the publication available and/or causing the publication to be made available for download to a large number of readers in the Australian Capital Territory and each other State and Territory of Australia and in Singapore.

- (c) The publication was made available for download on and from 6 September 2018, and thereafter, at the address <https://www.straitstimes.com/asia/australianz/aussie-war-hero-accused-of-misconduct-and-abuse>.
- (d) The first matter complained of was in fact downloaded and read in each State and Territory of Australia and in Singapore.
- (e) Further particulars of publication of the first matter complained of will be supplied following discovery and interrogatories.

5 The first matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

***Particulars of Imputations***

The first matter complained of carried the following defamatory imputations of and concerning the Applicant:

- (a) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by violently assaulting afghan prisoners and bullying Australian soldiers.*

(b) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by abusing unarmed civilians.*

(c) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by killing detainees in Afghanistan.*

***Particulars of parts of the first matter complained of***

The Applicant relies on the whole of the first matter complained of as giving rise to each of the imputations pleaded. In particular, the Applicant relies on the following parts of the first matter complained of, adopting the paragraph numbering in schedule 1 at Annexure "A" hereto, as follows:

(a) Imputation 5(a): 2, 4, 10, 11, 13, 14

(b) Imputation 5(b): 2, 4, 10, 11, 14

(c) Imputation 5(c): 2, 10, 11, 12, 13, 14

**THE SECOND MATTER COMPLAINED OF**

6 On or about 6 September 2018 the Respondent published and/or caused to be published of and concerning the Applicant an article in The Straits Times newspaper entitled "*Aussie war hero accused of misconduct and abuse*" a copy of which is set out in Annexure "B" hereto (**the second matter complained of**).

***Particulars of Publication***

(a) The Respondent was the author of the second matter complained of;

(b) The second matter complained of was published, and/or caused to be published by the Respondent in The Straits Times newspaper:

(i) in Australia in airline lounges and elsewhere;

(ii) in Singapore.

(c) Further particulars of publication of the second matter complained of will be supplied following discovery and interrogatories.

7 The second matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

***Particulars of Imputations***

- (a) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by violently assaulting afghan prisoners and bullying Australian soldiers.*
- (b) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by abusing unarmed civilians.*
- (c) *The Applicant while a member of the SASR in Afghanistan engaged in criminal conduct by killing detainees in Afghanistan.*

***Particulars of parts of the second matter complained of***

The Applicant relies on the whole of the second matter complained of as giving rise to each of the imputations pleaded. In particular, the Applicant relies on the following parts of the second matter complained of, adopting the paragraph numbering at Annexure "B" hereto, as follows:

- (a) Imputation 7(a): 2, 4, 10, 11, 13, 14
- (b) Imputation 7(b): 2, 4, 10, 11, 14
- (c) Imputation 7(c): 2, 10, 11, 12, 13, 14

**DAMAGE**

- 8 By reason of publication of the matters complained of, the Applicant has been greatly injured and his business, personal and professional reputation has been and will be brought into public disrepute, odium, ridicule and contempt.
- 9 The Applicant claims damages, including aggravated damages, interest and costs.

***Particulars of Aggravated Damages***

- (a) The Applicant's knowledge of the falsity of the imputations.
- (b) The conduct of the Respondent in presenting the publication of the matters complained of in an over-sensationalised manner.
- (c) The failure of the Respondent to apologise to the Applicant despite being informed that the first matter complained of is false and defamatory. See letter from Mark O'Brien Legal to the Respondent dated 21 September 2018.
- (d) Further particulars of aggravated damages will be provided in due course.

Date: 27 September 2018

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Signed by Paul Svilans  
Lawyer for the Applicant

This pleading was settled by Matthew Richardson of Counsel.

