

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/04/2021 4:49:23 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:	Affidavit - Form 59 - Rule 29.02(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, reading "Sia Lagos".

Dated: 6/05/2021 11:55:20 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.



Form 59
Rule 29.02(1)

Affidavit

No. NSD. 1485, 1486, 1487 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

Affidavit of: **Paul Victor Svilans**
Address: Level 19, 68 Pitt Street, New South Wales, 2000
Occupation: Solicitor
Date: 30 April 2021

Contents

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Filed on behalf of (name & role of party) Ben Roberts-Smith VC MG, Applicant
Prepared by (name of person/lawyer) Paul Svilans
Law firm (if applicable) Mark O'Brien Legal
Tel +61 2 9216 9830 Fax _____
Email mark.obrien@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au
Address for service Level 19, 68 Pitt Street, Sydney NSW 2000
(include state and postcode)

No.	Details	Paragraph	Pages
7.	Annexure "PVS-12" being letter from Australian Government Solicitor to Mark O'Brien legal and Minter Ellison dated 13 April 2021	12(c)	53
8.	Annexure "PVS-13" being letter from Mark O'Brien Legal to Australian Government Solicitor dated 29 April 2021	12(d)	56
9.	Annexure "PVS-14" being letter from Mark O'Brien Legal to Minter Ellison dated 29 April 2021	12(e)	62

I Paul Victor Svilans, solicitor of level 19, 68 Pitt Street, Sydney in the State of New South Wales, make oath and say as follows:

1. I am a Principal with the firm Mark O'Brien Legal (**MOBL**), the solicitors for the Applicant in these proceedings and assist in the conduct of the matter.
2. Unless otherwise stated, the facts in this affidavit are matters within my own knowledge.
3. Nothing in this affidavit is intended to waive any client or legal professional privilege. To the extent that any part of this affidavit may be construed as a waiver of privilege, I withdraw and do not rely upon that part of the affidavit.


A. Background

4. This affidavit is relied upon in support of the Applicant's Interlocutory Application filed on 30 April 2021 which seeks orders that the evidence of Persons 9, 23 and 33 (the **Witnesses**) be given at trial by audio-visual link (**AVL**). Copies of the Witnesses' Outlines of Evidence have been filed with the Court. None of the Witnesses' Outlines of Evidence traverse any of the particularised allegations of murder as against the Applicant.
5. Annexed hereto and marked "**PVS-7**" are documents downloaded by me on 28 April 2021 from the smartraveller.gov.au and nsw.gov.au websites. I note from the documents that any person arriving into NSW from overseas, other than from New Zealand, is required to go into a 14 day mandatory quarantine period.
6. Monica Allen, a Senior Associate employed by Mark O'Brien Legal, has under my instruction taken a number of steps and enquiries regarding the Witnesses. Unless stated otherwise, I depose to the matter set out in this section of my affidavit below based upon information provided to me by Ms Allen, which I believe to be true.

B. The Witnesses

Person 9

7. Person 9 has informed Ms Allen that:




- (a) he is a current member of the Special Air Service Regiment (SASR);
- (b) he is currently on a long-term military posting to the United Kingdom and will be away for the next two years;
- (c) he is presently in the United Kingdom;
- (d) the unit he is with is on short notice to move and he cannot be released to travel to Australia because of his role. He is confident that he would be able to access a video link for the purpose of giving evidence when required;

Person 23

8. Person 23 has informed Ms Allen that:

- (a) he is a United States citizen;
- (b) he presently resides in Los Angeles;
- (c) by reason of the 14-day quarantine period, even if permitted to enter Australia for the purpose of giving evidence, he would be unwilling to travel to Australia for such an extended period;
- (d) subject to the Court's discretion; he would be able to give evidence at the hearing by AVL;

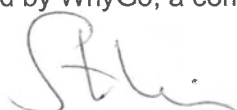
Person 33

9. Person 33 has informed Ms Allen that:

- (a) he is a United Kingdom citizen;
- (b) he is a serving member of the Royal Marines and is on short notice to move. He is therefore unable to advise as to where he may be deployed in the future, which is highly classified. He will be unable to reveal any details for the duration of any deployment, which could be for a number of weeks, during which he will have no external communications available. He will however notify Mark O'Brien Legal if he is to be deployed and when he will return for the purpose of assisting with the arrangement of him being able to give evidence by AVL.

WhyGo- Commercial AVL facility provider

10. Subject to any further order of the Court, the Applicant proposes that the Witnesses give AVL evidence at the final hearing in the proceedings utilising conference room facilities offered by WhyGo, a commercial AVL facility provider which provides such facilities in



London, Los Angeles and elsewhere. Annexed hereto and marked with the letter “**PVS-8**” are screenshots taken and pages downloaded by me on 28 April 2021 from the WhyGo website, being www.whygo.net. I note from the documents as follows:

- (a) WhyGo has been assisting in the provision of video conferencing rooms since 2003;
- (b) WhyGo provides video conference rooms for court hearings;
- (c) the Cisco software platform is offered;
- (d) upon a court approving a video link, a conference room is thereafter booked with WhyGo;
- (e) there are 41 video conferencing rooms available for booking in London, and over 24 video conferencing rooms available for booking in Los Angeles.

11. Annexed hereto and marked with the letter “**PVS-9**” is an email chain of communications between Tihana Mandic, an Associate employed by Mark O’Brien Legal, and Ian Porter, Bookings Co-Ordinator of WhyGo. I note from the email chain as follows:

- (a) that WhyGo has previously worked with the Federal Court in relation to Cisco video meetings;
- (b) that IT support will be available onsite during any video conference;
- (c) that WhyGo has many video conference rooms available after hours.

Correspondence

12. Annexed hereto and marked with the letters “PVS-10” – “PVS-13” respectively are copies of the following:

- (a) Letter from Mark O’Brien Legal to Minter Ellison dated 12 April 2021 (“**PVS-10**”);
- (b) Letter from Minter Ellison to Mark O’Brien Legal dated 12 April 2021 (“**PVS-11**”);
- (c) Letter from Australian Government Solicitor to Mark O’Brien legal and Minter Ellison dated 13 April 2021 (less enclosure) (“**PVS-12**”);
- (d) Letter from Mark O’Brien Legal to Australian Government Solicitor dated 29 April 2021 (“**PVS-13**”);
- (e) Letter from Mark O’Brien Legal to Minter Ellison dated 29 April 2021 (“**PVS-14**”).



Sworn by the deponent
at Sydney
in New South Wales
on 30 April 2021
Before me:

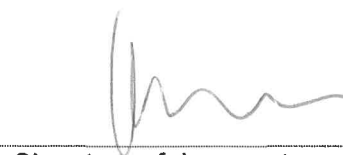


Signature of witness

STEVEN LEWIS, SOLICITOR

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

)
)
)
)
)



Signature of deponent

Certificate Identifying Annexure
"PVS-7"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd and others

Respondents

This is the annexure marked "PVS-7" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9815
Fax	-
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]



COVID-19: Re-entry and quarantine measures

Australia has strict border measures in place to protect the health of the Australian community.

You cannot come to Australia unless you're an Australian citizen, permanent resident or in an exempt category. The Department of Home Affairs looks after this entry ban. Check their [Coming to Australia](#) page for more information, including details on exemptions to the ban.

Read this page to learn about:

- [What to do before you leave for Australia](#)
- [Mandatory quarantine measures](#)
- [The New Zealand Safe Travel Zone](#)
- [How to find state and territory COVID-19 information, include state border measures](#)

For general information about arriving in Australia, see our page on [Australia's bio security and border controls](#).

