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### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
File Number:	NSD1486/2018
File Title:	BEN ROBERTS-SMITH v THE AGE COMPANY PTY LTD ACN 004 262 702 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 16/10/2018 1:07:03 PM AEDT

Registrar

### Important Information

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Form 59  
Rule 29.02(1)

## Affidavit

No. NSD1485/2018  
No. NSD1486/2018  
No. NSD1487/2018

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

### BEN ROBERTS-SMITH

Applicant

**FAIRFAX MEDIA PUBLICATIONS PTY LTD** and others  
Respondents

Affidavit of: **GREGORY CHARLES BILTON**  
Address: Headquarters Joint Operations Command  
Bungendore, New South Wales  
Occupation: Deputy Chief of Joint Operations  
Date: 10 October 2018

Document number	Details	Paragraph	Page
1	Affidavit of Major General Gregory Bilton in support of application for suppression order sworn 10 October 2018	1	2

I Gregory Charles Bilton say on oath:

Filed on behalf of (name & role of party) Commonwealth  
Prepared by (name of person/lawyer) Cameron Hutchins  
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## Background

1. I am the Deputy Chief of Joint Operations (DCJOPS) for the Australian Defence Force (ADF). I entered the Royal Military College in 1983 and graduated to the Royal Australian Artillery Regiment in 1986. I have held numerous command and staff appointments, including Deputy Commanding General United States Army Pacific. My operational experience includes service as the Deputy Chief of Staff for Security Sector Reform on Headquarters Regional Command South, Afghanistan in 2008. I have held the position of DCJOPS since 19 May 2017. In this role I support the Chief of Joint Operations Command (CJOPS) exercise command of ADF Joint Operations, direct command units and assigned forces in the planning and conduct of campaigns, operations, joint exercises and other activities directed by Chief of the Defence Force (CDF). On behalf of CJOPS, I am accountable for the management and mitigation of operational risks, and I execute Defence response options through the development of Contingency and Operational Plans.
2. In conjunction with CJOPS, I have overall command responsibility for the management of sensitive information related to the ADF's operational activities, consistent with Australia's national security interests, which includes preserving the operational security of both ADF capability and its people.
3. Throughout my service in the ADF, I have obtained extensive experience in, and understanding of, the threats faced by ADF personnel in conducting military operations, in terms of both the potential danger to ADF personnel and the risk to the successful conduct of missions.

## About this affidavit

### *Basis of affidavit*

4. This affidavit is based on my personal knowledge and, where indicated, on belief. Where statements in this affidavit are based on my belief as to certain matters (rather than a personal knowledge of those matters), I have been informed of the relevant background to those matters and I am satisfied that there is a sound basis for my belief.

### *Purpose of this affidavit*

5. I have seen a copy of the document titled 'Defence to Statement of Claim' (**the Respondents' Defence**) which I am informed has been filed by the Respondents in Federal Court of Australia proceedings NSD1485/2018 between Ben Roberts-Smith and Fairfax Media Publications Pty Ltd and others. I am informed and believe that similar documents have been filed by the Respondents in relation to proceedings NSD1486/2018 between Ben Roberts-Smith and The Age Company Pty Ltd and others, and proceedings NSD1487/2018 between Ben Roberts-Smith and The Federal Capital Press of Australia Pty Ltd and others. This affidavit is intended to be relied upon in support of the Commonwealth's Interlocutory Application filed in each of the three proceedings.
6. Where I refer to a paragraph number of the Respondents' Defence below, I am referring to the paragraph number in the Respondents' Defence under the heading "Particulars of Truth" (which are displayed in the Respondents' Defence in parentheses).
7. I have reviewed the content of the Respondents' Defence and I consider that it contains information that is sensitive to the ADF, the manner in which it conducts its operational activities on behalf of the Australian Government and the personnel that comprise part of the ADF's Special Operations capability.

8. Later in my affidavit I explain why, in my view, it is necessary in the interests of Australia's defence and security for aspects of the manner in which the ADF conducted its operational activities in Afghanistan to be protected from public disclosure. I also explain why, in my view, it is necessary in the interests of the safety of the named persons and their families, and the security and defence of Australia, that information which would tend to identify them is protected from public disclosure.
9. I seek an interim non-disclosure order over the highlighted portions of this affidavit, pending the outcome of the Commonwealth's substantive application. I shall arrange for a redacted version of this affidavit to be filed, with the unredacted version served upon the parties.

