

Form 35
Rule 17.01(1)

Amended Interlocutory application

No. 1440 of 2018

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

Ben Roberts-Smith

Applicant

Fairfax Media Publications Pty Limited

Respondent

To Ben Robert-Smith and Fairfax Media Publications Pty Limited

The Commonwealth of Australia applies for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building
184 Phillips Street
Sydney NSW 2000

Filed on behalf of (name & role of party) Commonwealth of Australia
Prepared by (name of person/lawyer) Cameron Hutchins
Law firm (if applicable) Australian Government Solicitor
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Australian Government Solicitor
Address for service Level 42, 19 Martin Place
(include state and postcode) Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

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

Orders sought

1. ~~There is to be no disclosure of information that identifies, or tends to identify, the persons, referred to in annexures B, C, F, H (at page 29, incorrectly marked as a second annexure G) and H (unpaginated two pages that follow page 31) to the Affidavit of Mark Geoffrey O'Brien affirmed on 10 August 2018 having the initials MF, GB, PC, AK, BH, TW, and Commander B.~~
2. There is to be no disclosure of information that identifies, or tends to identify, the persons with the following initials referred to in Confidential Exhibit MOBL1:
 - (a) AB whose full name first appears on page 41 of Confidential Exhibit MOBL1
 - (b) GB whose full name first appears on page 39 of Confidential Exhibit MOBL1
 - (c) GD who is named on page 3 of Confidential Exhibit MOBL1
 - (d) JA whose full name first appears on page 40 of Confidential Exhibit MOBL1
 - (e) JK who is named on page 3 of Confidential Exhibit MOBL1
 - (f) JP whose full name first appears on page 38 of Confidential Exhibit MOBL1
 - (g) JP whose full name first appears on page 39 of Confidential Exhibit MOBL1
 - (h) KD whose full name first appears on page 41 of Confidential Exhibit MOBL1
 - (i) MA whose full name first appears on page 41 of Confidential Exhibit MOBL1
 - (j) MB who is named on page 3 of Confidential Exhibit MOBL1
 - (k) MF whose full name first appears on page 40 of Confidential Exhibit MOBL1
 - (l) OH who is named on page 3 of Confidential Exhibit MOBL1
 - (m) PC whose full name first appears on page 2 of Confidential Exhibit MOBL1
 - (n) PG whose full name first appears on page 41 of Confidential Exhibit MOBL1
 - (o) PO who is named on pages 2 and 3 of Confidential Exhibit MOBL1
 - (p) PS whose full name first appears on page 2 of Confidential Exhibit MOBL1
 - (q) RD who is named on page 4 of Confidential Exhibit MOBL1
 - (r) SB who is named on page 2 of Confidential Exhibit MOBL1
 - (s) SB whose full name first appears on page 40 of Confidential Exhibit MOBL1
 - (t) SL who is named on page 3 of Confidential Exhibit MOBL1

- (u) WW who is named on pages 3 and 4 of Confidential Exhibit MOBL1
3. There is to be no publication of the information that is highlighted pink, yellow and green in the highlighted version of Confidential Exhibit MOBL1 that has been provided to the Court by the Commonwealth (as amended).
4. ~~Order 1 does not prevent disclosures to and between the following people:~~
- ~~a. Judges of this Court;~~
 - ~~b. necessary Court staff (including transcription service providers);~~
 - ~~c. the parties;~~
 - ~~d. legal representatives of the parties instructed in these proceedings and in related proceedings NSD 1485/2018, NSD 1486/2018 and NSD 1487/2018, including in-house counsel of the first respondent;~~
 - ~~e. Commonwealth Ministers;~~
 - ~~f. the Secretary of the Department of Defence, officers of the Department of Defence, and legal representatives of the Secretary, the Inspector General of the Australian Defence Force, and Assistant IGADFs; and~~
 - ~~g. judicial officers and necessary staff of any court hearing an appeal from any decision made in the course of this proceeding.~~
5. Orders 2 and 3 do not prevent disclosures to and between the following people:
- a. Judges of this Court;
 - b. necessary Court staff (including transcription service providers);
 - c. the Applicant;
 - d. legal representatives of the parties instructed in these proceedings and in related proceedings NSD 1485/2018, NSD 1486/2018 and NSD 1487/2018, including in-house counsel of the first respondent;
 - e. Commonwealth Ministers;
 - f. the Secretary of the Department of Defence, officers of the Department of Defence, and legal representatives of the Secretary, the Inspector-General of the Australian Defence Force, and Assistant IGADFs; and
 - g. judicial officers and necessary staff of any court hearing an appeal from any decision made in the course of this proceeding.
6. Orders 1, 2 and 3 apply throughout the Commonwealth of Australia.
7. Orders 1, 2 and 3 apply until further order.
8. Insofar as orders 1, 2 and 3 are made pursuant to the *Federal Court of Australia Act 1976* (Cth) they are made on the grounds referred to in s 37AG(1)(a), (b) and (c) of that Act.

9. ~~Following the making of orders 1, 2 and 3 the Commonwealth is to file a redacted version of the Mark Geoffrey O'Brien affidavit affirmed on 10 August 2018 which complies with order 1. The document to be filed shall not be a confidential document for the purposes of rule 2.32 of the Federal Court Rules 2011 and the Access to Documents and Transcripts Practice Note (GPN-ACCS).~~
10. Following the making of orders 1, 2 and 3 the Commonwealth is to file a redacted version of Confidential Exhibit MOBL1 which complies with orders 1, 2 and 3. The document to be filed shall not be a confidential document for the purposes of rule 2.32 of the Federal Court Rules 2011 and the Access to Documents and Transcripts Practice Note (GPN-ACCS).

Service on the Applicant and Respondent

It is intended to serve this application on the Applicant and Respondent.

Date: 26 September 2018



Signed by Cameron Hutchins
AGS Lawyer, for and on behalf of
the Australian Government Solicitor
Solicitor for the Commonwealth of Australia