Before you travel to Australia

Pre-departure COVID-19 testing

If you're travelling to Australia, you must provide evidence of a negative COVID-19 PCR or RT-PCR test to your airline when checking in for your flight at the departure point ([exemptions apply](#)). Rapid antigen tests will not be accepted. Testing must be conducted at an accredited testing facility, a self-administered COVID-19 test undertaken at home without supervision is not acceptable.

Anyone who has a negative test result and enters Australia must still complete mandatory 14-day quarantine at designated facilities in your port of arrival.

- You must be tested 72 hours or less prior to the scheduled flight departure, unless you are travelling from an [exempt destination](#)
- If you or a primary close contact of your travelling group tests positive, you won't be allowed to travel to Australia.
- Masks must be worn on all international flights, including at airports.

Local authorities and airlines may have additional requirements in place for departures. We recommend you check these before arriving at the airport. If you're transiting through other destinations during your trip, check on any local requirements at each transit destination and confirm any specific requirements for onward travel with your airline.

Exemptions to testing requirements

Children 4 years old and younger are [exempt](#) from the pre-departure PCR / RT-PCR testing requirement. Children 5 years or older must provide a negative test result.

Some destinations are exempt. In destinations where the testing capacity may be limited, a PCR / RT-PCR test that was conducted 96 hours or less prior to flight departure may be accepted.

A full list of destinations that are exempt or have an extended testing time frame is on the [Department of Health website](#), along with other frequently asked questions about the testing measures.

More information:

- [Coronavirus \(COVID-19\) advice for international travellers](#) (Department of Health)
- [Frequently asked questions – international airlines operating to Australia](#) (Department of Health)

Australia Travel Declaration

You should complete the [Australia Travel Declaration](#) at least 72 hours before your departure for Australia. The Declaration collects your information to help the Australian Government determine your quarantine arrangements (if required) and also allows the relevant health departments to contact you if someone you travelled with tests positive for COVID-19.

Mandatory quarantine

When you arrive in Australia, you must quarantine for 14 days at designated facilities in your port of arrival – unless you have an exemption. Vaccination against COVID-19 or a negative COVID-19 test prior to boarding your flight does not change this quarantine requirement.

- You won't be permitted to travel domestically (including to your home) or continue on any domestic connections until you have completed the 14-day mandatory quarantine period.
- Under the Biosecurity Act 2015 and applicable state legislation, you'll have to remain in the allocated accommodation until you're medically cleared to enter the Australian community. You may be tested for COVID-19 during your quarantine period. If you don't agree to be tested, you may have to quarantine for longer.
- The quarantine requirements are managed and enforced by [state and territory governments](#) with Australian Government support. You may have to contribute to the cost of quarantine.
- Quarantine is an unfamiliar experience for most people and can be challenging. The Department of Health website provides a guide on [getting ready for quarantine](#), including what to expect, what to do before you depart and how to manage your time in quarantine.

Safe travel zone with New Zealand

You can travel from New Zealand to Australia, quarantine-free, if:

- you have been in New Zealand for 14 days or more and not been in a designated COVID-19 outbreak location, and
- you are travelling to Australia on a quarantine-free flight.

Check the [New Zealand safe travel zone](#) (Home Affairs) page for the latest information, and read the travel advice for [New Zealand](#).

State and territory COVID-19 information

Each state and territory manage their own borders, flight caps and hotel quarantine programs. Before you return to Australia, read about the COVID-19 restrictions in place for the state or territory you'll be flying in to.

- [Australian Capital Territory](#)
- [New South Wales](#)
- [Northern Territory](#)
- [Queensland](#)
- [South Australia](#)
- [Tasmania](#)
- [Victoria](#)
- [Western Australia](#)

- [COVID-19 Restriction Checker](#) (HealthDirect)
- [States and territories COVID-19 information](#) (Australia.gov.au)

Read more:

- Read about [DFAT facilitated commercial flights](#)
- Learn about what [financial assistance](#) may be available if you've been unable to return to Australia
- Find out more about [registering with DFAT](#)
- Read about Australian [biosecurity and border controls](#)

See also:

- [COVID-19 and the border – Coming to Australia](#) (Department of Home Affairs)
- [Coronavirus \(COVID-19\) advice for travellers](#) (Department of Health)

Related content

COVID-19: Leaving Australia

COVID-19-related information for Australians and permanent residents in Australia who want to go overseas.

View details >

Travel zones

Travel zones are routes of travel that have eased COVID-19 border restrictions, either in Australia, in the destination, or both.

View details >

The impact of COVID-19 on international travel

COVID-19 has changed international travel. It's more unpredictable, and far more complex. We've broken down what you should consider before planning to travel.

View details >



Australian Government

Department of Foreign Affairs and Trade



[COVID-19 \(/covid-19\)](#) > Quarantine in NSW (/covid-19/quarantine)

Quarantine in NSW – what you need to know

Welcome to NSW, it's good to have you.

While the COVID-19 pandemic continues to grow around the world, Australia is proactively working to limit transmission. Currently, NSW has very few COVID-19 cases.

The introduction of COVID-19 into NSW is most likely through its international borders. To help us keep our communities safe, people arriving from overseas are required to undertake mandatory quarantine in a managed accommodation facility.

Thank you for playing your part in helping to protect the NSW community from COVID-19.

Key facts about quarantine

If you are arriving in NSW from an overseas location, you will need to go into a 14-day mandatory quarantine period.

Mandatory quarantine is a legal requirement under the [public health order](https://www.legislation.nsw.gov.au/information/covid-19/public-health-order-legislation) [legislation](https://www.legislation.nsw.gov.au/information/covid-19/public-health-order-legislation) (<https://www.legislation.nsw.gov.au/information/covid-19/public-health-order-legislation>)

Mandatory quarantine is undertaken in hotels where you will be supported throughout your stay. You will be charged a fixed fee for hotel quarantine.

Quarantine is managed by the NSW Government in hotel locations across Sydney.

While you are in quarantine, there are support services you can access if you need help.

Not following the quarantine rules is a criminal offence and attracts heavy penalties.

For individuals, the maximum penalty is \$11,000, 6 months in prison, or both with a further \$5500 fine for each day the offence continues.



Planning your trip

Check what quarantine rules apply to you before arriving into NSW

[View more \(/quarantine/planning-your-trip\)](#)



Fees and payment

Information on accommodation fees, payment options and financial assistance available

[View more \(/quarantine/fees-and-payment\)](#)



What to expect in quarantine

<https://www.nsw.gov.au/covid-19/quarantine>

A step-by-step process on what happens during quarantine hotel

[View more \(/covid-19/quarantine/what-to-expect\)](/covid-19/quarantine/what-to-expect)



Health and wellbeing

Resources to stay healthy in mind, body and spirit during quarantine

[View more \(/covid-19/quarantine/health-and-wellbeing\)](/covid-19/quarantine/health-and-wellbeing)



Residents returning to NSW

Resources and support services to help settle you back into NSW

[View more \(/covid-19/quarantine/returning-residents\)](/covid-19/quarantine/returning-residents)



Flight crew

Information and rules that apply to flight crew

[View more \(/covid-19/quarantine/flight-crew\)](/covid-19/quarantine/flight-crew)

Related information



New Zealand safe travel zone

From Monday 19 April 2021, a quarantine-free arrangement applies to travel between Australia and New Zealand.

