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Details of Filing

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702 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 31/10/2018 10:00:54 AM AEDT

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.

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Expert Witness Report

Relating to Fairfax Media, The Age and The Federal Capital
Press ats Ben Roberts-Smith Federal Court proceeding
numbers NSD 1486, 1486 and 1487 of 2018

Prepared by: Konrad Buczynski on behalf of askew & associates

Requesting Entity: Minter Ellison

Issue Date: 29th October 2018

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DISCLAIMER

This document is based on information examined by the Expert Witness from documentation supplied by the Requesting Entity and derived from his training, study and experience. Observations are based upon the assumption that documented and other information provided to the assessor was complete, factual, accurate and relevant in the circumstances.

askew & associates Pty Ltd, its officers, assessors, consultants and/or contractors involved or engaged in this project shall not be held liable for any direct, indirect or consequential loss or damage (whether for loss of profit, loss of business, loss of life, depletion of goodwill or otherwise), costs/expenses, or other claims for compensation whatsoever, which may arise as a result of any planning or dependence upon the results of this report.

EXPERT WITNESS ACKNOWLEDGEMENTS & DECLARATIONS

1. I have read and understood the Federal Court of Australia's Expert Evidence Practice Note, including the annexed Harmonised Expert Code of Conduct; I have prepared this report consistent with and agree to be bound by it.
2. My opinions are based wholly or substantially on specialised knowledge arising from my training, study and/or experience.
3. Where I have considered that my opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this has been stated where the opinion has been expressed.
4. I declare that I have made all the inquiries which I believe are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.
5. If I change my opinion on a material matter after submitting this report, I will forthwith provide the Requesting Entity with a supplementary report to that effect.



Konrad Buczynski
Security Risk Consultant
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INTRODUCTION

Assessor Background

1. I am a Certified Practising Risk Manager (CPRM) and Registered Security Professional (RSecP). My area of practice and expertise is in assessing security risk and providing advice to mitigate circumstances that threaten the safety of individuals and other assets.
2. Examples of the types of individuals to whom I have provided such advice, and the situations in which such advice has been provided, include:
 - a. Personal assessments for members of the Board and key Executives of a company ranked within the ASX top 100, in relation to their involvement in challenging and prolonged industrial relations matters.
 - b. Personal, workplace and social environment assessments for individuals involved in giving evidence in high-profile legal proceedings against defendants known for their criminal associations, including ongoing liaison with a special police taskforce set up in relation to the matter.
 - c. A collective assessment for the Board of one of Australia's largest telecommunications companies, in relation to the conduct of its Annual General Meeting and the safety of its participants. I have provided such assessments to other entities on multiple occasions.
 - d. Personal assessments for senior company executives and employees involved in a project that continues to draw broad community opposition and protest via social media and direct action.
 - e. Risk assessments for one of Australia's wealthiest individuals, and members of their family, in relation to their high-profile residence and criminal incidents experienced at the site.
3. I have undertaken innumerable security risk assessments over a period of more than 20 years, chair a committee for Security Professional's Australasia (SP-A), which is focused on security industry education and certification, and am an Associate of the Australian Risk Policy Institute (ARPI). A summarised Curriculum Vitae appears at Appendix A to this report.

Instructions

4. The questions I have been asked to consider are:
 - a. Based upon your background, training and experience, in your opinion will there be any risk to the safety of Person 17 in the event that her identity is publicly disclosed?
 - b. If your opinion is that there is such a risk, please describe the nature of the risk or risks (if more than one).
5. These questions require consideration of two scenarios in relation to Person 17: where her identity is not publicly disclosed and where it is.

6. A “risk to safety” in this context is taken as harm (death or physical injury) that might occur when exposed to a threat. It does not include mental/psychological harm that may occur in such circumstances.

Methodology Applied

7. In assessing the potential for harm to Person 17, should her identity be publicly disclosed in relation to this proceeding, it is most appropriate to assess the level of inherent risk (i.e. under current circumstances), then to conduct a comparative assessment of risk, which assumes that her identity is revealed.
8. The methodology I use for assessing risk to the safety of a person is defined within Standards Australia’s *Handbook 167:2006 - Security risk management* (the Handbook). Key aspects of the methodology define recognised practices for:
 - a. considering context associated with an assessment;
 - b. identifying ‘assets’ requiring protection and assessing the potential impacts upon them;
 - c. identifying Threat Actors and assessing plausible Threat Acts that may be committed against the asset(s);
 - d. identifying and assessing risk controls that serve to protect the asset(s) from those Threat Actors and associated Threat Acts;
 - e. considering information gathered and assessed above in the process of identifying risks, then assessing the likelihood and consequence of each to derive an Inherent Risk Rating;
 - f. considering and allocating risk treatments to reduce the level of each risk, if it exceeds acceptable thresholds/tolerances;
 - g. reassessing Residual Risk Ratings, taking into consideration measures recommended to address the risk, and repeating steps f. to g. until such time as individual risk ratings fall within levels of tolerance; and
 - h. monitoring and reviewing risks over time.
9. The Handbook represents the most authoritative Australian approach to assessing risks to individuals, where human-derived threat sources are to be considered. As such, it is mandated by the Commonwealth Attorney General’s Department for use by all Federal agencies (through its Protective Security Policy Framework) in assessing security-related risks; it is also widely applied by practitioners servicing private and non-government sectors.
10. It should be noted that the objective of the Handbook is to outline a ‘...broad framework and core processes...’ that should be included in security risk assessments. I have adhered to the framework and core processes in conducting this assessment and compiling this report and have tailored default assessment criteria indicated within the Handbook to be suitable to the assessment process.

11. Some terms have also been included that do not appear within the Handbook, but which have become common in the security industry lexicon. They are also widely used by organisations such as the Commonwealth Government and its agencies (e.g. AFP, ASIO and others); such terms include: Threat Actor; Threat Act and Inherent Risk.
12. The first step in forming an opinion as to the risk to a person's safety in a situation such as this is to identify available and relevant contextual information about that person. The type of information I would typically consider includes:
 - a. the person's immediate concerns about threats to their safety;
 - b. implied and explicit threats that have been made, and their assessed veracity;
 - c. the person's exposure to such threats, and others that may be identified; and
 - d. most likely options available to minimise risks associated with the threats.
13. In assessing such information, I consider specific matters, such as:
 - a. the manner and medium through which threats have arisen (e.g. threats made by individuals through social media platforms are taken seriously, but it is appropriate to bear in mind that they are not necessarily demonstrative of the true intent of those making them);
 - b. past incident history (i.e. comparing past, similar threats and situations to draw parallels and assess likely outcomes based on precedents); and
 - c. current controls that exist to protect the person from any threats and risks.
14. Application of the Handbook in conducting security risk assessments is also naturally and significantly enhanced by advanced levels of practitioner experience and expertise. This is in view of the fact that it is not always possible to gather and quantify every aspect relevant to an assessment, and some assumptions are usually necessary. This is discussed in specific detail within the Assessment section of this report.

