

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/06/2019 3:18:00 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: Notice of a Constitutional Matter under s78B Judiciary Act 1903 - Form 18 - Rule 8.11(2)  
File Number: NSD989/2019  
File Title: AUSTRALIAN BROADCASTING CORPORATION v MARTIN KANE & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 25/06/2019 9:43:06 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.



**Notice of a Constitutional matter  
under section 78B of the *Judiciary Act 1903***

No. \_\_\_\_\_ of 2019

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

**Australian Broadcasting Corporation**

Applicant

**Martin Kane and others**

Respondents

The Applicant gives notice that the proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903*.

**Nature of Constitutional matter**

The proceeding concerns, *inter alia*, a consideration of the implied Constitutional freedom for the reasonable discussion of government and political matters arising under sections 7, 24 and 128 of the Constitution of the Commonwealth of Australia (**Constitution**), in the context of:

- a. the decision of the First Respondent (**Kane**) on 3 June 2019 to issue a search warrant against the Applicant (**ABC**) pursuant to section 3E of the *Crimes Act 1914* (Cth) (**search warrant**) purporting to authorise the search of and seizure of materials from the ABC's premises at ABC Ultimo Centre, 700 Harris Street, Ultimo in the State of New South Wales (**ABC premises**); and
- b. the decision of the Second Respondent (**Brumby**) and the Third Respondent (**the Commissioner**) to seek and execute the search warrant.

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Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Applicant  
Prepared by (name of person/lawyer) Michael Rippon  
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(include state and postcode) \_\_\_\_\_

[Form approved 01/08/2011]

**Facts showing that section 78B Judiciary Act 1903 applies**

1. The ABC is Australia's national public broadcaster and a news organisation. Among other things, it conducts investigative and public interest journalism of the kind which is fundamental to the maintenance of the Australian system of representative democracy arising under sections 7, 24 and 128 of the Constitution.
2. By originating application filed on 24 June 2019 (**the application**), the ABC applied to the Federal Court of Australia for certain relief pursuant to section 39B of the *Judiciary Act 1903* (Cth) and section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The application concerns, *inter alia*, the validity of the search warrant and the lawfulness of the search of and seizure of materials from the ABC premises (**seized materials**) in purported execution of the search warrant on 5 June 2019.
3. The seized materials related primarily to a series of reports broadcast and published by the ABC known as the '**Afghan Files**', which were reports in relation to government and political matters of the highest public importance, relating to the following subjects (**Subjects**):
  - a. historical conduct and alleged conduct, including alleged unlawful killings, carried out by Australian special forces in Afghanistan between about 2009 and 2013;
  - b. whether that conduct and alleged conduct had been investigated adequately or at all, or covered up; and
  - c. gross dysfunction within the Australian Defence Force.
4. In the proceeding, the ABC contends, *inter alia*, that Kane (by issuing the search warrant) and Brumby and the Commissioner (by seeking and executing the search warrant) made decisions that were legally unreasonable and would not have been made by any reasonable person in their respective positions, having regard to, *inter alia*, the public interest in investigative journalism, the Subjects, and the implied Constitutional freedom for the reasonable discussion of government and political matters which arises under sections 7, 24 and 128 of the Constitution.

Date: 24 June 2019



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Signed by Constance Bernadette Carnabuci  
Lawyer for the Applicant