***Sensitivity of this affidavit***

10. I have prepared this affidavit on the basis that it can be made available to the parties and the court. In doing so, I have avoided the inclusion of highly sensitive information which would cause this affidavit to be highly classified (which would give rise to numerous restrictions regarding its handling, storage and disclosure).
11. As noted throughout this affidavit, there is further classified information to which I have had regard when reaching the conclusions I have described. If necessary, I would be prepared to swear a further, but confidential affidavit to address such matters.

**General considerations**

***Assessment of risks***

12. In this affidavit, I describe various risks to Australia's defence and security. These risks are not capable of precise quantification, but are rather matters of professional military judgement and assessment having regard to a large number of potential variables.
13. Where I have made assessments of risk in this affidavit I have had regard to both the likelihood of a particular outcome and the gravity of the consequences of that outcome. In some cases, the likelihood of a particular outcome may not be high. However, in circumstances where the potential risks include the loss of life, the reduction in our military effectiveness and the weakening of Australia's national security efforts more generally, I consider that any material increase in the likelihood of that occurring should be avoided wherever possible.
14. For the reasons explained below, I believe that the public disclosure of information detailing the tactics, techniques and procedures used by Special Operations personnel in the conduct of military operations and identifying information in relation to the personnel would give rise to a real risk of detriment to Australia's defence and security and of harm to Special Operations personnel and/or their families and those who assist us on operations, such as partner forces and interpreters.

***Mosaic analysis***

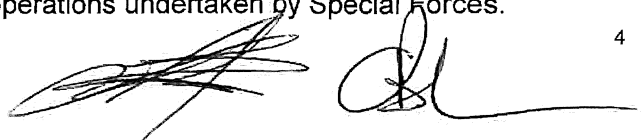
15. When assessing whether disclosure of information could cause damage to Australia's defence and national security, it is also necessary to have regard to what is referred to as 'mosaic analysis'. This is a process by which individual, often seemingly innocuous, pieces of information from multiple sources are collated and considered collectively in a way that reveals a complete picture of a sensitive matter. Thus, the public disclosure of an individual piece of information which may not, of itself, appear to be detrimental may nevertheless be of significance to a threat element that is applying mosaic analysis.



16. It can be difficult, if not impossible to quantify the likelihood that public disclosure of a specific piece of information will contribute to a successful and harmful application of mosaic analysis. This is because it is not possible to know precisely what other information may be available to the person or entity conducting that analysis. This is particularly the case in circumstances where:
- 16.1. the mosaic analysis may be conducted by persons who are capable of employing sophisticated information gathering and analytical techniques; and/or
  - 16.2. it is unknown the extent to which such persons possess the other 'tiles' in the mosaic.
17. Accordingly, when considering the possible public disclosure of information relating to military capabilities, it is necessary in my view to consider whether that information is capable of meaningfully contributing to an understanding by threat elements of Australia's intelligence and military activities. If it is, and if that increased understanding could be exploited to the real detriment of Australia's defence and security, or put at risk the lives of Australian personnel (or former personnel) and others, then that information ought to be protected from disclosure.
18. For the above reasons, the absence of an immediate threat of direct and identifiable harm does not mean that the public disclosure of a previously confidential piece of information would not endanger ADF members, and in particular Special Operations personnel (or former personnel) or cause damage to Australia's defence and security.

#### **Australia's Special Forces**

19. The ADF's Special Forces provides special operations capability to assist the Australian Government in protecting Australia's national interests both domestically and internationally. It provides unique and highly specialised capabilities which permit the Australian government to prepare for and respond to a broad range of domestic and offshore national security issues. The operational flexibility provided by a special force element of a kind that can undertake sensitive operations across the operational spectrum is critical to Australia's military capability.
20. Special Forces are also critical to Australia's capacity to operate as a member of coalition forces (including many of Australia's longstanding key allies) in ongoing or future operations. If anything were to diminish Australia's capacity to contribute to these multilateral operations, including by limiting Australia's ability to carry out its military responsibilities, it would potentially have a prejudicial effect on Australia's relationship with key allies and thereby prejudice Australia's national security and defence more generally.
21. In addition to overseas military activities, Special Forces also provide critical support to the Australian Government in a range of other national security activities which are vital to the Government's protection of Australia's national security. The very nature of these activities is highly sensitive and, therefore, I do not describe them in this unclassified affidavit.
22. Australia's Special Forces members are under the command of Special Operations Command (SOCOMD). SOCOMD is comprised of a number of units which, collectively, are described as 'Special Forces'.
23. When there is requirement for Special Forces to undertake a military operation, they are generally 'force assigned' to CJOPS. By 'force assignment' I mean that responsibility for the command and control of those forces is transferred to CJOPS for the duration of their operational activity. As Deputy Commander, I assist CJOPS in the command and control of the ADF's operational activities, including operations undertaken by Special Forces.