Summary of Findings

15. In summary, on the basis of the information provided to me and the assumptions I have made, in my opinion there is an increased risk to the safety of Person 17 in the event that her identity is publicly disclosed.
16. I have assessed the risk to Person 17's safety as follows:
 - a. the person at risk of harm is Person 17 (the asset);
 - b. two Threat Acts were assessed as most relevant to the scope of the assessment, which considers Instructions issued - these include assault and homicide;
 - c. the risk control that was considered as part of the assessment was her current level of anonymity;
 - d. the aforementioned Threat Acts gave rise to the identification of two related risks;

- e. in the case of the risk of 'assault causing injury', the level of anonymity presently afforded to Person 17 is considered key to retaining a lower likelihood of the risk occurring, resulting in a **MEDIUM** level of current risk - if her identity were to become widely known the level of risk would increase to **HIGH**; and
- f. in the case of homicide, the risk rating is assessed to be **MEDIUM** should her identity continue to be protected – this increases to **HIGH** if anonymity were to be removed.

Assumed Facts

- 17. Assumed Facts appear at Appendix B to this report.

Documents and Materials

- 18. I was provided with the documents and materials set out in Appendix C to this report.

ASSESSMENT OF RISK IN RELATION TO PERSON 17 USING HB 167

Context

19. In relation to Person 17, the information I have identified as relevant to an assessment of the risk to the safety of Person 17 is as follows:
- a. Vitriolic social media utterings, in this case by apparent supporters of Ben Roberts-Smith, subject to the qualification I have explained below.
 - b. In particular, the reaction to the articles which include content relating to Person 17, referred to in paragraphs (dd)-(gg) of Annexure B and provided as items 20-23 of Annexure C. This reaction has included social media reaction to the effect that Person 17 is an example of a woman who is trying to bring down men unfairly.
 - c. Media reports to the effect that the ACT Police have ceased to investigate the allegations of domestic violence made by Person 17 against Ben Robert-Smith because of insufficient evidence.
 - d. The materials referred to in paragraphs (j), (k) and (jj) of Annexure B and provided as items 7 and 8 of Annexure C in relation to Yumi Stynes, which demonstrates that serious, explicit threats were made in multiple forums in relation to presenters of "The Circle" television show, following disparaging remarks made about Ben Roberts-Smith in 2012. [REDACTED]
 - e. I have assumed from the terms of the questions I have been asked and from the information provided to me that Person 17's identity is currently not publicly known.
 - f. If that status quo were to change by Person 17 being publicly identified, her identity would become publicly known through widespread reporting of her identity as Person 17.
 - g. Person 17's address and other contact details are publicly available, such that were her identity to be publicly disclosed she could be contacted and located by Threat Actors for the purpose of carrying out Threat Acts.
20. Specific matters and considerations relating to this information I have considered are as follows:
- a. I take into account when considering social media utterings that they do not necessarily correlate with the necessary intent and level of capability of the person making the uttering to commit a threatened act. Social media is notorious for its quantity of threatening content which, in my experience, only relatively occasionally materialises into physical acts. Nonetheless, I have taken into account the fact that the level of emotion evident in comments supporting Ben Roberts-Smith in such forums is heightened and, as such, warrant serious consideration.

- b. In view of the link to the military, issues such as the prevalence of Post-Traumatic Stress Disorder, and its potential to cause ex-serving members to act irrationally, are likely to elevate the threat environment rather than reduce it.
- c. The intent of potential Threat Actors who are aware of media reports to the effect that the ACT Police investigation ceased because of insufficient evidence is likely to be increased, as such individuals may understand those reports to invalidate the matters raised by Person 17 against Ben Roberts-Smith. This elevates the threat environment.
- d. There is potential for individuals promoting currently popular feminist issues, such as the #MeToo movement, to attempt to visibly associate themselves with and support Person 17, should her identity become known (regardless of her wishes for them to become involved). It is possible that such involvement may increase hostility, and thus the level of threat, towards Person 17 by some sections of the community who are critical of the movement, as a consequence.
- e. In questioning the credibility and character of someone who many evidently refer to as a ‘hero’, and one of only four living Australian Victoria Cross recipients, the nature of any potential physical response from members of the community at large remains somewhat uncertain.
- f. The information relating to the experience of Yumi Stynes is significant because it demonstrates the preparedness of members of the public, including apparent supporters of Ben Roberts-Smith, to contact a person directly who is identified as being critical of him and to make threats of death and serious violence.

It is also important to take into account the fact that the content of the material in the articles and the defence relating to Person 17, by comparison to the subject matter of Ms Stynes’ comments concerning Ben Roberts-Smith, is much more serious. That consideration, taken together with the nature of the reaction to Person 17 to date, further elevate the threat environment.

Asset Criticality Assessment

- 21. The ‘asset’ requiring protection in this situation is Person 17. Based on qualitative measures defined within Table 1 below, the level of assessed criticality is **EXTREME**. I base this on the fact that, should Person 17 be targeted by a Threat Actor, then it is possible that the impact of this could be her death.

Criticality Rating	Criteria
EXTREME	• Fatality.
HIGH	• Serious injuries requiring inpatient treatment and/or long-term impairment.
SIGNIFICANT	• Injuries requiring outpatient treatment.
MODERATE	• Injuries requiring first aid treatment.
LOW	• No injuries.

