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# The Sydney Morning Herald

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## War hero fires back over abuse claims

Victoria Cross recipient Ben Roberts-Smith has denied accusations of bullying and domestic violence, that are under investigation. Last night in the Federal Court he failed to stop publication of this story.  
 BY NICK MCKENZIE, DAVID WROE AND CHRIS MASTERS  
 NEWS PAGES 9-10



Ben Roberts-Smith in front of his portrait at the Australian War Memorial. Photos: Jay Cronan

## Labor MP Husar cleared of lewd conduct and sexual harassment

Nick O'Malley, Deborah Snow, Fergus Hunter

Two days after announcing she would not recontest her key seat of Lindsay, Labor MP Emma Husar has been cleared of the most serious allegations against her, that she had exposed herself to a fellow MP and sexually harassed members of her staff.  
 An assessor found those allegations were not supported, and concluded "there is no basis for Ms Husar to resign". "I'll always regret not being able to recontest Lindsay," Ms Husar told the Herald. "With the smears and speculation I had no other choice".  
**FULL STORY Page 4**

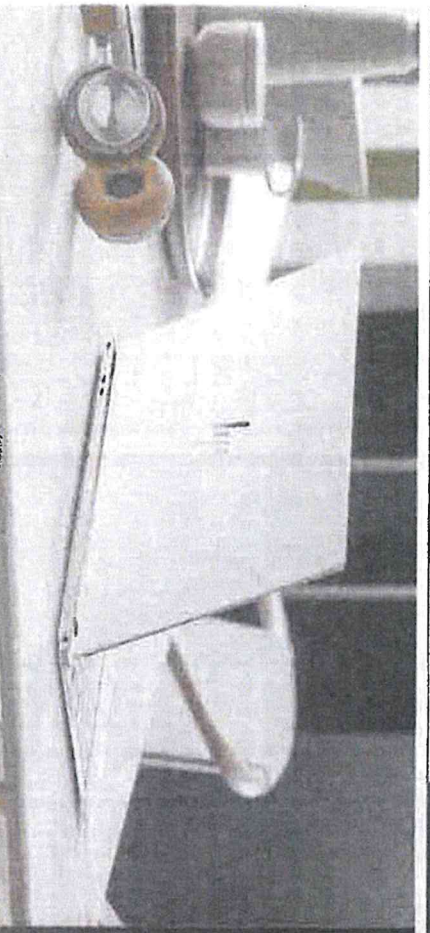


**Two new lungs and ready to run**  
 With remarkable determination, Adam Wells will take on the City2Surf less than 10 months after a double lung transplant.  
**EXCLUSIVE PAGE 13**

**Energy policy lags as prisoner of politics**  
 Malcolm Turnbull's flagship energy policy has become a prisoner of politics, thrown into a holding cell for a month to learn its fate. He'll have another chance in September.  
**DAVID CROWE PAGE 12**

**Wood loses millions in failed lawsuit**  
 Gordon Wood has lost a malicious prosecution case after he was wrongfully convicted of killing his girlfriend Caroline Byrne.  
**NEWS PAGE 2**

**Robots and our jobs**  
 With automation, there are fears our future income won't be shared fairly.  
**BUSINESS PAGE 6**

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# Beneath the bravery of our

A Victoria Cross recipient and Father of the Year, Ben Roberts-Smith is a highly respected public figure. Why are so many questions being asked about his past? Nick McKenzie, David Wroe and Chris Masters investigate.

**W**hen Malcolm Turnbull gave a speech four months ago about the struggle some veterans faced readjusting to civilian life, it was hard to ignore the man towering behind him in the Great Hall of Parliament House.

Hands clasped and head slightly bowed, Australia's most decorated Afghanistai veteran, Ben Roberts-Smith, stood on stage with the Prime Minister as a fitting testament to success after the military.

Having received a Victoria Cross for bravery during an assault on the Afghan village of Tizak in 2010 - an award that was preceded by a Medal for Gallantry and followed by a Commendation for Distinguished Service - Roberts-Smith was in the midst of a seemingly successful transition to corporate life.

The transformation from battlefield to boardroom was significant. For 10 years, Roberts-Smith had served with Australia's Special Air Service Regiment, a unit of elite soldiers who are mostly not allowed to speak about their work. Receiving the Commonwealth's ultimate bravery award made Roberts-Smith an instant celebrity. His agent began charging thousands to corporate clients to hear not only from "the most decorated soldier in the Commonwealth" but a man who had also been named "Australian Father of the Year".