### **The conduct of ADF operational activities in Afghanistan**

24. Operation Slipper was the name of the operation for the ADF's contribution to the international coalition undertaking action to combat the threat posed by terrorism in Afghanistan. The Operation commenced following the events of 11 September 2001, with the deployment of Special Forces task groups to Afghanistan from around October 2001 to December 2003 and then again for most of the period from September 2005 to December 2013. A small number of Special Operations personnel remain deployed in Afghanistan as part of Australia's ongoing commitment.
25. The principle objective of Operation Slipper was to enable the Afghan government to provide effective security across the country and to develop the Afghan security forces. Combatting the insurgency in Afghanistan was complex due to the number of armed groups, including the Taliban and Al-Qaeda.
26. Combating the Afghan insurgency was a complex, difficult and dangerous mission. The Afghan insurgents employed a combination of stand-off attacks, high profile attacks, targeted assassinations, Improvised Explosive Devices and indirect fire attacks. The insurgents proved to be an adaptable and ruthless enemy. Their attacks were often carefully planned, unpredictable and brutal.
27. Forty-one ADF members were killed in insurgent attacks during Operation Slipper. Twenty of these fatalities were Special Forces members.
28. Operation Slipper ended in 2014 when a decision was made by the Australian government to support the NATO-led train, advise and assist mission called Resolute Support which replaced the previous NATO-led International Security Assistance Force mission. The current ADF operation in support of NATO's Resolute Support mission is Operation Highroad. The role of the ADF troops has effectively now changed from conducting offensive operations, to advising and assisting Afghan Forces in their efforts to combat the Afghan insurgency.

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

***Protection of the identities of Person 12 and Person 13***

-  

operations. This could prejudice the ADF's ability to engage interpreters for these types of activities in the future.

#### ***Role of SOCOMD personnel***


36. As explained above, the personnel (and former personnel) referred to in the Respondents' Defence and below as Persons 1 to 11 and 14 to 16, currently serve, or did previously serve, with SOCOMD forces. SOCOMD provides special operations capability to assist the Australian Government in protecting Australia's national interests both domestically and internationally. These are unique and highly specialised capabilities which permit the Australian Government to handle a broad range of domestic and offshore national security issues.
37. At the heart of these capabilities is the careful selection and advanced training of a small number of ADF personnel. The investment in creating and sustaining this special capability is high, and the flexibility and effect of those capabilities is such that it could not readily be replicated in any other way.
38. For these reasons, the ADF is particularly concerned to maintain the confidentiality of SOCOMD personnel, capabilities and operations in a way which does not apply to conventional military forces and operations.

#### ***Protection of the identities of SOCOMD personnel***

39. The ADF goes to considerable lengths to ensure that the identities of SOCOMD personnel remain confidential. Such personnel have consistently been afforded '*protected identity status*' under relevant ADF procedures and directives. In accordance with these requirements, the identities of SOCOMD personnel are protected from disclosure to the public, unless specifically authorised.
40. SOCOMD personnel are instructed to take precautions to minimise the scope for disclosure of their identities, addresses and so forth. They are also instructed to protect any details revealing their involvement with Special Forces from disclosure where possible. One example of this is that even when recognised with honours or awards, SOCOMD personnel are, with few exceptions, anonymised in public announcements.
41. In my view, the protected identity status of SOCOMD personnel, including the personnel named in the Confidential Annexure to the Respondents' Defence, is necessary in order to:
  - 41.1. minimise the risk of harm to them and their families;
  - 41.2. minimise the risk that they will be exploited to obtain sensitive information; and
  - 41.3. maximise scarce operational resources of the ADF.
42. I consider each of these matters in turn below.