Table 1: Asset Criticality Assessment Table

Threat Assessment

22. The Threat Assessment is undertaken in a manner that is related to existing risk controls (i.e. protection of Person 17's identity) and examines threats to the asset; in doing so it supports the identification of risks. In the process, Threat Actors are identified, as are the most likely types of Threat Acts that they may perpetrate (in the context of the assessment).
23. Individual ratings, which should not be confused with subsequent risk ratings, are then applied to each Threat Act.
24. There are several constraints in assessing levels of threat associated with assessments such as this. These include:
 - a. It is not always possible to fully quantify all aspects of Threat Actors and Acts during the assessment process. This may be due to the fact that, while multiple individuals may be collectively considered a part of the same group of Threat Actor (e.g. deranged individuals), each individual is likely to exhibit at least subtly unique characteristics that limit a completely accurate assessment.
 - b. This issue is compounded further when it is not possible to examine any of the Threat Actors personally, as opposed to assessing their potential to act through social media commentary. This includes an inability to make a fully-informed assessment of their capability and intent to carry out different types of Threat Acts.
 - c. There may be Threat Actors that are not apparent from material gathered.
25. In acknowledging this, it is often the case that information is assimilated, and judgement is used, to identify relevant and plausible threat commentary and ratings. Assessor experience is critical in this process, as it enables information to be analysed through comparison to other situations in an informed manner.
26. In the current circumstances, and consistent with Instructions issued, I consider that Person 17's actions in proceedings has given rise to the emergence of a threat to her physical safety. This is validated through online commentary about her in relation to proceedings, which is referenced earlier, and which is considered demonstrative of an implied threat. Such a threat may manifest through Threat Acts committed by a Threat Actor.
27. The most relevant type of Threat Actor in the circumstances is, in my opinion, someone who is willing to act on urges that would threaten the physical safety of Person 17, based on their support for Ben Roberts-Smith.
28. In committing a Threat Act that would harm the safety of Person 17, such a Threat Actor would be perpetrating a serious criminal offence. For the purposes of referencing within this report, I thus refer to such a Threat Actor as a 'Serious Criminal'.
29. When identified, potential Threat Acts are assessed individually using the criteria at Table 2. Two Threat Acts were considered most relevant and plausible in the context of the assessment; these, and ratings applied to each through reference to Table 2 below, include:

- a. Physical Assault (**HIGH** threat act rating) - this is an assessment of Intent (Implied – references to negative consequences for Person 17) and Capability (Extensive – based on the ability of a Serious Criminal to cause serious physical injuries); and
- b. Homicide (**HIGH** threat act rating) - this is an assessment of Intent (Implied – references to negative consequences for Person 17) and Capability (Extensive - based on the ability of a Serious Criminal to cause death).

		Intent		
		None	Implied	Expressed
Capability	Extensive	Medium	High	High
	Moderate	Low	Medium	High
	Low	Low	Low	Medium

Table 2: Threat Assessment Table

30. The Threat Assessment takes into account current circumstances, including Person 17’s level of anonymity; it does not, however, represent the level of assessed risk to Person 17, which is assessed in the ‘Risk Assessment’ section below.

31. It should also be noted that, should Person 17’s identity be made public, that this could increase the level of Intent to commit a Threat Act against her. This may not necessarily be preceded by an explicit threat being made.

Risk Control Effectiveness Assessment

32. The most effective and obvious risk control presently available to Person 17 is her relative anonymity regarding the allegations of domestic violence; this control, in terms of its effectiveness of design and suitability to the circumstance, is rated as **ADEQUATE**.

33. This rating was applied with reference to Table 3 below.

RCE Rating	Criteria
ADEQUATE	<ul style="list-style-type: none"> • Control elements are well designed to address threats. • Nothing more to be done except review and monitor control elements. • There are no doubts that the controls are the most appropriate for the task.
MODERATE	<ul style="list-style-type: none"> • Most control elements are designed correctly, in place and effective. • Some more work should be considered to improve operating effectiveness. • There may be doubts around operational effectiveness and reliability.
INADEQUATE	<ul style="list-style-type: none"> • Controls do not address threats effectively. • There are significant control flaws or no credible controls at all. • There are obvious doubts that the controls will work as intended.

Table 3: Risk Control Effectiveness (RCE) Ratings

Identification of Risks

34. Risks to the safety of Person 17 correlate directly with Threat Acts that were identified. Risk descriptions associated with those Acts include:

- a. Risk 1: Person 17 is physically assaulted causing injury.

- b. Risk 2: Person 17 is severely assaulted, resulting in death.

Risk Assessment

35. Once formally identified, an assessment of the likelihood that each risk would be realised under current arrangements is made, along with the consequences that would be likely if each were to occur. These individual ratings are correlated on a risk matrix, which determines the Inherent Risk Rating. This process is performed using the Likelihood and Consequence tables at Tables 4 and 5, and the Risk Matrix at Table 6 below:

Likelihood Rating	Likelihood Descriptor
Almost Certain	Is very predictable and will happen.
Likely	Could easily happen and has happened in similar circumstances regularly.
Possible	Could happen and has likely occurred before.
Unlikely	Is not known to have happened in this circumstance, but could occur.
Rare	Exceptionally unlikely to happen.

Table 4: Likelihood Ratings

		Increasing consequences				
		Negligible	Minor	Moderate	Severe	Catastrophic
Person 17						
		Minor injury or first aid treatment.	Injury requiring treatment by medical practitioner and/or lost time from workplace	Major injury(s)/ hospitalisation	Multiple major injuries requiring hospitalisation and causing medium-long-term impairment.	Death.

Table 5: Consequence Ratings

	Negligible	Minor	Moderate	Severe	Catastrophic
Almost Certain	Low	Medium	High	Extreme	Extreme
Likely	Low	Low	Medium	High	Extreme
Possible	Very Low	Low	Medium	High	High
Unlikely	Very Low	Very Low	Low	Medium	High
Rare	Very Low	Very Low	Low	Medium	Medium

Table 6: Risk Matrix

36. Risk 1: Person 17 is physically assaulted causing injury.

- a. **Likelihood.** In view of the current concealment of Person 17’s identity, it is considered that the likelihood of this risk being realised is **RARE** (“Exceptionally unlikely to happen”). This is due to the inability of Threat Actors to target her directly without knowing who she is. Were this risk control withdrawn, it is assessed that risk likelihood would increase to **POSSIBLE**.
- b. **Consequence.** Regardless of how unlikely the risk is, should it indeed occur, then the assessed consequences are rated as **SEVERE**. This is based on the premise that a deranged individual who takes the time to locate and attack Person 17 would plausibly seek to cause multiple serious injuries.

- c. **Risk Rating.** In correlating these, a Residual Risk Rating of **MEDIUM** results with Person 17's current level of anonymity, and **HIGH** were it to be removed.