He was appointed chairman of the Australia Day Council, the deputy chairman of the Prime Minister's defence mental health committee and veterans' employment committee. He became the public face of a campaign against "one punch" violence and the "Stay Kind" campaign, which urges people to look after vulnerable mates. He helped select domestic violence campaigner Rosie Batty as an Australian of the Year. The award ceremony produced an evocative image of the 196-centimetre warrior gazing comfortingly at a tearful Batty.

The photograph fitted his public ethos, which was to value "moral courage" above physical prowess and "cheerish your family every single day". But as he stood behind Turnbull at a veterans' function at Parliament House on March 28, serious doubts about his conduct were being discussed in senior defence circles. Among the generals and politicians in the Great Hall that night were some who had trouble reconciling disturbing allegations about Roberts-Smith's behaviour in Afghanistan and back home with the grand public image.

Over almost a year, the *Herald* has interviewed dozens of veterans, officials and people with knowledge of Roberts-Smith's personal conduct, including decorated soldiers who served alongside him. Their claims include bullying, intimidation and his involvement in small SAS teams suspected of the abuse of unarmed civilians and the use of force that goes well beyond what is acceptable in the theatre of war. Indeed, some of the most important people in the room that night knew of the allegations.

At the VTP table sat the unflappable HERMAN AODS HR



Ben Roberts-Smith comforts Rosie Batty after she is announced as Australian of the Year in 2015; right, Roberts-Smith with the Special Operations Task Group in Afghanistan. Photos: David Flannery, Australian Defence Force

Chief of Army and special forces veteran, Lieutenant-General Angus Campbell. Two years earlier, Campbell had commissioned the Inspector-General of the Defence Force to begin an inquiry into the nation's special forces - the most penetrating inquiry in the recent history of the military.

## DISRUPTING RUMOURS

By the time of the Great Hall event, it was clear to an inner circle in defence that disturbing rumours about small SAS patrol teams - typically consisting of five to six men including a patrol commander and deputy commander - involved serious allegations about their conduct in Afghanistan. The patrols under scrutiny featured Roberts-Smith as a key player, either as a deputy or lead patrol commander. Those making the allegations were from the SAS itself and had served alongside Roberts-Smith's patrols.

The allegations concerned the patrols' treatment of detainees or unarmoured Afghans. They included claims that the patrols may have failed to report accurately incidents in which Afghans had been subjected to the use of force, including acts of brutality perpetrated against unarmoured men.

## 'RS [Roberts-Smith] repeatedly smashed this guy in the cheek and kneed him in the guts.'

SAS insider

But it wasn't only Roberts-Smith's conduct as an SAS operator that would prompt scrutiny. That evening at the Great Hall would result in further allegations that suggest he was struggling with living up to all that was expected of him.

Sitting on the same VTP table as Lieutenant-General Campbell, between ADF deputy chief Vice-Admiral Ray Griggs and Veterans' Affairs Minister Darren Chester, was a female lawyer whom Roberts-Smith had brought as his guest, and whom he'd introduced to military figures earlier that day as a client of his employer, Channel Seven. After



"stormed the enemy position killing the ... machine gunners".

During his deployments to Afghanistan in 2009 and 2010, Roberts-Smith was deputy commander of a small SAS patrol. In his last overseas deployment, before leaving the army in 2013, he was appointed patrol commander. The *Herald* has confirmed with multiple special forces insiders that among the allegations made to the Inspector-General's inquiry is that patrols he helped lead brutally mistreated unarmoured Afghans. Four defence insiders have alleged they observed patrols under Roberts-Smith's direct or deputy leadership severely mistreat unarmoured Afghans on four occasions.

A member of Roberts-Smith's 2009 patrol allegedly encouraged a more junior trooper to execute a detainee - a suspected militant - and was later overheard boasting about it. The *Herald* has obtained a photo of the dead man and two witness accounts describing the circumstances of his death.

One experienced SAS soldier described intervening to stop Roberts-Smith bashing an unarmoured Afghan who was seeking to arrest in the fetal position when Roberts-Smith entered the room, wearing Kevlar gloves. The insider describes Roberts-Smith unexpectedly attacking the man, pummeling him in the face with his fists and in the stomach with his knees.