For more about the requirements, visit

([https://covid19.homeaffairs.gov.au/new-zealand-safe-travel-](https://covid19.homeaffairs.gov.au/new-zealand-safe-travel-zone)

- Australian Department of Home Affairs: [New Zealand safe travel zone](https://covid19.homeaffairs.gov.au/new-zealand-safe-travel-zone) zone)

(<https://covid19.govt.nz/travel-and-the-border/quarantine-free-travel/>

- New Zealand Government: [Quarantine-free travel](https://covid19.govt.nz/travel-and-the-border/quarantine-free-travel/) travel/)

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Apply for a quarantine fee waiver)

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Exemptions for air and maritime quarantine)

COVID-19 rules (/covid-19/rules)

<https://www.nsw.gov.au/covid-19/quarantine>

Self-isolation rules (</covid-19/rules/self-isolation>)



Interstate hotspots (</covid-19/rules/interstate-hotspots>)



Current COVID-19 case locations (</covid-19/latest-news-and-updates>)



Contacts and enquiries

If you have any questions or concerns about your quarantine during the quarantine period, **contact the reception desk** of your quarantine accommodation.

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Call 1800 020 080 (24/7) for health questions or to check symptoms.)

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Call Service NSW 24 hours, 7 days a week on 13 77 88)

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Translation and Interpreter Services)

Last updated: 8 April 2021

Certificate Identifying Annexure
"PVS-8"

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

No. NSD. 1485 of 2018

Ben Roberts-Smith VC MG
Applicant

Fairfax Media Publications Pty Ltd
Respondents

This is the annexure marked "PVS-8" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9815
Fax	-
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]

Video conference rooms


Perfect for remote **court hearings**

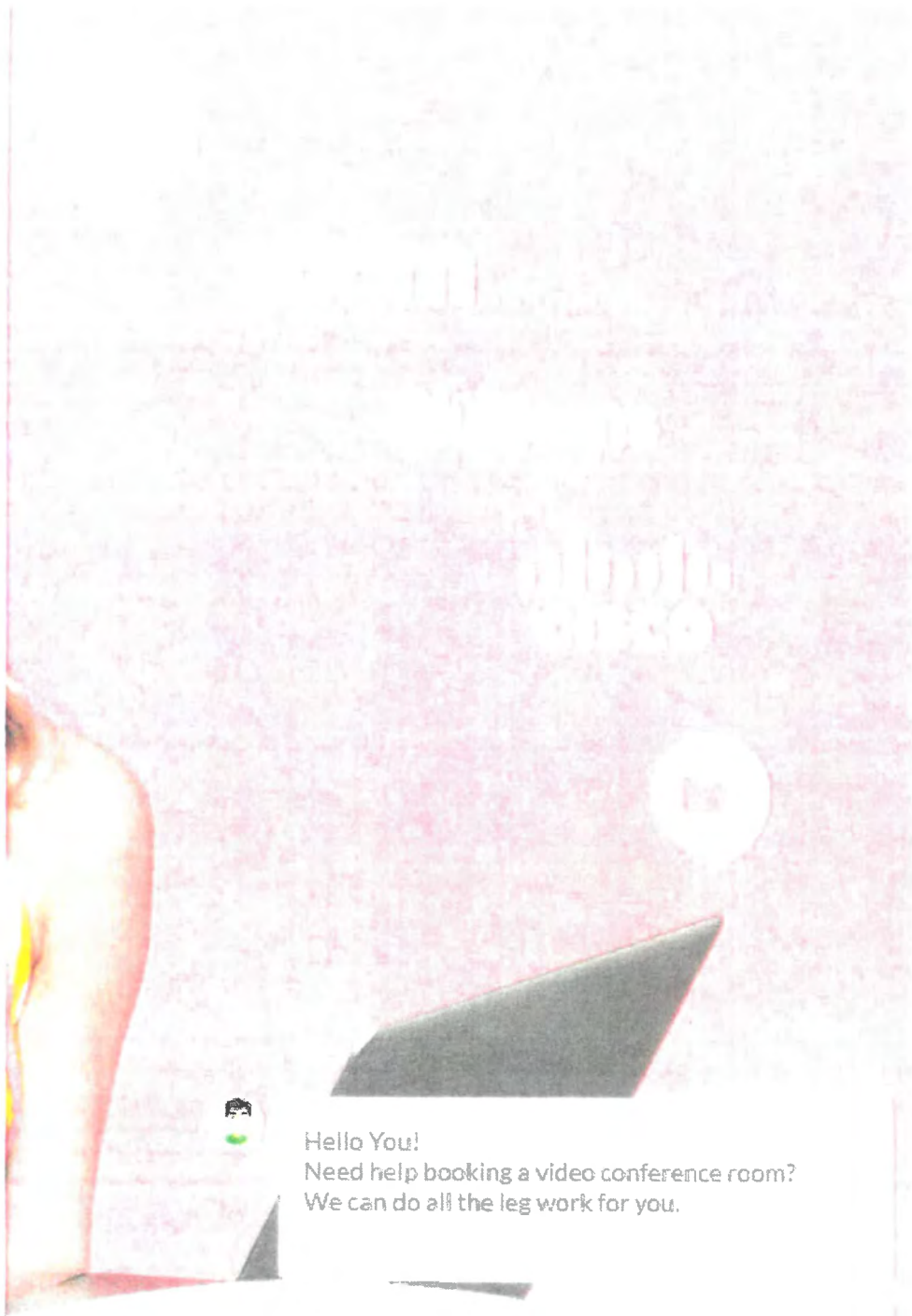
Over 4,500 video conference rooms worldwide

Video conference rooms

01 01 568

 Chat to an expert

 Quick quote



Court room video conferencing

Remote testimony

Your 3 step booking process

1

Court approval

Ensure the presiding Judge has approved your video link.

2

Book with us

Get quote and book public video room or PC connection with us!

3

Update court

Finalize booking and connection details with the court video team.

VIDEO CONFERENCE ROOMS

Over 4,500 professional
video conference rooms



Walk in, be welcomed, sit down and relax



Book by the hour, day or week



Best price guarantee

VIDEO CONFERENCE ROOMS

room as option for you.

Software connection

Alternatively we can connect to any video enabled
laptop / tablet.

Room & software

Last resort is we provide public meeting room with
video enabled laptop.

ANY DEVICE, ANYWHERE

Connecting courts &
prisons to mobile devices



 We help with all pre-testing

C. A. to US!

Q. In 1968?

ell us what itv/subu

What is it? (time and duration)

5 1 111 115

the entire minutes
Open to all

Your name

Your email

Your video conference requirements?

Submit your request



or

Click to Chat Live to Us!

Testimonials

Court room video conferencing good vibes

*"We have been using whyGo for over 17 years.
That says it all."*



"Thank you so much for the exceptional service. We have never been happier."



American
Recruitment Agency

"whyGo always finds a solution for our remote witness testimonies."



Canada
Crown Council

Frequently Asked Questions

What is a video conference room?

conferencing equipment (camera, tv, mic, speakers) installed.

How much do video conference rooms cost?

Video conference rooms range from \$150 - 350 per hour during business hours and range from \$250 - 500 per hour after hours. This includes the room and equipment hire.

What are the cancellation terms?

Over 48 hours = no cost (booking fees may apply)
Under 48 hours = 50% of all charges incurred
Under 24 hours = 100% of all charges incurred

How long can I book a room for?

You can book for literally any duration. One hour or five days. When clients book long duration's like full days or weeks, we work to secure discounted rates from the venues.

What to expect from the venues?

A private meeting room (4 x walls and a door) with video conference equipment installed.

The coordinator will show the attendees to the room, seat them, ensure

Can I connect my laptop, tablet or phone?