**Certificate of lawyer**

I, Paul Svilans, certify to the Court that, in relation to the Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 27 September 2018

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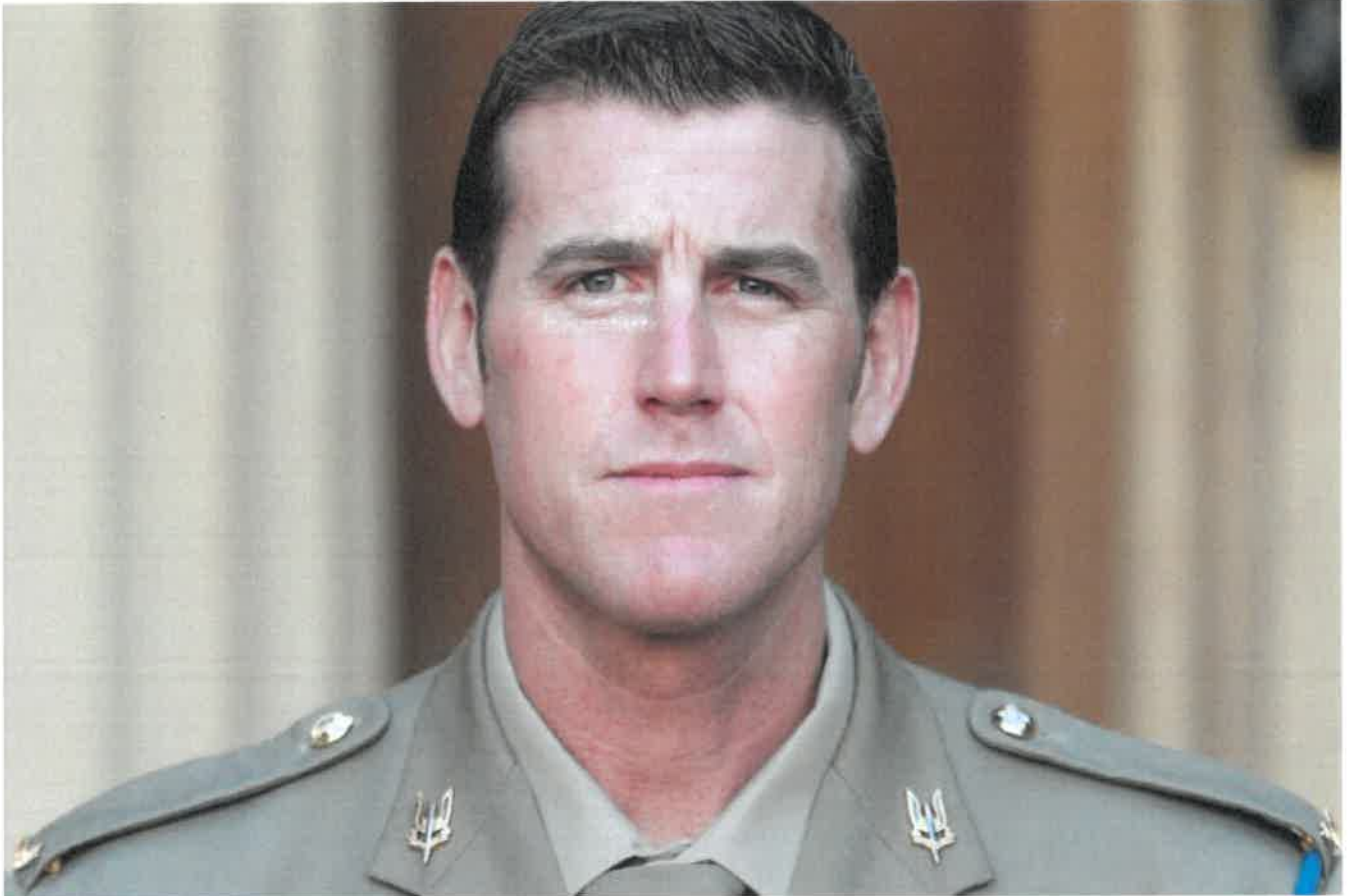
# ANNEXURE "A"

## 1. THE STRAITS TIMES

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### 2. Aussie war hero accused of misconduct and abuse

3.