37. Risk 2: Person 17 is severely assaulted, resulting in death.

- d. **Likelihood.** In view of the current level of concealment of Person 17's identity, it is considered that the likelihood of this risk being realised is **RARE** ("Exceptionally unlikely to happen"). This is due to the inability of Threat Actors to target her directly without knowing who she is. Were this risk control withdrawn, it is assessed that risk likelihood would increase to **UNLIKELY**.

The reasoning behind such low likelihood ratings includes: limited historical rates of homicide in high-profile cases such as this in Australia; the extreme nature of risk consequences; the high profile of the case and likelihood of being caught.

- e. **Consequence.** Regardless of how improbable it is that the risk be realised, should it indeed occur, then the consequences are clearly **CATASTROPHIC** to Person 17.
- f. **Risk Rating.** In correlating these, a Residual Risk Rating of **MEDIUM** results should anonymity be continued, and a rating of **HIGH** results should her identity be revealed.

38. These results are depicted within Table 7 below, which shows the resultant Security Risk Register for the assessment. Callouts have been inserted in red to highlight changes in risk ratings should Person 17's identity be revealed.

Threats	Primary asse	Controls	Risk Description	Risk Type	Inherent Risk	Treatments	Residual Risk
Serious Criminal - Physical Assault (High)	Person 17 (EXTREME)	Anonymity	Person 17 is physically assaulted causing injury.	Personnel	Medium Likelihood: Rare Consequence: Severe	Identity revealed.	High Likelihood: Possible Consequence: Severe
Serious Criminal - Homicide (High)	Person 17 (EXTREME)	Anonymity	Person 17 is severely assaulted, resulting in death.	Personnel	Medium Likelihood: Rare Consequence: Catastrophic	Identity revealed.	High Likelihood: Unlikely Consequence: Catastrophic

Under current arrangements

Should Person 17's identity be revealed

Table 7: Security Risk Register

39. In the case of the risk ratings above, and with regard to issues of safety, organisations usually pursue a 'As Low and Reasonably Practicable (ALARP)' approach or otherwise require risks to be mitigated to LOW or ideally VERY LOW (or a close equivalent where different criteria is applied).

40. In view of the scope of the assessment involving a single individual, and by way of equivalency, an untreated MEDIUM safety-related risk would, in my opinion, not usually be acceptable to entities governed by Workplace Health and Safety legislation; certainly a HIGH risk would in most cases be unacceptable.

41. In such cases consideration would usually be given to mitigating the risk, ceasing the risk-causing activity, or otherwise setting in place very strict arrangements for monitoring it routinely (and vesting risk ownership with senior executive personnel).
42. In a best-case scenario, it is assessed that the safety risk to Person 17 would presently be **MEDIUM**, rising to **HIGH** for both risks should her anonymity in relation to these proceedings be removed. Consistent with commentary above, and depending upon her tolerance to risk, this may suggest that she consider risk controls above and beyond her current anonymity to reduce risk ratings further or acknowledge the risk to her safety and continue to make risk-based judgements on an activity-by-activity basis (e.g. before leaving the house).
43. Additional treatments, beyond her current anonymity, may include things such as an appropriately tailored guarding detail, duress arrangements and response planning etc., although some of these and other treatments may prove to not be cost-beneficial in her circumstances.

Conclusion of Risk Assessment

44. Based on my background, training and experience, it is my opinion that the public disclosure of Person 17's identity in relation to the proceedings will increase her exposure to safety risk, specifically in relation to the risk of assault and serious injury.
45. Accordingly, my answers to the questions are:

- g. Yes.
- h. The key risks to Person 17's (physical) safety that were identified relate to assault and homicide.

The likelihood of either occurring while Person 17's identity is protected is considered **RARE**.

Increases in the level of likelihood (to Possible and Unlikely respectively), which would occur should her identity become known in relation to the proceedings, will have the effect of increasing risk ratings from **MEDIUM** to **HIGH**.

APPENDIX A: SUMMARISED CURRICULUM VITAE

Education and Qualifications

1. I am a licenced Security Consultant pursuant to the NSW and ACT Security Industry Acts (1997 and 2003 respectively).
2. I hold the following tertiary educational qualifications:
 - a) Masters Security Management, Edith Cowan University .
 - b) Graduate Diploma IT Management, University of NSW.
 - c) Graduate Diploma Telecommunications Management, University of NSW.
 - d) Certificate IV Security Risk Management, Chubb Fire and Security.
 - e) Certificate IV Workplace Training and Assessment, Bayley & Associates Pty Ltd.
 - f) Associate Diploma Personnel Administration, Royal Military College Duntroon.
3. I hold the following professional associations, certifications and memberships:
 - a) Committee Chair and Council Member, Security Professionals Australasia.
 - b) Registered Security Professional, Security Professionals Australasia.
 - c) Certified Practising Risk Manager (CPRM), Risk Management Institute of Australasia.
 - d) Certified Counter-Terrorism Practitioner, Skills for Security (UK).
 - e) Associate, Australian Risk Policy Institute.
 - f) Member, Risk Management Institute of Australasia (RMIA).
 - g) Member, Standards Australia MB-025 Sub-committee 06 (Protective Security).
 - h) Lead Auditor and Assessor, ISO 28007: 2010 - Security management systems for the supply chain.

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Career Engagements

Industry Risk

Managing Director

Sept' 2004 – Present

<https://industryrisk.com.au>

askew & associates

Security Risk Consultant

Nov' 2009 – Present

www.askew&associates.com.au

Thales Australia-NZ

Chief Security Officer | Crisis &
Continuity Program Manager

Jun' 2005 – Apr' 2009

<https://www.thalesgroup.com>

Berkeley

Principal Consultant

Sept' 2001 – Sept' 2004

<https://berkeley.solutions/>

Department of Defence

Army Officer

Jan' 1991 – Sept' 2001

<https://www.army.gov.au/>

Industry Risk Pty Ltd was commenced upon sale of equity in Berkeley, initially under a trading entity then shortly afterwards a Pty Ltd company. Since that time the company has grown and counts among its Directors and consultants some of the most senior and highly regarded professionals within the industry. Industry Risk closely supports askew & associates and is partnered for all significant assignments.

Key achievements:

- Delivered a range of critical projects resulting in strong contributions to Australian Government, private sector and community security and resilience.
- Delivered services to more than 80 satisfied domestic and international clients, with many of those involving multiple projects and engagements.
- Lead consultant and contractor to Global Strategies Group (Pakistan) and Regional Assistance Mission to the Solomon Islands (Transitional Contingent Security Manager).
- Accepted roles as Committee Chair, Director and member in multiple value-add partnerships and co-ventures, such as: the Australian Centre for Security Management (Director); Agilent Pty Ltd (Director) and Security Professionals Australasia (Committee Chair); Standards Australia (Committee Member).