You sure can! We offer two options to connect video devices.

Self-service: We provide all parties with a Virtual Meeting Room which allows any device to connect into, using ALL video technologies.

Fully-managed: Same as Self-Service except one of our agents is on standby for support.

Both options include pre-testing. :)

What is the quality like?

Most of the time, the quality is great.

Video conferencing runs over the internet, meaning the quality is subject to speed and connection quality at both locations.

Connections of 768Kbps and up are most recommended for a good to great quality video conference.

To be clear, that is 768 Kbps of internet JUST for the video conference, not shared with cousin Bob in the room next door watching the latest Game of Thrones as that will kill the connection as it will be using most of that bandwidth.

Can multiple locations connect?

We can connect any number of video conference rooms and video enabled



1 LONDON, Trafalgar Square

London, London W1C 1SE

0.021 km from London

100m x 100m x 100m x 100m x 100m

\$303

100m x 100m x 100m

Spaces



2 LONDON, Chandos Place

London, London WC2N 4HS

0.051 km from London

100m x 100m x 100m x 100m x 100m

\$244

100m

100m x 100m

Spaces



3 LONDON, Regent Street

London, London W1B 1AB

0.011 km from London

100m x 100m x 100m x 100m x 100m

\$303

100m

Spaces



4 LONDON, Regent Street

London, London W1B 1AB

0.011 km from London

100m x 100m x 100m x 100m x 100m

\$303

100m

100m

Spaces



5 LONDON, Finsbury Street

London, London EC1A 1JF

0.011 km from London

100m x 100m x 100m x 100m x 100m

\$302

100m

100m x 100m

Spaces

	<p>6 LONDON Southwark Road London, London WC2E 7RS (0.58km from London) 1 video conference room / 1 person</p> <p>\$303 /</p> <p> View details Spaces </p>
	<p>7 LONDON Covent Garden London, London WC2E 9RT (0.77km from London) 1 video conference room / 1 person</p> <p>\$305 /</p> <p> View details Spaces </p>
	<p>8 LONDON Piccadilly London, London W1W 6BS (1.81km from London) 1 video conference room / 1 person</p> <p>\$299 /</p> <p> View details Spaces </p>
	<p>9 LONDON Rathbone Place London, London W1T 1JU (1.65km from London) 2 video conference rooms / 1 person</p> <p>\$347 /</p> <p> View details Spaces </p>
	<p>10 LONDON Holborn Tube St London, London WC1H 7DH (0.58km from London) 1 video conference room / 1 person</p> <p>\$244 /</p> <p> View details Spaces </p>



11 LONDON, Trafalgar

London, London SE1 8DJ

(1.45km from London)

1 Video conference room 10 people

\$232

hour

5718

Spaces



12 LONDON, Hill Street

London, London W1J 8JG

(1.43km from London)

1 Video conference room 10 people

\$318

5718

Spaces



13 LONDON, Tottenham Court

London, London W1T 2EX

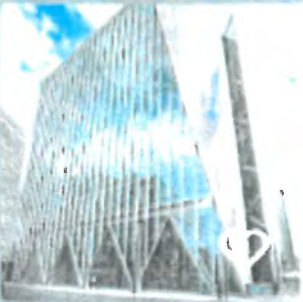
(1.51km from London)

1 Video conference room 10 people

\$336

hour

Spaces



14 LONDON, Strand and Fleet

London, London SW1E 5BX

(1.52km from London)

1 Video conference room 10 people

\$261

Spaces



15 LONDON, Southampton Bu

London, London WC2A 1AL

(1.55km from London)

1 Video conference room 10 people

\$531

hour

Spaces



16 LONDON, London Mary

London, London, W1W 6JB

(1.74km from London)

Video conference, up to 10 people

\$346

/hour

5 1 1 1

Spaces



17 LONDON, St Paul's

London, London, EC2V 3AA

(2.28km from London)

Video conference, up to 10 people

\$273

/hr

5 1 1 1

Spaces



18 LONDON, Bridge Street

London, London, SE1 9BG

(2.90km from London)

Video conference, up to 10 people

\$270

/hr

5 1 1 1

Spaces



19 LONDON, More London Riv

London, London, SE1 2RE

(3.98km from London)

Video conference, up to 10 people

\$302

/hr

5 1 1 1

Spaces



20 LONDON, Stockley Park

London, Middlesex, UB11 3ED

(21.80km from London)

Video conference, up to 10 people

\$303

/hr

5 1 1 1

Spaces



21 BALLANTYNE John DeLante
Charlotte/Ballantyne, North Carolina, 28011
(0.44km from London)

\$235
/hr

1 Space available

Spaces



22 DAMARU Teward Street
Orem, South Island, 5400
(0.44km from London)
1 Space available

\$240
/hr

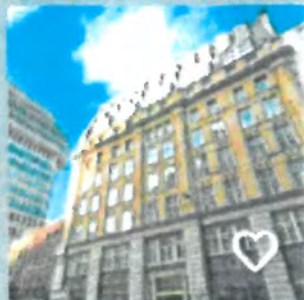
Spaces



23 NASHVILLE Marriot Drive
Nashville, Tennessee, 37214
(0.45km from London)
1 Space available

\$350
/hr

Spaces



24 LONDON Westminster St
London, London, SW1H 0RG
(0.45km from London)
1 Space available

\$300
/hr

Spaces



25 LONDON Holborn Estate
London, London, WC2A 3JL
(0.45km from London)
1 Space available

\$253
/hr

Spaces



26 LONDON Berkeley Square

London, London, W1J 8EF

(1.18km from London)

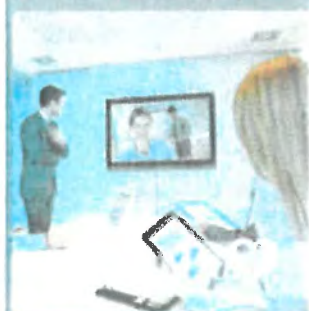
3 Video conferencing rooms 16 people

\$303

per hour

see info

Spaces



27 LONDON Victoria

London, London, SW1E 5RS

(1.48km from London)

3 Video conferencing rooms 16 people

\$303

per hour

see info

Spaces



28 LONDON Convent Garden

London, London, WC1E 5HA

(1.58km from London)

3 Video conferencing rooms 16 people

\$319

per hour

see info

Spaces



29 LONDON Holborn Gate

London, London, WC1N 7QT

(1.51km from London)

3 Video conferencing rooms 16 people

\$303

per hour

see info

Spaces



30 LONDON Harley Street

London, London, W1G 8QR

(1.75km from London)

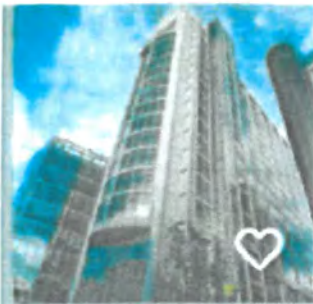
3 Video conferencing rooms 16 people

\$385

per hour

see info

Spaces



31 LONDON St Pancras

London, London NW1 8BT

(2.15km from London)

1 view (including night view) 18 people

\$303

2

1 view 18 people

Spaces



32 LONDON St Pauls

London, London EC1A 4EH

(2.34km from London)

1 view (including night view) 18 people

\$303

2

1 view 18 people

Spaces



33 LONDON Eaton Gate

London, London SW1W 8BJ

(2.41km from London)

1 view (including night view) 18 people

\$283

2

1 view 18 people

Spaces



34 LONDON Cheapside

London, London EC2V 8D1

(2.43km from London)