"RS [Roberts-Smith] repeatedly smashed this guy in the cheek and kneed him in the guts. I went, 'Whoa whoa whoa. Back off mate. We have this under control.'"  
"The fella's face immediately blew up. We stepped back and gave the fella

SAS veterans have also alleged Roberts-Smith bullied and intimidated fellow soldiers, including two junior operators who made internal complaints about the impact of his conduct on their mental health.

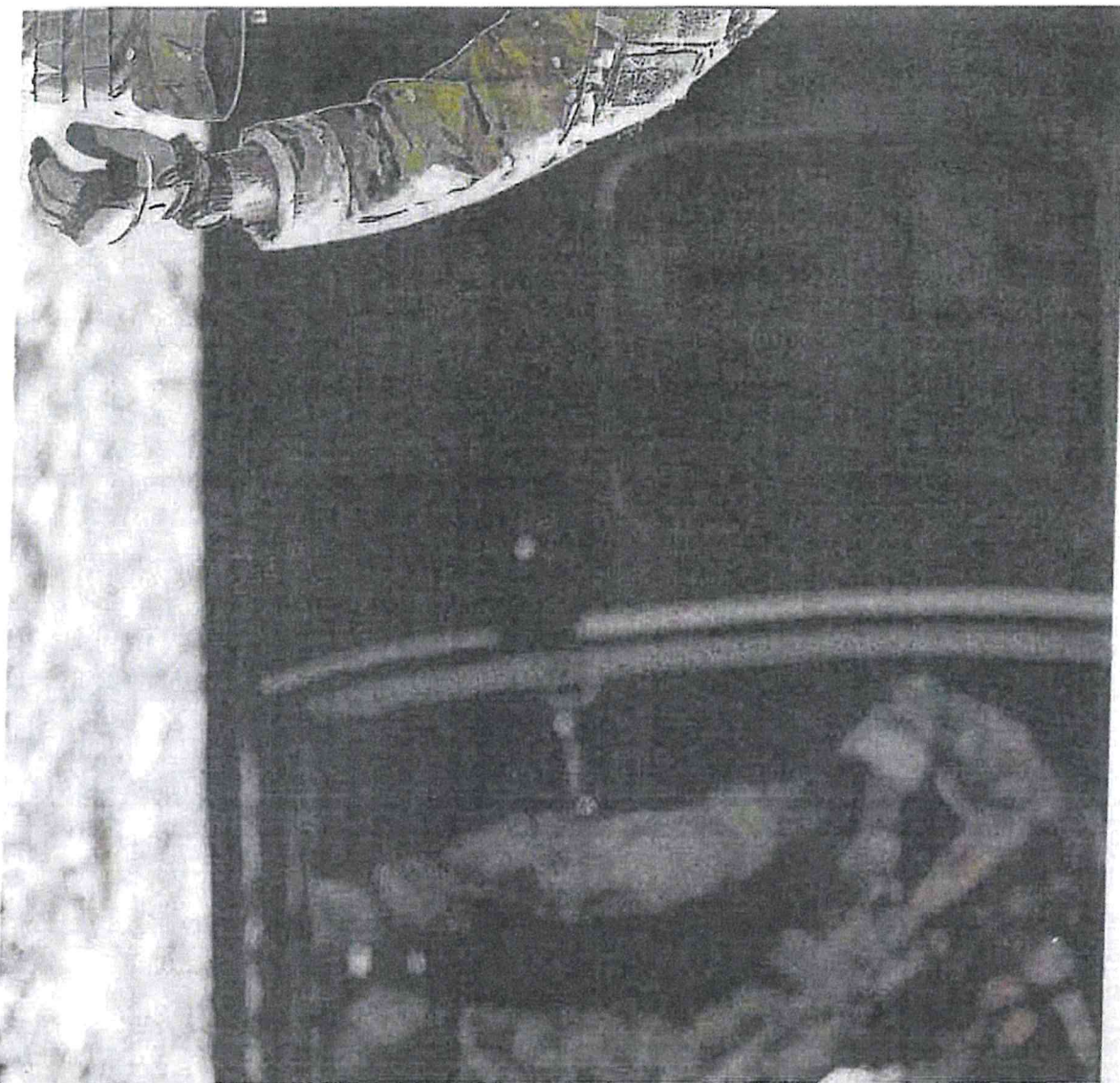
Witnesses allege one was punched in the head by an angry Roberts-Smith after a battlefield bungle.