Perform the role of senior corporate manager responsible for designing and deploying what is widely regarded as the exemplar security program within Defence Industry.

Key achievements:

- Designed and developed the country's leading Defence corporate security program, which is routinely referenced by the regulator, the Defence Security Authority.
- Integrated security between an iconic local entity (ADI Limited) and its new parent.
- Reduced security spending through driving efficiencies in operations.
- Grew the trust and cooperation of Divisional security representatives through collaboration and empowerment and transformed security culture.
- Developed new, centrally overseen methods for assuring baseline obligations.
- Implemented a National Security Management Team canvassing 40 sites.
- Minimised regulator attention through proactive engagement and collaboration.
- Reinforced the Group brand through achieving "Trusted Defence Partner" status.
- Transformed security culture from 'traditional' to market leading.

As an early investor and principal in Berkeley I initiated a shift in focus from local Defence contractor placement to participating in the broader commercial IT market, before commencing Industry Risk to focus on the security and resilience market.

Key achievement:

- Achieved steady growth in profile and revenue through expansion of service offerings from IT manpower to commercial partnerships and services contracts.

Graduate of the Royal Military College Duntroon and Army Officer specialising in telecommunications, reaching the rank of Major before moving to the private sector. I served

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Client Consulting List

FULL CONSULTING CLIENT LIST

Security Risk and Resilience Consulting Clients

2004 - Present

Industry Risk Pty Ltd and other contracting entities

CRITICAL INFRASTRUCTURE	Adelaide Airport AGL Airservices Australia ANSTO ARPANSA	Essential Energy Hunter Water Corporation Jemena MidCoast Water Corporation NSW Office of Emergency Management
DEFENCE & INDUSTRY	AGSVA Elbit Systems	Defence Security Authority Thales Australia
BANKING & BUSINESS SERVICES	Commonwealth Bank King & Wood Mallesons	Macquarie Group Limited Melton Country Club
AVIATION SECTOR	Bankstown Airport Devonport Airport Malaysia Airlines	Melbourne Airport Office of Transport Security Regional Express Airlines
STATE & FEDERAL GOVERNMENT	ACT Chief Minister Treasury and Economic Development Directorate ACT Justice and Community Safety Directorate (JACS) ACT Territory and Municipal Services ACT Transport Canberra and City Services Administrative Appeals Tribunal Australian Bureau of Statistics Australian Electoral Commission Bureau of Meteorology	Department of Defence Department of Finance Department of Human Services Department of Immigration & Border Protection IP Australia National Disability Insurance Agency National Transport Commission NSW Department of Justice NSW Treasury
ARTS & ENTERTAINMENT	Australian Event Protection Adelaide Festival Centre Arden Leisure Group Arts Centre Melbourne	Australian Centre for the Moving Image Docklands Studios Museum of Contemporary Art Sydney Opera House
ENGINEERING, CONSTRUCTION, MANUFACTURING & BUILDING MANAGEMENT	101 Collins St Boral British American Tobacco Cerebos Coca-Cola Amatil	Dexus Property Group Downer Group Leightons Raheen Thiess-John Holland Group
HEALTH & HOSPITALS	ACT Health Primary Health Care Ramsay Health	NSW Health Queensland Health
TELECOMMUNICATIONS & MEDIA	Australian Broadcasting Corporation Equinix Global Switch	Media Hub Optus Singapore Telenor Pakistan
NGOs	Regional Assistance Mission to the Solomon Islands	
EDUCATION, TRANSPORT & EVENTS	Deakin University DHL	Navitas Limited
CORRECTIONS, DETENTION & SECURITY INDUSTRY	Global Strategies Group ISS Security MSS Security	Wilson Security SXP

APPENDIX B: ASSUMED FACTS

The Applicant

- (a) The Applicant:
- (i) is a former soldier and member of the SASR;
 - (ii) was deployed on six occasions to Afghanistan;
 - (iii) is one of Australia's most recognisable former soldiers;
 - (iv) is one of Australia's most decorated soldiers;
 - (v) received a Medal for Gallantry, the Victoria Cross and a Commendation for Distinguished Service.

The publications

- (b) On or around 9 June 2018, the article entitled "SAS's Day of Shame" was published in The Age newspaper (First Article). A version of the First Article was also published:
- (i) in the Sydney Morning Herald Newspaper; and
 - (ii) across various websites controlled by Fairfax Media, including the websites for:
 - (A) The Age;
 - (B) The Sydney Morning Herald; and
 - (C) The Canberra Times.
- (c) On or around 10 June 2018, the article entitled "Blood Ties" was published in The Age newspaper (Second Article). A version of the Second Article was also published:
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The proceeding

- (e) The proceeding has, to date, received significant media attention (both in the print and digital media).
- (f) It is likely that the proceeding will, in the future, continue to receive significant media attention (both in the print and digital media).
- (g) The contents of Defence, when made public, will likely be reported by the media.
- (h) The Defence will include the particulars set out in paragraph 1.5 above.

Yumi Stynes

- (i) On 27 February 2012, Yumi Stynes, a presenter on Channel 10's television program, The Circle, made comments about the Applicant, which in substance, questioned the Applicant's intelligence.
- (j) Following those comments Ms Stynes received vitriolic attacks from members of the public who supported the Applicant for making those comments about the Applicant's intelligence.
- (k) We attach the following documents which evidence or refer those attacks:
 - (i) an article dated 6 March 2012, entitled 'Vicious Circle: Death threats against Yumi as advertisers flee' published on www.news.com.au;
 - (ii) an article dated 28 February 2012 entitled "Circle slammed over hero soldier insults" published on www.thecourier.com.au;
 - (iii) an article dated 1 March 2012 entitled "Ben Roberts-Smith accepts apology from Stynes, Negus" published on www.tvtonight.com.au;
 - (iv) comments published on the www.ausmilitary.com on a post entitled "Re: A Brief from CPL Ben Roberts Smith";
 - (v) comments on a Youtube clip of a Sky News report on Yumi Stynes' comments about the Applicant, published online at, <https://www.youtube.com/watch?v=Kc7CCwOeC9A>;
 - (vi) the Facebook page entitled "Yumi Stynes' brain found at bottom of pool alongside George's Viagra".