1 view (including night view) 18 people

\$290

2

1 view 18 people

Spaces



35 LONDON Lombard Street

London, London EC3N 3LJ

(2.37km from London)

1 view (including night view) 18 people

\$303

2

1 view 18 people

Spaces



36 LONDON Royal Exchange

London, London, EC3N 3ET

(3.87km from London)

1 Video conferencing room (10 people)

\$233

per hour

edit info

Spaces



37 LONDON CityPoint

London, London, EC2Y 5HT

(3.05km from London)

1 Video conferencing room (12 people)

\$303

per hour

edit info

Spaces



38 LONDON New Broad

London, London, EC2N 1JH

(3.25km from London)

1 Video conferencing room (5 people)

\$303

per hour

Spaces



39 LONDON London Bridge

London, London, SE1 2RE

(3.55km from London)

1 Video conferencing room (10 people)

\$303

per hour

Spaces



40 LONDON Brick Lane

London, Haggerston, E2 9EJ

(3.10km from London)

1 Video conferencing room (8 people)

\$147

per hour

Spaces



AT 150M/500' CANARY WHARF

Canary Wharf, London E14 5DY
(7.58km from London)

Capacity: 1,000 people (approx.)

\$303
per person

871.8 ft

Spaces



1 LOS ANGELES, Los Angeles

Los Angeles, California 90071

(1.00km from Los Angeles)

(View on map)

\$334

per night

Spaces



2 LOS ANGELES, City National

Los Angeles, California 90071

(1.15km from Los Angeles)

(View on map)

\$334

per night

View info

Spaces



3 LOS ANGELES, South Figue

Los Angeles, California 90071

(1.24km from Los Angeles)

(View on map)

\$334

per night

View info

Spaces



4 LOS ANGELES, Wilshire Blvd

Los Angeles, California 90017

(1.27km from Los Angeles)

(View on map)

\$293

per night

View info

Spaces



5 LOS ANGELES, Wilshire Blvd

Los Angeles, California 90017

(1.32km from Los Angeles)

(View on map)

\$235

per night

View info

Spaces



6 LOS ANGELES: Hong Kong Tower

Los Angeles, California 90010

(5.5 km from Los Angeles)

1000 sq. ft. 1000 sq. ft. 1000 sq. ft.

\$273

0

1000 sq. ft.

Spaces



7 LOS ANGELES: Wilshire Blvd.

Los Angeles, California 90036

(9.8 km from Los Angeles)

1000 sq. ft. 1000 sq. ft. 1000 sq. ft.

\$334

0

1000 sq. ft.

Spaces



8 GLENDALE: Brandt Boulevard

Glendale, California 91205

(11.1 km from Los Angeles)

1000 sq. ft. 1000 sq. ft. 1000 sq. ft.

\$334

0

1000 sq. ft.

Spaces



9 GLENDALE: Brandt Boulevard

Glendale, California 91205

(11.1 km from Los Angeles)

1000 sq. ft. 1000 sq. ft. 1000 sq. ft.

\$334

0

1000

Spaces



10 BEVERLY HILLS: Wilshire Blvd.

Beverly Hills, California 90212

(12.9 km from Los Angeles)

1000 sq. ft. 1000 sq. ft. 1000 sq. ft.

\$334

0

1000 sq. ft.

Spaces



11 WEST HOLLYWOOD West S

West Hollywood, California, 90069

(13.19km from Los Angeles)

1 Video conferencing room: 16 people

\$334

/mo

2 3 info

Spaces



12 PASADENA East Colburn

Pasadena, California, 91105

(13.65km from Los Angeles)

1 Video conferencing room: 16 people

\$334

/mo

2 3 info

Spaces



13 PASADENA South Euclid

Pasadena, California, 91101

(13.72km from Los Angeles)

1 Video conferencing room: 16 people

\$341

/mo

2 3 info

Spaces



14 BEVERLY HILLS North Main

Beverly Hills, California, 90210

(14.07km from Los Angeles)

1 Video conferencing room: 16 people

\$342

/mo

2 3 info

Spaces



15 BURBANK Alameda Avenue

Burbank, California, 91505

(14.14km from Los Angeles)

1 Video conferencing room: 16 people

\$334

/mo

2 3 info

Spaces



16 IOWA/EL NA North Lake Ave

Pasadena, California 91101

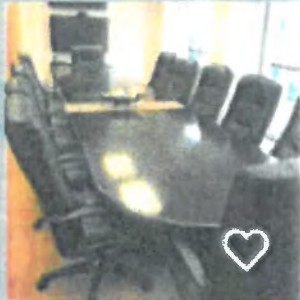
(14.79km from Los Angeles)

1 space | 100 sq ft | 100 sq ft

\$334
mo.

100 sq ft

Spaces



17 BEVERLY HILLS Century Pal

Beverly Hills, California 90067

(15.64km from Los Angeles)

1 space | 100 sq ft | 100 sq ft

\$410
mo.

100 sq ft

Spaces



18 LOS ANGELES Century Pal

Los Angeles, California 90067

(15.74km from Los Angeles)

1 space | 100 sq ft | 100 sq ft

\$334
mo.

100 sq ft

Spaces



19 LOS ANGELES Northrop Gr

Los Angeles, California 90064

(15.93km from Los Angeles)

1 space | 100 sq ft | 100 sq ft

\$334
mo.

100 sq ft

Spaces



20 LOS ANGELES Century Pal

Los Angeles, California 90045

(15.93km from Los Angeles)

1 space | 100 sq ft | 100 sq ft

\$334
mo.

Spaces



21 LOS ANGELES Santa Monica

Los Angeles, California 90067

(5.97km from Los Angeles)

Video conferencing room / 8 people

\$334

Spaces



22 LOS ANGELES Avenue of t

Los Angeles, California 90087

(13.06km from Los Angeles)

Video conferencing room / 8 people

\$334

Spaces



23 LOS ANGELES AVENUE CUC

Los Angeles, California 90046

(18.36km from Los Angeles)

Video conferencing room / 8 people

\$296

Spaces



24 LOS ANGELES South Sepul

Los Angeles, California 90084

(17.61km from Los Angeles)

Video conferencing room / 8 people

\$334

Spaces

Certificate Identifying Annexure
"PVS-9"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked "PVS-9" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel +61 2 9216 9815	Fax -
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]

Paul Svilans

From: whyGo Bookings <bookings@whygo.net>
Sent: Tuesday, 27 April 2021 8:42 PM
To: Tihana Mandic
Cc: Paul Svilans; Katrina Kelly; Isabella Gerardi
Subject: Re: VIDEO CONFERENCE ROOM Enquiry :: LONDON, UK / LOS ANGELES :: DATE TBC :: BK TBC :: Mark O'Brien Legal

Ok, great, thanks Tihana!

Yes, if the court provide their room details for us to connect to, either IP/SIP address, video equipment can connect to this.

1. A quote for hiring a room suitable for the above per hour and/or per day for each location, including rates for after hours. Given the time difference, the rooms may be required in the middle of the night. Would you confirm that the rooms can be available 24 hours a day, 7 days a week? Would you please send through examples of **two different room options** in each of London and Los Angeles, including photos? **We can't confirm this without dates/times. We have many venues in London & Los Angeles which can support after hours bookings, however, this is always upon request AND on confirmation staffing is available. Therefore I can't confirm costs until I know which room suppliers can help. It wouldn't be logical for me to suggest rooms or provide pricing if these rooms can not support once you know when you need them.**

To give you an idea of pricing though (VC room hire), see below;

London - From AUD\$271 per hour (business hours) and from AUD\$366 per hour (outside business hours)

Los Angeles - From AUD\$334 per hour (business hours) and from AUD\$450 per hour (outside business hours)

Scheduling Fee (Non-Refundable) - AUD\$30 ex GST, per room booking.