4. Mr Ben Roberts-Smith, who faces misconduct allegations, received the Victoria Cross in 2011 for bravery in Afghanistan. PHOTO: AGENCE FRANCE-PRESSE

🕒 PUBLISHED SEP 6, 2018, 5:00 AM SGT

5. Questions over conduct on battlefield prompt debate on veneration of soldiers

6. Jonathan Pearlman For The Straits Times In Sydney

7. During a hard-fought battle in a small village in Afghanistan in 2010, Australian corporal Ben Roberts-Smith cemented his reputation as a war hero after ignoring a volley of bullets to distract enemy machine gunners and rescue a patrol that was under heavy fire.

8. For his remarkable gallantry, Mr Roberts-Smith, who was a member of Australia's elite Special Air Service (SAS) Regiment, became a rare recipient of the nation's highest military honour, the Victoria Cross, making him one of the nation's best-known and most decorated soldiers.
9. The citation for the honour said that he showed "a total disregard for his own safety" and "his valour was an inspiration".
10. But his reputation has come under question after he was accused of misconduct and breaches of ethics in a scandal that has prompted debate about the nation's veneration of its soldiers.
11. In a series of explosive investigative reports by Fairfax Media, Mr Roberts-Smith, 39, was accused of criminal misconduct on the battlefield, including violence against Afghan prisoners and bullying fellow Australian soldiers.
12. The allegations were reportedly leaked from an inquiry into Australia's elite forces, which have been accused of widespread misconduct that included unlawfully killing detainees in Afghanistan.
13. According to a Fairfax Media report on Aug 11, dozens of veterans, officials, witnesses and soldiers who served with Mr Roberts-Smith accused him of misconduct towards his fellow soldiers and detainees.
14. The claims included "bullying, intimidation and his involvement in small SAS teams suspected of the abuse of unarmed civilians and the use of force that goes well beyond what is acceptable in the theatre of war". This followed a series of reports which began to emerge last year raising questions about the conduct of Mr Roberts-Smith, who is married with children.
15. Mr Roberts-Smith has denied all allegations and launched defamation proceedings against Fairfax Media in the Federal Court. He has also requested that the Australian Federal Police investigate whether there has been illegal leaking of evidence.
16. He told The Australian on Aug 18 that the allegations arose from a smear campaign by jealous and disgruntled former elite soldiers.
17. The allegations against Mr Roberts-Smith came as a shock and received widespread coverage, partly because he has attracted a high profile since receiving his decoration. He left full-time army duties in 2013 and is a general manager of the Seven Network television station in Queensland.
18. The attack on his service record and reputation prompted fierce debate over the treatment of Australian war heroes.
19. Some figures leapt to the defence of Mr Roberts-Smith, including former defence minister Brendan Nelson, now director of the Australian War Memorial. "War is a messy business," he told 2GB Radio on Aug 15.
20. "Ben Roberts-Smith is, by any standard, one of the greatest Australians in terms of heroism the country has produced. His reputation is being traduced by elements of the media that, in my opinion, diminish the respect that we have for them and the job that they should be doing."
21. But some historians criticised Dr Nelson's approach, saying it was important to ask difficult questions about the military's conduct in war.

22. "A democratic society requires a media that's capable of asking difficult questions, as well as historians asking similar questions," Australian National University Professor Frank Bongiorno told Fairfax Media on Aug 17.

23. "The idea there are no-go areas or areas that belong to the sacred, that journalists, historians and other academics shouldn't encroach on is dangerous for a democracy."

24. A similar debate previously arose over the veneration of the Australian soldiers who fought at the famous Gallipoli campaign in World War I.

25. Some commentators have urged the nation to take a more critical approach to the role of its troops, saying myth-making does not do justice to the reality of the war and can sometimes be misused to promote nationalism or patriotism.

26. For now, this debate has spilt into the courts, which will decide whether Mr Roberts-Smith's reputation was unfairly maligned.

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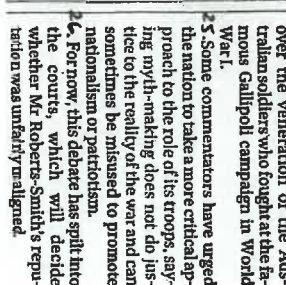
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4. Mr Ben Roberts-Smith, who faces misconduct allegations, received the Victoria Cross in 2011 for bravery in Afghanistan. PHOTO: AGENCE FRANCE-PRESSE

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