Chris Masters

- (l) In or about October 2017 a book authored by Mr Masters, entitled "No Front Line" was published.
- (m) An article about Mr Master's book was published on The Australian's website on 20 October 2017, entitled "No Front Line: An explosive account of death in Afghanistan". A copy of that article is attached to this letter.
- (n) On 21 October 2017 an article entitled "VC winner Ben Roberts-Smith speaks out", was published online on the internet website www.morningmail.org, outlining Roberts-Smith's response to Chris Masters' book No Front Line. A copy of that article, including comments on the article, is attached to this letter.
- (o) On 23 October 2017 Mr Masters received an email from 61415572337@optusmobile.com.au which stated:
 - (i) "Who the fuck do you think you are. I've never even read one of your books but to even remotely try to put our world's best elite soldiers in any spotlight other than the hero's that they are you must be scum scrape together any controversy to sell a headline oh and you must be a fucking idiot to piss off these blokes whose job is covert missions behind enemy lines haha

if I was you don't walk down any dark alleys and ild(sic) watch that spineless back of yours too"; In or about November 2017 a letter was sent to News Corp (in response to the article in The Australian). A copy of that letter is attached to this letter.

- (p) In or about November 2017 a letter was sent to News Corp (in response to the article referred to at paragraph (m) above), and subsequently provided to Mr Masters. A copy of that letter is attached to this letter.

Nick McKenzie

- (q) On 9 June 2018 Mr McKenzie received a message with the subject line "SAS", as follows:
- (i) What a cowardly report - these guys put their lives at risk and all you arseholes do is criticise I am disgusted at this crap report - maybe you should go and talk to the many widows that we have as a result of these guys going out to protect our country or the many wives and partners and kids that have soldiers fighting for Australia and lose sleep every night not knowing the fate of their hero soldiers You are a disgrace and a coward as are most left wing journalist - if that's what you call yourself!!
- (r) On 11 August 2018 Mr McKenzie received a message from "tony Vietnam Vet blake" which stated "DICK HEAD! LEAVE BRS alone! your (sic) not fit to lick his boots".
- (s) On 12 August 2018 Mr McKenzie received a message with the subject line "Cocksucker(sic)" which stated "You are a fucking cocksucker I bet you are a fag ever been in the military you fucking cut less (sic) cocksucker how many cocks have you taken in the Arsenal I bet your father is proud of you".
- (t) On 12 August 2018 Mr McKenzie received an email sent from bensmit74@hotmail.com (which was also sent to David Wroe) which stated:

"McKenzie & Wroe,

Your character assassination of Ben Roberts-Smith VC is nothing short of shameful and such gutter journalism is the reason why the SMH is going broke and why channel 9 will scrap your vile little cess pool of a newspaper. The offence of treason and capital punishment should be brought back so can swing. You gutless cretans (sic) should be attacking our enemies, not our brave soldiers who protect you at night.

I hope karma brings death and disease to you.

Regards

Ben Smit".

- (u) On 20 August 2018 Mr McKenzie received an email from tony@muston.info (also sent to Chris Masters and David Wroe) which stated as follows:
- (i) What sad little men you are. Quite happy to sit behind your desk and let others do the hard yards. But so inadequate that when a soldier becomes a hero you are unable to understand or comprehend the personal commitments that are made on the battlefield. Should I say probably jealous of someone who is a much better person than you. It's one thing to even have your opinions but completely another to be so small minded and bitter to want to publicly try and harm someone doing an exceptional job. You might just reflect on why Fairfax has failed and consider what part you have played in its demise.

Public comments about the Articles

- (v) On about 10 August 2018 the article "Beneath the bravery of our most decorated soldier", which published on the internet website www.smh.com.au and then shared on Facebook by the Sydney Morning Herald Facebook page. A copy of that Facebook post, together with its comments, is attached to this letter.
- (w) On 10 August 2018 the article "Beneath the bravery of our most decorated soldier", was shared on twitter by Guns in Australia. A copy of that tweet is attached to this letter.
- (x) On 10 August 2018 a blog post entitled "Fairfax hatchet job on Ben Roberts Smith VC MG" was published on the internet website www.michaelsmithnews.com. A copy of that blog post is attached to this letter.
- (y) On 11 August 2018 a blog post entitled "Brendan Nelson – brilliant on Ben Roberts Smith VC MG. Well done Brendan. Lest We Forget" was published online on the internet website www.michaelsmithnews.com. A copy of that blog post is attached to this letter.
- (z) On 18 August 2018 an article entitled "Frustration at looking on led to making of hero Ben Roberts-Smith" was published on the internet website www.theaustralian.com.au. A copy of that article, together with its comments, is attached to this letter.
- (aa) On 18 August 2018 an article entitled "'I'm 100 per cent behind him': Widow of decorated SAS soldier comes to the defence of Victoria Cross recipient Ben Roberts-Smith after he denies allegations of war crimes and domestic violence" was published online on the internet website www.dailymail.co.uk. A copy of that article, together with its comments, is attached to this letter.
- (bb) On 18 September 2018 an article entitled "ABC and Fairfax pursuit of Ben Roberts-Smith 'malicious'", was published online on the internet website www.morningmail.org. A copy of that article, together with its comments, is attached to this letter.

Person 17

- (cc) On 25 September 2018 article "Police clear VC hero Ben Roberts-Smith of domestic violence claim" which was first published on the internet website www.theaustralian.com.au. A copy of that article is attached to this letter.
- (dd) On 25 September 2018 the article referred to in the preceding paragraph was referred to on Facebook by Dallas Beaufort. A copy of that Facebook post and its comments is attached to this letter.
- (ee) On 25 September 2018 an article entitled "Police clear Ben Robert-Smith after allegations of assault" was published on the internet website www.couriermail.com and was then shared on Facebook by the Courier Mail Facebook page. A copy of that Facebook post, together with its comments is attached to this letter.
- (ff) On 26 September 2018 an article entitled "War Hero Cleared of violence" was published on the internet website www.theaustralian.com.au and then shared on Facebook at by the Facebook page, "Survive to Thrive – Dane Christison". A copy of that Facebook post, together with its comments is attached to this letter.
- (gg) On 26 September 2018 a person by the name of Liam Cherry published a Facebook post on his personal Facebook page in relation to The Australian article, "War Hero Cleared of violence". A copy of that Facebook post is attached to this letter.