2. Whether you can have IT support available on site 24 hours a day, 7 days a week. **No supplier globally has IT support onsite 24hrs / 7 days a week. Support will be available onsite during your conference and for any booked test calls of course.**
3. How much notice needs to be given to book a room, as we do not know what date the witnesses will be giving evidence. **We can book any VC room with minimal notice. As long as we can get hold of the supplier and confirm availability and have everything locked in, in time for the video conference. However, for a successful conference and to avoid any unnecessary charges having it all confirmed at least 72 business days prior to the conference date is good, so we can ensure all connection to each VC room is tested prior. Essentially, as much notice as you can is ideal.**

4. Whether your services can connect to the Sydney courts via Cisco and whether this can be set up by your IT team. **The Sydney Federal Court connect via Cisco meetings and set up the connection on their end. They would usually provide details of this connection to all parties, which would include an IP/SIP address of which the video rooms in London & Los Angeles can dial into. We would also have the video rooms test into their pre-test numbers prior to the conference date and ensure they can connect to their virtual rooms.**

Any further questions, let us know.

We look forward to the conference dates & times so we can check available venues and have official quotes sent to you. :)

Kind Regards

Ian Porter
Bookings Coordinator

usa +1 (214) 272 2578 | emea. +44 (0) 207 183 0460 | asia. +61 1300 652 626
w. www.whygo.net e. bookings@whygo.net

services: [video conference rooms](#) | [justice network](#)
application: [features](#) | [share your space](#) | [calendar sync](#) | [integrations](#) | [support](#)

Confidential Notice: If you received this email in error, please do not forward or keep as this would be breaking confidentiality laws. Please simply destroy.

On April 27, 2021 at 12:14 PM, Tihana Mandic (Tihana.Mandic@markobrienlegal.com.au) wrote:
Hi Ian

If you use the video room with video conferencing equipment with the Federal Court then that is the option we would like to proceed with.

Kind regards

Tihana Mandic
Associate | Mark O'Brien Legal

**MARK
O'BRIEN
LEGAL**

ABN 56 002 421 123 Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9831

E tihana.mandic@markobrienlegal.com.au

W www.markobrienlegal.com.au

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From: whyGo Bookings <bookings@whygo.net>

Sent: Tuesday, 27 April 2021 7:57 PM

To: Tihana Mandic <Tihana.Mandic@markobrienlegal.com.au>

Cc: Paul Svilans <Paul.Svilans@markobrienlegal.com.au>; Katrina Kelly <Katrina.Kelly@markobrienlegal.com.au>; Isabella Gerardi <admin@markobrienlegal.com.au>

Subject: Re: Room hire for giving evidence - London to Sydney / LA to Sydney

Thanks for this, Tihana,

We can and would love to help.

Can I just clarify it's a meeting room with a computer you need, or an IP video conference room with videoconferencing equipment?

We worked with the Sydney Federal Court a lot and they connect via Cisco meetings and would provide dial in information for us to connect, so this can be done using a video room with video conference equipment for your witnesses to give evidence.

Can you confirm you're happy to proceed on this basis?

Kind Regards

Ian Porter
Bookings Coordinator

usa. +1 (214) 272 2578 | emea. +44 (0) 207 183 0460 | asia. +61 1300 652 626
w. www.whygo.net e. bookings@whygo.net

services: [video conference rooms](#) | [justice network](#)

application: [features](#) | [share your space](#) | [calendar sync](#) | [integrations](#) | [support](#)

Confidential Notice: If you received this email in error, please do not forward or keep as this would be breaking confidentiality laws. Please simply destroy.

On April 27, 2021 at 11:38 AM, Tihana Mandic
(Tihana.Mandic@markobrienlegal.com.au) wrote:
Hi there

We are looking to hire a room with a computer in both London and Los Angeles for about **5 people** in June or July. It is for the purpose of these people giving evidence via audio visual link (on Cisco) to the Federal Court in Sydney, Australia.

We would like to know the following:

1. A quote for hiring a room suitable for the above per hour and/or per day for each location, including rates for after hours. Given the time difference, the rooms may be required in the middle of the night. Would you confirm that the rooms can be available 24 hours a day, 7 days a week? Would you please send through examples of **two different room options** in each of London and Los Angeles, including photos?
1. Whether you can have IT support available on site 24 hours a day, 7 days a week.
1. How much notice needs to be given to book a room, as we do not know what date the witnesses will be giving evidence.
1. Whether your services can connect to the Sydney courts via Cisco and whether this can be set up by your IT team.

Many thanks

Tihana Mandic
Associate | Mark O'Brien Legal

**MARK
O'BRIEN
LEGAL**

ABN 86 002 421 123 Level 19, 68 Pitt Street, Sydney NSW 2000 Australia

T +61 2 9216 9831

E tihana.mandic@markobrienlegal.com.au

W www.markobrienlegal.com.au

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Certificate Identifying Annexure
"PVS-10"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked "PVS-10" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9815
Fax	-
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]

Our Ref: MOBL 283
Your Ref: PLB 1183220

12 April 2021

Mr. Peter Bartlett
Minter Ellison
Collins Arch, 447 Collins Street
MELBOURNE VIC 3000

By Email: Peter.Bartlett@minterellison.com

Dear Colleagues

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

We refer to Order 8 of the Orders entered by his Honour Justice Besanko on 5 March 2021

The Applicant intends to call the following witnesses at the hearing:

1. Ben Roberts-Smith VC MG
2. Person 5
3. Person 9
4. Person 11
5. Person 22
6. Person 23
7. Person 27
8. Person 29
9. Person 32
10. Person 33
11. Person 35
12. Person 36
13. Person 38
14. Person 39
15. Person 49
16. Person 68
17. Terry Nichols
18. Susan Wood
19. Shannon Sedgwick
20. Deborah Rolfe, AM
21. Anthony Tremlett

22. Dr. Parbodh Gogna
23. Adam Veale
24. Sarah Kelly
25. Christopher Marr, DSM
26. Dr. Brendon Nelson
27. Dame Quentin Bryce
28. Michael Potter.

Due to COVID-19 international travel restrictions, the Applicant intends to seek leave to call Person 9, Person 23 and Person 33 via audio visual link (AVL).

We have recently been informed that Person 9 is on a long-term secondment with the UK special forces, and he will be on deployment during the trial. Person 9's evidence relates only to the mock execution and does not traverse matters likely to be considered Sensitive Information for the purposes of the s38B Orders.

Person 23 is based in the United States and runs his own business. Person 33 is a member of the Special Boat Service in the United Kingdom. Persons 23 and 33 relate only to Rotation III in 2006 and the bullying allegations made by Person 1 (being [17] to [36] of the Particulars of Truth). The details of the mission in question have been extensively published over the past 15 years and the Applicant's counsel are of the view that it will not be necessary for Person 23 and 33 to give evidence on matters considered to be Sensitive Information or Sensitive Documents under the s38B Orders.