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# most decorated soldier



further, falsely stating the dead male was armed with an automatic rifle. Roberts-Smith accused the two critical patrol members of cowardice and failing to prepare their weapons. Multiple sources contend Roberts-Smith followed up this critique with repeated bullying of the smaller and quieter of the two patrol members, Trooper M. (The *Herald* cannot name a serving SAS soldier but have confirmed he is still serving and has been promoted to patrol commander.)

More than one witness claims to have overheard Roberts-Smith threatening to harm Trooper M. The two patrol commanders alleged “years of bullying that RS [Roberts-Smith] put him through” and which affected his mental health. A bullying complaint against Roberts-Smith was lodged inside the SAS by Trooper M, which led to mediation.

## LEADERSHIP ROLE

Roberts-Smith’s promotion to patrol commander left him responsible for mentoring junior soldiers. It was an appointment he relished, a realisation of leadership ambitions. Some other SAS soldiers were pleased, considering Roberts-Smith a fierce and impressive soldier now able to pass on his knowledge.

But not all felt that way. Concerns about the treatment of the least-experienced member of Roberts-Smith’s patrol, Trooper J, were raised in mid-2012, before deployment to Afghanistan. During a training exercise in Perth involving the mock capture of a prisoner, three soldiers witnessed Roberts-Smith instruct Trooper J to shoot the detainee.

“RS grabbed [Trooper J] by the shoulder and said, ‘F—ing kill him, f—ing kill him’, an SAS soldier who claims to have witnessed the event said. The soldier alleges Trooper J responded by half-heartedly simulating a mock execution (“he went bang as a joke,” recalls a witness).

This witness alleges Robert-Smith then said, “You good with that?” The witnesses who observed the order said that two patrol commanders informally challenged Roberts-Smith, telling him to “pull your head in.”

*‘I am hard, I get that, but there is no one I beat up harder than myself.... Because if you make a mistake, someone is going to die.’*

Ben Roberts-Smith

After arriving in Afghanistan in July 2012, the mentoring of Trooper J generated further controversy when a mission on July 15 to the Choras Valley to flush out the Taliban turned ugly, and one patrol member was nearly shot by a second SAS patrol in a bungle. Trooper J wasn’t responsible for the friendly fire but he was accused of breaching protocol by firing his weapon in response and not adhering to Roberts-Smith’s orders. He was formally investigated, placed on administrative duties with another patrol and soon after left the army.

According to statements later submitted to senior defence officials, Roberts-Smith ran his own, off-the-books disciplinary process. Multiple witnesses allege that Roberts-Smith castigated the trooper in front of his patrol, ordering Trooper J to stand up and then punching him in the head. A further threat from Roberts-

Smith was allegedly made several months later: if the trooper’s account about the incident and aftermath was not consistent with his version, Roberts-Smith would report him to the International Criminal Court at The Hague for firing near civilians. The treatment of Trooper J by Roberts-Smith concerned several experienced patrol commanders, who were also troubled about other aspects of Roberts-Smith’s mentoring and leadership in 2012. The most pressing issue discussed among a small number of senior SAS soldiers involved an alleged assault on an unarmed Afghan. Those with concerns were surprised and angered when Defence in 2014 released a formal assessment of Roberts-Smith’s 2012 service as it awarded him a Commendation for Distinguished Service, praising his exemplary “mentoring... of his patrol and less experienced members.”

Three patrol commanders, still serving with the regiment and also recognised for their service in Afghanistan, signed a complaint written by one of the trio, Sergeant L. It urged senior officers to investigate Roberts-Smith’s mentoring, leadership and treatment of Trooper J. “As SAS soldiers, we are responsible for accurate reporting and honesty, in the field and in camp. This citation is a contradiction of those values,” the complaint said. For two years, the complaint went nowhere. But it is one of many documents handed to the Inspector-General.

## DEFIANCE AND CLAIMS

For his part, Roberts-Smith traces the complaints about his behaviour to the awarding of the VC in 2011. His forceful, driven personality – traits shared by many in the regiment – stoked resentment. When queried about this last year, he said: “I am hard, I get that, but there is no one I beat up harder than myself. You are supposed to be better. If not, you should not be there. Because if you make a mistake, someone is going to die.”