Supplementary Assumptions Provided

Yumi Stynes

- (ii) Following the comments made by Ms Stynes on 27 February 2012 (referred to in paragraph 3.1(i) of our letter dated 17 October 2018), she was the subject of a campaign on social media, including comments made:
 - (i) on the Facebook Page "Axe the Circle"; and
 - (ii) on Twitter.
- (jj) By way of example, there was a Facebook post published by the *Axe the Circle* on its Facebook page on 1 March 2012, which included the following comments by supporters of the Facebook page:
 - (i) "Let me guess you'll only be happy when she kills herself?", posted by Damien Des (on page 25 of the attachment);
 - (ii) "I'll settle for sliced wrists", posted by Rhys Hyatt (on page 25 of the attachment);
 - (iii) "I will settle for petrol bombing the set", posted by Aaron Mac Phail (on page 25 of the attachment); and
 - (iv) "...Well here's my 2 cents worth Yumi's a complete c***t as we all now know, let's keep on track and smash ch Ten till they f**k her right off, and for that f***ing worm George Nm let's hope he stays hudden under that rock he's hiding under, and as soon as he pop he's [sic] disrepecting mug up will smash him till he's f**ks off and retires from show bis like he should have done years ago....", posted by Matt Pirrone.
- (kk) Screenshots of various additional posts and comments, including racist and sexist remarks and violent threats made on the abovementioned Facebook page are attached to this letter.
- (ll) The Herald Sun newspaper published an editorial calling for a 'ceasefire' to stop the "online hate campaign against television host Yumi Stynes". A copy of that editorial is attached to this letter.
- (mm) As well as the campaign on social media, Ms Stynes also received what might be termed "hate mail" that was sent to her then-employer, Channel 10, including dog excrement sent in the mail addressed to Ms Stynes.
- (nn) Among this hate mail was also a death threat made against Ms Stynes that was reported to police.
- (oo) Following the above:
 - (i) In around March 2012, Channel 10 arranged for a security expert (a former policeman) to visit Ms Stynes' home to review the security of her home. The security expert advised Ms Stynes to upgrade some of the locks in her home, which she did.

- (ii) Ms Stynes' husband felt so threatened that he felt he should sleep with a cricket bat underneath his bed and a kitchen knife under his pillow in order to defend himself or Ms Stynes against any intruder.

Person 17

- (pp) Person 17 received vitriol on social media, some of which was seemingly directed towards her by people who view her as a woman trying to bring men down unfairly.
- (qq) Screenshots of various social media posts and comments of this kind are attached to this letter.

APPENDIX C: DOCUMENTS AND MATERIALS

1. Statement of Claim (NSD 1486).
2. Articles.
3. Article "Vicious Circle: Death threats against Yumi as advertisers flee" published on www.news.com.au on 6 March 2012.
4. Article "Circle slammed over hero soldier insults" published on www.thecourier.com.au on 28 February 2012.
5. Article "Ben Roberts-Smith accepts apology from Stynes, Negus" published on www.tvtonight.com.au on 1 March 2012 with the relevant comments.
6. Comments from post "Re: A Brief from CPL Ben Roberts Smith" on www.ausmilitary.com.
7. Comments made on the Youtube posting of a clip of a Sky News report on Yumi Stynes' comments about the Applicant.
8. Tom Strasser's comment from Facebook page "Yumi Stynes' brain found at bottom of pool alongside George's Viagra".
9. Article "No Front Line: An explosive account of death in Afghanistan" from The Australian's website published on 20 October 2017.
10. Article "VC winner Ben Roberts-Smith speaks out", published on www.morningmail.org on 21 October 2017 with comments.
11. Letter sent to Newscorp in November 2017 making threats against Chris Masters
12. Article "Beneath the bravery of our most decorated soldier", published on www.smh.com.au on August 2018, including comments from the SMH Facebook page when the article was crossposted.
13. Tweet and comment from Guns in Australia twitter feed linking to the article "Beneath the bravery of our most decorated soldier", first published on the internet website www.smh.com.au on 10 August 2018.
14. Blog post "Fairfax hatchet job on Ben Roberts Smith VC MG" published on www.michaelsmithnews.com on 10 August 2018, with comments.
15. Blog post "Brendan Nelson – brilliant on Ben Roberts Smith VC MG. Well done Brendan. Lest We Forget" published on www.michaelsmithnews.com on 11 August 2018, with comments
16. Article "Frustration at looking on led to making of hero Ben Roberts-Smith", published on The Australian on 18 August 2018, with comments
17. Article "'I'm 100 per cent behind him': Widow of decorated SAS soldier comes to the defence of Victoria Cross recipient Ben Roberts-Smith after he denies allegations of war crimes and domestic violence", published on www.dailymail.co.uk.
18. Article "ABC and Fairfax pursuit of Ben Roberts-Smith 'malicious'", published on www.morningmail.org on 18 September 2018, with comments.
19. Article "Police clear VC hero Ben Roberts-Smith of domestic violence claim", published on The Australian on 25 September 2018.
20. Comments on Dallas Beaufort Facebook page made on 25 September 2018 in relation to The Australian article "Police clear VC hero Ben Roberts-Smith of domestic violence claim".
21. Article "Police clear Ben Robert-Smith after allegations of assault", published on www.couriermail.com and subsequently the Courier Mail Facebook Page on 25 September 2018, with comments.
22. Survive to Thrive Facebook post of article "War Hero Cleared of violence", on 26 September 2018, with comments.
23. Facebook post and comment by Liam Cherry in relation to The Australian article "War Hero Cleared of violence" published on 28 September 2018.
24. Expert Evidence Practice Note.
25. Federal Court Rules 2011 (Cth) No.134, 2011, rule 23.13.
26. Facebook Article titled "Axe The Circle", published on 30 Jul 2012, including comments.
27. Article titled "Time for a Circle ceasefire", published by Herald Sun on 7 Mar 2012.
28. Facebook post "Survive To Thrive Nation" by Dane Christison, including comments.

APPENDIX D: LETTERS OF INSTRUCTION

MinterEllison

15 October 2018

By email: konrad@askewandassociates.com.au

Mr Konrad Buczynski
Askew & Associates
PO Box 24
MASCOT NSW 1460

Dear Mr Buczynski

**Fairfax Media, The Age and The Federal Capital Press ats Ben Roberts-Smith
Federal Court proceeding numbers NSD 1486, 1486 and 1487 of 2018**

We act for Fairfax Media Publications Pty Ltd, The Age Company Pty Ltd and The Federal Capital Press of Australia Pty Limited (**Fairfax Media**) and Nick McKenzie, Chris Masters and David Wroe (**Respondents**) in the Proceedings.