Yours faithfully



Mark O'Brien

Principal

T +61 2 9216 9828

M +61 412 637 304

E mark.obrien@markobrienlegal.com.au

Certificate Identifying Annexure
"PVS-11"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked "PVS-11" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel	+61 2 9216 9815
Fax	-
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
Address for service (include state and postcode)	Level 19, 68 Pitt Street, Sydney, New South Wales 2000

[Version 2 form approved 09/05/2013]

MinterEllison

12 April 2021

BY EMAIL Mark.O'Brien@markobrienlegal.com.au

Mark O'Brien
Principal
Mark O'Brien Legal
Level 19
68 Pitt Street
SYDNEY NSW 2000

Dear Mark

Ben Roberts-Smith v Fairfax Media Publications & Ors
Federal Court Proceeding numbers NSD 1485, 1486 and 1487 of 2018

We refer to your letter dated 12 April 2021 regarding the witnesses that the Applicant intends to call at the hearing of the proceedings.

We note that your client intends to make an application for Persons 9, 23 and 33 to give evidence via audio visual link.

We do not agree that it will not be necessary for Persons 9, 23 and 33 to give evidence on matters considered to be Sensitive Information or Sensitive Documents. We note in this regard that the Commonwealth has already indicated that the Outline of Evidence of Person 33 is a Sensitive Outline of Evidence for the purpose of the orders made pursuant to section 38B of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (**s 38B orders**). The Respondents would seek to cross examine Person 33 on the entirety of the evidence that the Applicant has indicated that Person 33 would give at trial. As you are aware, the Commonwealth has previously indicated that the Commonwealth would object to any national security information being disclosed during the course of an AVL connection (see Exhibit C on our clients' application for evidence to be given via audio visual link).

So that our clients are in a position to respond to your client's application on a considered basis, it would be useful to understand the Commonwealth's position in relation to documents which we expect would need to be shown to the witnesses. At a minimum we expect that our clients would wish for the witnesses to be shown the following documents:

- Paragraphs 60 to 75 and 89 to 94 of Part One, Section A of the PAP Notice issued to your client;
- Paragraphs 12 to 20 of Part One, Section D of the PAP Notice issued to your client;
- The documents produced by Defence with the file names commencing "Schedule 3B".

We acknowledge that order 92 of the s 38B orders presently prevents any witness being shown the PAP Notice. However, that does not prevent an application being made at trial in respect of any particular witness and any particular portion of the PAP Notice.

We would also ask that you confirm the Commonwealth's position on the cross examination by audio visual link of Persons 9, 23 and 33 in relation to the evidence contained within their respective outlines.

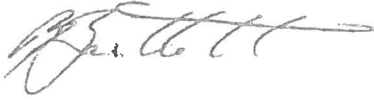
Could you please take steps to ascertain the Commonwealth's position in this regard so that our clients can make an informed decision in relation to your client's application.

Level 20 Collins Arch 447 Collins Street Melbourne
GPO Box 769 Melbourne VIC 3001 Australia DX 204 Melbourne
T +61 3 8608 2000 F +61 3 8608 1000 minterellison.com

ME_182689942_1

Finally, the Respondents intend to call Tony Samuel at trial. We apologise for omitting him from our list of witnesses that was provided earlier today.

Yours faithfully
MinterEllison

A handwritten signature in black ink, appearing to read 'D. Levitan', with a long horizontal flourish extending to the right.

Contact: Dean Levitan T: +61 3 8608 2152
Dean.Levitan@minterellison.com
Partner: Peter Bartlett T: +61 3 8608 2677
OUR REF: PLB 1183220

Certificate Identifying Annexure
"PVS-12"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked "PVS-12" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer) Monica Allen
Law firm (if applicable) Mark O'Brien Legal
Tel +61 2 9216 9815 Fax -
Email paul.svilans@markobrienlegal.com.au; monica.allen@markobrienlegal.com.au
Address for service Level 19, 68 Pitt Street, Sydney, New South Wales 2000
(include state and postcode)

[Version 2 form approved 09/05/2013]



Our ref. 20202919

13 April 2021

Mr Mark O'Brien
Mark O'Brien Legal

By email: mark.obrien@markobrienlegal.com.au
monica.allen@markobrienlegal.com.au
paul.svilans@markobrienlegal.com.au

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Dear Colleagues

**Ben Roberts-Smith v Fairfax Media Publication & Ors and related proceedings
(NSD1485/2018, NSD1486/2018 and NSD 1487/2018) – proposed amendments
to trial-phase s 38B orders – Sensitive Witness Representatives**

1. We refer to our letters dated 16 and 26 March 2021 and to the orders made by his Honour Justice Besanko under s 38B of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) on 5 March 2021. Except where specified otherwise, we adopt the terms used in those orders and in our previous correspondence.
2. We now **enclose** a proposed revised version of the Amended s 38B orders for the parties' consideration, with all revisions to the version that was made by his Honour on 5 March 2021 in mark-up.
3. The amendments that have been made in the enclosed version of the Amended s 38B orders are intended to address the Applicant's proposal, and to introduce proposed changes to orders which are incidental or related to those amendments for completeness.
4. While we expect most of the proposed amendments will be self-explanatory, we note:
 - a) the concept of a 'Sensitive Witness Representative' has been added to the definitions at Order 1;
 - b) amendments have been made to Orders 8, 9 and 11 to permit Sensitive Witness Representatives to be involved in communications of Sensitive Information, identifying information and other national security information for the purposes of the proceedings in the same circumstances as their clients.

Each of these orders also now contemplates that such information may be communicated between a Sensitive Witness and a Sensitive Witness Representative for the purposes of the proceedings (for example, following a conference with Party Representatives at which Sensitive Information is discussed), provided that occurs in specified circumstances;

- c) corresponding amendments have been made to Order 17 to permit Sensitive Witness Representatives to access, use or handle Sensitive Documents in the same circumstances as their clients;
 - d) amendments have been made to Order 32 to permit Sensitive Witness Representatives to prepare New Sensitive Documents (having in mind they may wish, for example, to prepare hard copy notes of any conferences at which Sensitive Information is discussed), and new Orders 35 and 40–44 have been added to provide for the storage of such documents (in sealed envelopes) by the Commonwealth, in circumstances where Sensitive Witness Representatives do not have access to safes and other associated equipment for the purposes of these proceedings; and,
 - e) amendments have been made to Part F to permit Sensitive Witness Representatives to be present in closed court during the evidence given by their own clients only.
5. We confirm that the proposed amendments to the Amended s 38B Orders are not intended to in any way affect the operation of Part M of the orders, which restricts access to Sensitive IGADF Documents and Sensitive IGADF Information to Authorised Persons only. For the avoidance of doubt, the Amended s 38B Orders (including the enclosed proposed amendments) do not permit Sensitive Witnesses, Sensitive Witness Representatives, Authorised Advisors, or any other class of persons other than Authorised Persons to access Sensitive IGADF Documents or Sensitive IGADF Information.
6. We are instructed to propose the enclosed amendments to the Amended s 38B Orders for the parties' consideration, and would be grateful if the parties could indicate their views with respect to the proposed amendments by no later than the close of business on **Friday, 16 April 2021**.
7. As we have noted in our correspondence throughout this matter, it will be necessary for the Attorney-General to consider and provide her agreement to the final version of any proposed alterations to the Amended s 38B Orders on behalf of the Commonwealth before any application may be made to amend the orders (whether by way of proposed consent orders or formal interlocutory application).