Supporters say the allegations stem from envy, most particularly from disgruntled veterans. Roberts-Smith’s defamation lawyer blames sensationalist journalists for seeking to bring down a war hero through a “smear campaign”. Ross Coulthart – a former TV investigative journalist who is now a public relations consultant for a firm, Cato and Clegg – is working closely with Roberts-Smith and his lawyer on his own investigation into the *Herald*’s reporting.

Coulthart has interviewed SAS soldiers close to Roberts-Smith and is privately insisting to people linked to Channel Seven there is no evidence of any wrongdoing. However, he and the PR firm’s Sue Cato have declined to share their findings. Coulthart refuses to say publicly who he is working for.

Roberts-Smith has previously derided his critics as hypocrites, saying: “The bullying is what they do to me. Bullies are cowards. They stay in the shadows. This is about group cowardice. I don’t like bullies. I am sick of it.”

He has been unequivocal he has no questions to answer in respect of any of his actions in Afghanistan.

“I’ve been under the microscope for the last six years and, you know what, my record is spotless,” he said in a newspaper interview when questions about his conduct in Afghanistan first emerged publicly in October last year. *Continued Page 10*

some space. We then arrested him.” Two alleged incidents have been separately recounted by other SAS members and involve men under the control of a patrol being led by Roberts-Smith. Both involve the alleged mistreatment of Afghan men who witnesses claim were posing no threat and could have been arrested without force. One of the men harmed was in custody and posing no threat at all when he was allegedly assaulted.

Sources from inside the SAS say this alleged mistreatment was not only unnecessary but potentially counter-productive. An essential purpose of the Afghan mission was the protection of the local population and the generation of confidence in the coalition and government forces. The sources also concede that, while the allegations caused deep concern, and were discussed informally and sometimes raised with more senior SAS soldiers, they were not immediately reported to senior command in Canberra.

## A NEW CAREER

Keeping secrets is part of being in the SAS. Yet by late 2012 and early 2013, as Roberts-Smith was preparing to start his new career as a corporate and community leader and mental health champion, some SAS colleagues were asking if he might have shirked scrutiny because less experienced soldiers were worried about challenging him. Much of the concern held by senior military officers about the cultural problems within the SAS have involved keeping quiet about behaviours that needed confronting. A report in March 2016 by then Special Operations Commander Major-General Jeff Sengelman described a

culture of impunity that may have normalised allegedly disturbing behaviour. Sengelman’s report also identified serious “governance and behavioural lapses” and helped spark the Inspector-General’s inquiry.

A record of a discussion between two long-serving SAS patrol commanders reveals some experienced soldiers in the regiment were worried Roberts-Smith’s apparent bullying meant some allegedly occurred back at base or in training. The two patrol commanders identify that the first time Roberts-Smith came to attention for alleged bullying was in 2006, during his first deployment to Afghanistan.

After a hair-raising battle early in the deployment, Roberts-Smith fell out with two members of a six-man patrol, in part over whether it was necessary to kill an Afghan who had earlier walked past an observation post.

One of the two patrol members later insisted the Afghan appeared to be an unarmed teenager whose death could have been avoided. But it was a perilous circumstance and a tough call apparently made in the fog of war. Roberts-Smith’s version of events was backed by other patrol members.

The young male was presumed to be a “spoiler”. This meant he might have seen the observation post and planned to report it to the Taliban, who could then attack Roberts-Smith and other patrol members also said he was armed with a smoke grenade, which exploded after he was shot.

The conflicting accounts are mirrored in official reports to senior officers. Some post-incident reports describe an anti-coalition militant posing a “threat”. Some reports go



# Beneath a decorated soldier's bravery

From Page 9

But the argument that critical accounts of Roberts-Smith amount to tall-poppy syndrome sits uneasily with the testimony of many who have served in the SAS, including in Afghanistan.

Some sources note the reputations of that conflict's other Victoria Cross recipients Mark Donaldson and Dan Keighran (a VC was also awarded posthumously to Commando Corporal Cameron Baird) have faced no such challenges. Most significantly, the allegations about Roberts-Smith and his patrols have, according to regiment sources, been made under oath before the Inspector-General.

## PUSHING BACK

Roberts-Smith has also been pushing back, apparently aiming to paint those making allegations about him as disgruntled liars. Defamation lawyer Mark O'Brien, who is working for Roberts-Smith, separately wrote last year to the two soldiers who were members of Roberts-Smith's patrol in 2006 and who had expressed serious misgivings about his conduct.