#### ***Risk of harm to SOCOMD personnel and their families***

43. I consider that SOCOMD personnel and their families are likely to be particularly attractive targets for attacks and exploitation. There are a number of reasons for this:
  - 43.1. it is well known that SOCOMD personnel play a key role in Australia's whole-of-Government response to target violent extremism. While the specific nature of their activities is kept confidential, the fact that they have a significant role in these areas is not;



- 43.2. in more recent conflicts, particularly, in Afghanistan and Iraq, SOCOMD personnel have been responsible for the capture or killing of a significant number of high-level extremists. As a result, sympathisers of those extremists and/or those who oppose Australia's involvement in these conflicts may seek to target Special Forces personnel, in particular, for retribution; and
- 43.3. as SOCOMD, and personnel with known operational service in particular, are known to be a vital part of Australia's counter terrorism apparatus, they are also more likely to be targeted as a means of directly undermining the effectiveness of our counter-terrorism activities.
44. Although within Australia such incidents are, fortunately, limited to date, I believe that this is more a result of the steps that have been taken by the ADF to protect its personnel and their families rather than a lack of threats. In saying this, I note the following general experiences in this area:
- 44.1. the identities of SOCOMD personnel killed in Afghanistan are generally made known to the public. However, this is usually done by the ADF with the family's consent, in order to prevent them being the subject of ongoing approaches by the media. The families of three of those deceased personnel have been harassed and intimidated by phone calls from extremists and threatened with violence. In one case, a letter of this kind was hand-delivered to the family at the funeral itself; and
- 44.2. within Australia, convicted and suspected terrorists have targeted Holsworthy Barracks. This is a base which is publicly known to house SOCOMD personnel (although the presence of those personnel is not known to have been a motivation for the targeting).

***Risk of compromise of sensitive information***

45. By virtue of their position, SOCOMD personnel have an understanding of, and access to a range of sensitive security related information. This makes them a target for a range of threat elements which may wish to obtain such information. The means by which this targeting could be carried out is varied.
46. For the reasons explained above, I do not here provide details of:
- 46.1. the nature of the sensitive information to which SOCOMD personnel have access;
- 46.2. the specific threat elements which may seek to access such information; or
- 46.3. the means by which the various threat elements may target SOCOMD personnel.
47. However, these considerations are such that, were the identity of the personnel to be revealed, I believe that there would be a real risk that sensitive capabilities and information may be disclosed to the prejudice of Australia's defence and security.
48. For so long as the identities of such personnel remain protected from public disclosure, I believe that it is more difficult for the threat elements to effectively target them.

***Loss of ongoing capability***

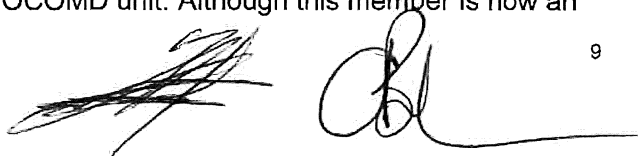
49. SOCOMD personnel, and the members outlined above, comprise a select pool of ADF members with the necessary skills and experience to be engaged in a range of high-risk operations. They undergo highly specialised training, unique to their unit, which can take more than 18 months to complete.




50. Additionally, SOCOMD personnel who have performed those duties for some time acquire a skill set and experience which is not able to be replicated simply by conducting further recruiting or training. In this case, the personnel referred to in this affidavit as currently serving, or previously serving, SOCOMD personnel have obtained skill sets of this kind.
51. SOCOMD personnel also perform confidential functions for the Australian Government. For the reasons explained in paragraph 21 above, I do not describe what those functions are in this affidavit. However, I am able to say that if the identities of SOCOMD personnel were to be publicly disclosed, they would no longer be able to perform many of these important functions.