Yours sincerely



Kristy Alexander

Senior Executive Lawyer

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Certificate Identifying Annexure
"PVS-13"

No. NSD. 1485 of 2018

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

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked "PVS-13" now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....
Signature of person taking affidavit

Mark O'Brien Legal
Level 19, 68 Pitt Street
Sydney New South Wales 2000
An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law

Filed on behalf of	Ben Roberts-Smith VC MG
Prepared by (name of person/lawyer)	Monica Allen
Law firm (if applicable)	Mark O'Brien Legal
Tel +61 2 9216 9815	Fax -
Email	paul.svilans@markobrienlegal.com.au ; monica.allen@markobrienlegal.com.au
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[Version 2 form approved 09/05/2013]

29 April 2021

Ms. Kristy Alexander
Australian Government Solicitor
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By Email: kristy.alexander@ags.gov.au

Dear Colleagues

**Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018**

We enclose our letter to the Respondents' solicitors 12 April 2021 and their reply of the same day.

As you will observe, our clients are applying to call Persons 9, 23 and 33 by audio-visual link (AVL). The Respondents have indicated that (despite Section M of the Section 38B orders) that they wish to show those witnesses various parts of the PAP notice issued to our client and documents produced by Defence with the file name commencing Schedule 3B.

Please let us know the Commonwealth's position in relation to the ability of the Respondents to show documents of this kind to witnesses whether in person or via AVL. Please also let us know whether it is possible that some portions of the documents produced by Defence with the file name commencing Schedule 3B could ultimately be put to witnesses or shown via AVL.

Further please let us know whether the Commonwealth would have any objection to evidence of the kind contained in the Outlines of Persons 9, 23 and 33 being provided by AVL. In this respect we note that Person 33's outline has been classified within the Section 38B orders as a sensitive outline. We are not aware of the reason for this and could you please indicate that portion of the outline relevant to this classification.

Yours faithfully



Paul Svilans

Principal

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Our Ref: MOBL 283
Your Ref: PLB 1183220

12 April 2021

Mr. Peter Bartlett
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By Email: Peter.Bartlett@minterellison.com

Dear Colleagues

Ben Roberts-Smith VC MG v Fairfax Media Publications Pty Ltd & Ors
Federal Court of Australia Proceedings No. NSD 1485, 1486 and 1487 of 2018

We refer to Order 8 of the Orders entered by his Honour Justice Besanko on 5 March 2021

The Applicant intends to call the following witnesses at the hearing:

1. Ben Roberts-Smith VC MG
2. Person 5
3. Person 9
4. Person 11
5. Person 22
6. Person 23
7. Person 27
8. Person 29
9. Person 32
10. Person 33
11. Person 35
12. Person 36
13. Person 38
14. Person 39
15. Person 49
16. Person 68
17. Terry Nichols
18. Susan Wood
19. Shannon Sedgwick
20. Deborah Rolfe, AM
21. Anthony Tremlett

- 22. Dr. Parbodh Gogna
- 23. Adam Veale
- 24. Sarah Kelly
- 25. **PERSON 30**
- 26. Dr. Brendon Nelson
- 27. Dame Quentin Bryce
- 28. Michael Potter.

Due to COVID-19 international travel restrictions, the Applicant intends to seek leave to call Person 9, Person 23 and Person 33 via audio visual link (AVL).

We have recently been informed that Person 9 is on a long-term secondment with the UK special forces, and he will be on deployment during the trial. Person 9's evidence relates only to the mock execution and does not traverse matters likely to be considered Sensitive Information for the purposes of the s38B Orders.

Person 23 is based in the United States and runs his own business. Person 33 is a member of the Special Boat Service in the United Kingdom. Persons 23 and 33 relate only to Rotation III in 2006 and the bullying allegations made by Person 1 (being [17] to [36] of the Particulars of Truth). The details of the mission in question have been extensively published over the past 15 years and the Applicant's counsel are of the view that it will not be necessary for Person 23 and 33 to give evidence on matters considered to be Sensitive Information or Sensitive Documents under the s38B Orders.

Yours faithfully



Mark O'Brien

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MinterEllison

12 April 2021

BY EMAIL Mark.O'Brien@markobrienlegal.com.au

Mark O'Brien
Principal
Mark O'Brien Legal
Level 19
66 Pitt Street
SYDNEY NSW 2000

Dear Mark

Ben Roberts-Smith v Fairfax Media Publications & Ors
Federal Court Proceeding numbers NSD 1485, 1486 and 1487 of 2018

We refer to your letter dated 12 April 2021 regarding the witnesses that the Applicant intends to call at the hearing of the proceedings.

We note that your client intends to make an application for Persons 9, 23 and 33 to give evidence via audio visual link.

We do not agree that it will not be necessary for Persons 9, 23 and 33 to give evidence on matters considered to be Sensitive Information or Sensitive Documents. We note in this regard that the Commonwealth has already indicated that the Outline of Evidence of Person 33 is a Sensitive Outline of Evidence for the purpose of the orders made pursuant to section 38B of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (s 38B orders). The Respondents would seek to cross examine Person 33 on the entirety of the evidence that the Applicant has indicated that Person 33 would give at trial. As you are aware, the Commonwealth has previously indicated that the Commonwealth would object to any national security information being disclosed during the course of an AVL connection (see Exhibit C on our clients' application for evidence to be given via audio visual link).

So that our clients are in a position to respond to your client's application on a considered basis, it would be useful to understand the Commonwealth's position in relation to documents which we expect would need to be shown to the witnesses. At a minimum we expect that our clients would wish for the witnesses to be shown the following documents:

- Paragraphs 60 to 75 and 89 to 94 of Part One, Section A of the PAP Notice issued to your client;
- Paragraphs 12 to 20 of Part One, Section D of the PAP Notice issued to your client;
- The documents produced by Defence with the file names commencing "Schedule 3B".

We acknowledge that order 92 of the s 38B orders presently prevents any witness being shown the PAP Notice. However, that does not prevent an application being made at trial in respect of any particular witness and any particular portion of the PAP Notice.

We would also ask that you confirm the Commonwealth's position on the cross examination by audio visual link of Persons 9, 23 and 33 in relation to the evidence contained within their respective outlines.

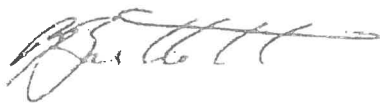
Could you please take steps to ascertain the Commonwealth's position in this regard so that our clients can make an informed decision in relation to your client's application.

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Finally, the Respondents intend to call Tony Samuel at trial. We apologise for omitting him from our list of witnesses that was provided earlier today.

Yours faithfully
MinterEllison



Contact: Dean Levitan T: +61 3 8608 2152
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Partner: Peter Bartlett T: +61 3 8608 2877
OUR REF: PLB 1183220

Certificate Identifying Annexure

“PVS-14”

No. NSD. 1485 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Ben Roberts-Smith VC MG

Applicant

Fairfax Media Publications Pty Ltd

Respondents

This is the annexure marked “PVS-14” now produced and shown to PAUL VICTOR SVILANS at the time of swearing his affidavit on 30 April 2021.

Before me:



.....

Signature of person taking affidavit

Mark O'Brien Legal

Level 19, 68 Pitt Street

Sydney New South Wales 2000

An Australian Legal Practitioner within the

meaning of the Legal Profession Uniform Law

Our Ref: MOBL283

29 April 2021

Peter Bartlett
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By Email: Peter.Bartlett@minterellison.com

Dear Sir

Roberts-Smith VC MG -v- Fairfax Media Publications Pty Limited

We refer to your letter dated 12 April 2021 regarding our client's foreshadowed AVL application.

We have written to the Commonwealth as requested.

Otherwise we do not agree that application at trial may be made to show witnesses the PAP notices. It does not seem to us that his Honour would relevantly have the power to do this within the present regime and the Commonwealth's position on the protection of the IGADF documents (see for instance paragraph 5 of their letter of 13 April 2021 addressed to the parties) appears to be absolute

Yours faithfully



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