The lawyer accused the veterans of colluding to concoct false allegations. Roberts-Smith sent a letter to a third SAS veteran, also threatening litigation. Attention then shifted to a fourth SAS Afghanistan veteran, Sergeant L, who wrote the 2014 complaint that urged an investigation of Roberts-Smith's commendation for Distinguished Service.

On October 18, in a letter sent to the *Herald*, Roberts-Smith's defamation lawyer attacked the credibility of Sergeant L, accusing him of smuggling weapons into Afghanistan in 2012. (The two other commanders who signed the complaint were not mentioned.)

By now, more missives attacking Sergeant L were also circulating, although who was responsible for these remains a mystery.

On October 20, *The Australian* newspaper received an anonymous email. The *Herald* has linked this email to a Queensland photographer, Nathan Richter, but he has said he was just acting as a middleman and refuses to say who wrote and sent it.

This email repeated the historic gun smuggling claim and added some dramatic detail. It claimed Sergeant L was at grave risk of gunning down civilians in Perth. The baseless



massacre allegation was also sent to Australian Federal Police in an apparent attempt to get police to raid Sergeant L. Days later, they did so, finding none of the weapons the writer had promised would be located. Six months later, another mysterious writer emerged.

In April, the lawyer Roberts-Smith had weeks earlier taken as his guest to the Great Hall of Parliament House also received an email. It was from a "Danielle Kennedy" and claimed to have been sent on behalf of Roberts-Smith. By then, Canberra sources say the lawyer was alleging Roberts-Smith had subjected her to an act of domestic violence and intimidation after the Great Hall event in late March.

According to senior sources in Canberra, a relative of the woman complained about the alleged incident to a politician, who alerted a more senior colleague, who in turn alerted defence officials. Later, the alleged victim told police of her claims. Police have been told she had been drinking at

the event, and as it ended, alleges Roberts-Smith appeared angry at her behaviour, worried it had exposed his affair to the military's top brass.

She stumbled and fell down some stairs at Parliament House as she left, causing further embarrassment. Police have been told that by the time the pair arrived back at the Realm Hotel, Roberts-Smith was allegedly furious and she was subjected to an act of domestic violence.

The *Herald* has decided not to name the lawyer due to the nature of her allegations. Defence and political figures who have been told of the allegations have said that once they learnt she had gone to police, they took no further action.

Police also have details of multiple phone and email accounts Roberts-Smith used to conduct the liaison before it ended on April 6, when the lawyer disclosed the affair to his wife.

On April 22, the lawyer received the email from "Danielle Kennedy", who claimed to "represent Mr Roberts-Smith" and be acting on his "instructions". The *Herald* could not locate any lawyer by the name of "Danielle Kennedy". The photo used in the email appears to have been stolen from the internet. It is of Anne Whelford, an administrator at Lincoln University in Christchurch.

Ben Roberts-Smith passionately dismisses allegations he has breached the laws of armed conflict. Photo: Nic Walker

After a university spokesman was supplied with a copy of the "Danielle Kennedy" email, he sent a statement saying: "Lincoln University was unaware of the use of Anne Whelford's photograph, as was she, and neither party sanctions its use in this way".

The use of the picture "is a matter which should be dealt with by the police", the statement said. The woman at the centre of allegations declined to comment.

Roberts-Smith has also declined requests to be interviewed, or to answer questions about any knowledge he might have of "Danielle Kennedy", or why a stolen photo was used, or to give his version of events.

It is understood that after he received questions, he told his public relations advisers no affair had ever occurred (a claim unverified by copious evidence) and the alleged domestic violence and intimidation is also a malicious invention. And on Wednesday - six days after he was alerted that the *Herald* knew of the allegations reported to police as well as the mysterious

"Danielle Kennedy" - Roberts-Smith contacted police claiming to be a victim of stalking by the lawyer.

In respect of the claims made by SAS soldiers, Roberts-Smith has also privately dismissed allegations he is a bully or that he ever assaulted or humiliated a fellow soldier. Roberts-Smith privately and passionately dismisses all allegations he has ever breached the laws of armed conflict in Afghanistan. He recently retained a top Sydney barrister with expertise in military inquiries, Arthur Moses, SC.