***Disclosures of SOCOMD personnel identities in particular circumstances***

52. I have been informed that, notwithstanding their protected identity status, the names of particular SOCOMD personnel have occasionally been publicly disclosed. In some cases, this has been done against the wishes of those personnel and SOCOMD. In those cases, steps have been taken within SOCOMD to ensure the safety of those personnel and their families.
53. There have been exceptional circumstances where a conscious decision was made by the ADF to publicly disclose the identities of SOCOMD personnel in recognition of their significant contribution and awards. An example is that of Trooper Donaldson upon the awarding to him of the Victoria Cross in 2009. This is equally applicable to the Applicant, Mr Ben Roberts-Smith, following the awarding to him of the Victoria Cross in 2011. Despite the exceptional and significant nature of those awards, the decision to publicly release their names was not made lightly. It was made by senior leadership with the specific agreement of those personnel and after careful consideration of the potential risks and consequences of such disclosure. In those instances, significant care has been taken to consider and ensure the ongoing safety of those personnel and their families.
54. The information that is contained in the Respondents' Defence, along with its Confidential Annexure, that I consider identifies SOCOMD personnel and my belief as to why this is the case is set out below.
55. The persons of interest named in the Respondents' Defence are as follows:
- 55.1. The person identified as Person 1 on pages 8, 9 and 10 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the Australia Defence Organisation (ADO) Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.2. The person identified as Person 2 on pages 8 and 9 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of the ADF and a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted as a full time member of the ADF and, despite being posted to a non-SOCOMD unit, I believe his identification poses the same personal security concerns as apply with respect of current serving SOCOMD personnel.
- 55.3. The person identified as Person 3 on page 10 of the Respondents' Defence and named in the Confidential Annexure is a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member was previously posted to a SOCOMD unit. Although this member is now an



inactive Army Reserve member (that is, no longer fulfilling a full- or part-time role within SOCOMD), I believe that his identification poses the same personal security concerns as apply in respect of current serving Special Operations members.

- 55.4. The person identified as Person 4 on pages 11 and 19 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.5. The person identified as Person 5 on page 11 of the Respondents' Defence and named in the Confidential Annexure is a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member was previously posted to a SOCOMD unit. Although this member has now discharged from the ADF, I believe that his identification as a former Special Operations operator exposes him to the same personal security concerns as apply in respect of current serving Special Operations members.
- 55.6. The person identified as Person 6 on page 12 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.7. The person identified as Person 7 on pages 13 and 14 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.8. The person identified as Person 8 on page 13 of the Respondents' Defence and named in the Confidential Annexure is a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member was previously posted to a SOCOMD unit. Although this member has now discharged from the ADF, I believe that his identification as a former Special Operations operator exposes him to the same personal security concerns as apply in respect of current serving Special Operations members.
- 55.9. The person identified as Person 9 on page 14 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.10. The person identified as Person 10 on pages 14, 15 and 16 of the Respondents' Defence and named in the Confidential Annexure is a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member was previously posted to a SOCOMD unit. Although this member has now discharged from the ADF, I believe that his identification as a former Special Operations operator exposes him to the same personal security concerns as apply in respect of current serving Special Operations members.
- 55.11. The person identified as Person 11 on page 19 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.




- 55.12. The person identified as Person 14 on page 20 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.13. The person identified as Person 15 on page 21 of the Respondents' Defence and named in the Confidential Annexure is a currently serving member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member is currently posted to a SOCOMD unit.
- 55.14. The person identified as Person 16 on page 21 of the Respondents' Defence and named in the Confidential Annexure is a former member of SOCOMD. I have been shown a copy of the ADO Service record for this member, which confirms that this member was previously posted to a SOCOMD unit. Although this member is now an active Army Reserve member and no longer fulfilling a role within SOCOMD, I believe that his identification poses the same personal security concerns as apply in respect of current serving Special Operations members.

### Conclusion

56. I believe that the safety and security risks described above are real, and applicable to [REDACTED] [REDACTED], as well as the identification of the individuals identified as Persons 1 to 16 of the Respondents' Defence and named in the Confidential Annexure.


[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

58. The disclosure of the names of Persons 1 to 11 and 14 to 16 in connection with their positions (or former positions) in the ADF at the time in question could provide a valuable 'tile' for a mosaic analysis which may result in a threat element confidently concluding that they are members or former members of Special Forces. For example, they may have other information that a person matching the member's name description is a member of SOCOMD, knowing the location of SOCOMD units and the member's current city of residence, and the publication of the member's name in connection with this proceeding will complete that picture. For the reasons explained above, while that risk is difficult to quantify, the consequences of it eventuating are sufficiently serious (in terms of risk to the safety of the personnel and their families, as well as risks to the operational security of SOCOMD) that the risk should be avoided wherever possible.
59. For the reasons set out at paragraph 35 above, I respectfully request that the court also order that there be no disclosure of the names of the member of the Afghan partner force (Person 12) and name of the interpreter who supported the ADF in the conduct of its operations in Afghanistan (Person 13).




Sworn by the deponent  
at Russell  
in Australian Capital Territory  
on 10 October 2018

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Signature of deponent

Before me:



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

Name and qualification of witness

*Laura Jane Bond*  
*Solicitor*