In his recent public appearances, Roberts-Smith appears to have sought opportunities to burnish his image. He appeared on a Channel Seven tourism and lifestyle program to highlight his family values - "family is the most valuable thing" - and his passion for supporting soldiers struggling with mental health problems.

## NO SHRED OF EVIDENCE

In June, yet another mysterious letter writer was at work. A former member of Roberts-Smith's patrol received a letter from an anonymous source warning he should withdraw what the letter described as false information given to the Inspector-General, or risk having adverse information about his own activities exposed. The patrol member immediately reported the letter to the SAS Commanding Officer, who relayed it to the Inspector-General. The Inspector-General does not comment on investigations. But the patrol member has told colleagues he is not scared by the threat.

Roberts-Smith's supporters privately insist the Inspector-General will clear him of any wrongdoing and there is not a "shred" of evidence that suggests otherwise. Roberts-Smith's supporters also say the famous soldier is yet to give his version of events.

But SAS insiders aware of some of the adverse allegations about Roberts-Smith or the conduct of his patrols say credible evidence has already been placed on record and on oath.

Questions have dogged Ben Roberts-Smith from well before he became supersized by expectation, responsibility and pride in the spirit of the Anzacs. After two years of investigation, and having interviewed 200 witnesses on oath, the Inspector-General is expected to finalise his report in the coming months.

# War hero fails to stop publication over allegations

Michael Evans  
Kate McClymont

Decorated Australian war hero Ben Roberts-Smith has failed in a bid to win an injunction against Fairfax Media to prevent publication in today's *Sydney Morning Herald* and *The Age* newspapers of detailed allegations concerning the former corporal's behaviour.

Mr Roberts-Smith took action late last night in the Federal Court, arguing there had been a breach of confidentiality against federal law concerning an inquiry into Mr Roberts-Smith.

At 7.35pm, Justice Robert Brown ruled in Fairfax's favour.

The 4500 word story, authored by investigative journalists Nick McKenzie and Chris Masters, plus the *Herald's* defence correspondent David Wroe, was published on Fairfax Media websites yesterday morning with plans for public-

ation in today's editions of the *Herald* and *The Age*. In court late yesterday, Arthur Moses, SC, for Mr Roberts-Smith suggested Fairfax Media's reporters had committed a criminal offence by publishing confidential military information. He sought removal of the story from Fairfax websites and a ban on publishing the story today in print.

The story invoked "wanton publication in breach of Commonwealth Law", in reporting details from an inquiry by the inspector-general into Mr Roberts-Smith while a member of the special forces. He said "there is no public interest in publishing material in breach of Commonwealth Law".

Sandy Dawson, SC, for Fairfax said the action was misconceived and should be against the Commonwealth not the publisher, noting that the "horse has bolted" given the story was published at 6am yesterday and "has been read by thousands". "Where is the crime if the news-

paper publishes" asked Mr Dawson. "If there is a crime, it has already happened."

After the judgment, Mr Moses asked for the matter to be referred to the Australian Federal Police to see if there was "aiding and abetting" by journalists.

Justice Brown said referrals from the Federal Court could only be made in the event of a determination by a court - and that would be a step too far.

Mr Roberts-Smith, who is one of three living recipients of the Victoria Cross, the nation's highest military honour, issued an emphatic denial of the allegations, labelling them a "catalogue of lies, fabrications and misrepresentations".

He said early yesterday he would vigorously defend himself against the "malicious" claims. "I do want to say today that I unequivocally deny any physical abuse of any woman at any time ever, and that I have not at any stage been interviewed by police about any purported complaint by any woman," Mr-



Prime Minister Malcolm Turnbull said he was aware of the allegations. Photo: AAP

Roberts-Smith, now an executive at Channel Seven, said in a statement yesterday. "I am deeply troubled that alleged evidence given on oath before the Inspector-General of the Australian Defence Force inquiry has been canvassed in the press and that Fairfax has allegedly accessed it. Not only is it illegal, it is unfair to people who haven't given evidence and it has the potential to undermine the fairness of the inquiry."

The celebrated soldier said he was confident "direct witnesses will categorically demonstrate the falsity" of all the allegations made against him.

The Prime Minister Malcolm Turnbull was asked yesterday about the story and allegations against Mr Roberts-Smith, saying: "I am aware of the allegations, complaints have been made to police and they will be dealt with appropriately." Mr Turnbull said, "I can't make any comment on the specific matters because they are being dealt with by the police."