We wish to retain you to provide expert evidence in the form of a written opinion for the purposes of an application for a suppression order that has been filed in the Proceeding (**Application**).

The purpose of this letter is to set out, among other things:

- (a) the background to the Proceeding and the Application;
- (b) the matters in respect of which your opinion is sought;
- (c) the assumptions upon which your opinion is to be based; and
- (d) the materials that have been provided to you for the purpose of preparing your opinion.

Each of these matters is addressed in turn below.

After preparing your written opinion (in the form of a report), you may be required to give evidence as an expert witness at any hearing of the Application. If required, this would in all likelihood include cross examination on the contents of your report. The Application is listed for hearing on 16 November 2018.

1. Background to the Proceeding and the Application

Proceedings

- 1.1 Ben Roberts-Smith (**Applicant**) is a former soldier and member of the Special Air Service regiment (**SASR**) who was deployed on multiple occasions to Afghanistan. The Applicant is one of Australia's most decorated soldiers, having received a Medal for Gallantry, the Victoria Cross and a Commendation for Distinguished Service.
- 1.2 The Applicant has issued legal proceedings against the Respondents for defamation arising from the publication of various articles (**Articles**) published by the Respondents in print newspapers and on online news media websites controlled by the Respondents.

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GPO Box 769 Melbourne VIC 3001 Australia DX 204 Melbourne
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1.3 The Applicant is claiming that the Articles defamed him because they conveyed the following defamatory imputations about him:

- (a) The Applicant while a member of the SASR, murdered an unarmed and defenceless Afghan civilian, by kicking him off a cliff and procuring the soldiers under his command to shoot him.
- (b) The Applicant broke the moral and legal rules of military engagement and is therefore a criminal.
- (c) The Applicant disgraced his country Australia and the Australian army by his conduct as a member of the SASR in Afghanistan.
- (d) The Applicant while a member of the SASR committed murder by pressuring a newly deployed and inexperienced SASR soldier to execute an elderly, unarmed Afghan in order to "blood the rookie".
- (e) The Applicant while a member of the SASR, committed murder by machine gunning a man with a prosthetic leg.
- (f) The Applicant having committed murder by machine gunning a man in Afghanistan with a prosthetic leg, is so callous and inhumane that he took the prosthetic leg back to Australia and encouraged his soldiers to use it as a novelty beer drinking vessel.
- (g) The Applicant committed an act of domestic violence against a woman in the Hotel Realm in Canberra.
- (h) The Applicant is a hypocrite who publicly supported Rosie Batty, a domestic violence campaigner, when in private he abused a woman.
- (i) The Applicant as deputy commander of a 2009 SASR patrol, authorised the execution of an unarmed Afghan by a junior trooper in his patrol.
- (j) The Applicant during the course of his 2010 deployment to Afghanistan, bashed an unarmed Afghan in the face with his fists and in the stomach with his knee and in so doing alarmed two patrol commanders to the extent that they ordered him to back off.
- (k) The Applicant as patrol commander in 2012 authorised the assault of an unarmed Afghan, who was being held in custody and posed no threat.
- (l) The Applicant engaged in a campaign of bullying against a small and quiet soldier called Trooper M which included threats of violence.
- (m) The Applicant threatened to report Trooper J to the International Criminal Court for firing at civilians, unless he provided an account of a friendly fire incident that was consistent with the Applicant's.
- (n) The Applicant assaulted an unarmed Afghan in 2012.

(Defamatory Imputations)

Defence

1.4 In their Defence filed in the Proceedings, the Respondents have alleged that each the Defamatory Imputations is substantially true, and provided particulars of the facts, matters and circumstances that they rely upon to establish that each imputation is substantially true.

1.5 In support of the substantial truth of imputations (g) and (h) above, the Respondents have provided the following particulars:

- (a) From about 2014 to 2017 the Applicant held the position of Chair of National Australia Day Council.

- (b) On 26 January 2015 Rosie Batty was awarded the 2015 Australian of the Year. Rosie Batty is a domestic violence campaigner. The Applicant publicly congratulated and supported Ms Batty on her award.
- (c) From about 13 October 2017 to 5 April 2018 the Applicant engaged in an extra-marital affair with Person 17.
- (d) On 28 March 2018 the Applicant attended a function for the Prime Minister's Veterans Employment Awards held at the Great Hall in Parliament House. The Applicant brought Person 17 as his guest to the awards and introduced her as a guest of his employer, Channel Seven.
- (e) During the function Person 17 became intoxicated and fell down the stairs leading into the underground carpark as she was leaving the function.
- (f) After the function the Applicant and Person 17 went to a room at the Realm Hotel. When they were in the hotel room an argument ensued between the Applicant and Person 17 as the Applicant was angry with Person 17 due to her behaviour at the function and his fear that she may have exposed the affair.
- (g) During the argument Person 17 said to the Applicant, in substance "my head hurts". The Applicant responded in substance "It's going to hurt more" or "I'll show you what hurt is" and punched Person 17 hard in her left eye with a clenched right fist. Person 17 sustained a black eye as a result of this punch.
- (h) On 30 May 2018, Person 17 approached the Australian Federal Police and complained about being assaulted by the Applicant.
- (i) On 24 August 2018, after seeking legal advice about the process of being involved in a criminal prosecution as a witness, Person 17 decided that she did not wish to proceed with a formal complaint to the AFP and notified the AFP accordingly.

Application

- 1.6 The Respondents have filed the Application which seeks a suppression order under section 37AF of the *Federal Court Act 1976 (Act)*.
- 1.7 The Application seeks to suppress publication of the identity of Person 17. The Application does not seek to withhold the identity of Person 17 from the Applicant, and her identity is known to the Applicant.
- 1.8 The basis for making the Application is that the suppression order is necessary to protect the safety of Person 17: section 37AG(1)(c) of the Act.

2. Expert Opinion and Report

- 2.1 We request that you prepare a written report which addresses the following:
 - (a) Based upon your background, training and experience, in your opinion will there be any risk to the safety of Person 17 in the event that her identity is publicly disclosed?
 - (b) If your opinion is that there is such a risk, please describe the nature of the risk or risks (if more than one).
- 2.2 In preparing your report, please ensure that:
 - (a) You include a section in which you describe your background, training, study and experience;
 - (b) Your opinion is based wholly or substantially on your specialised knowledge arising from your training, study or experience; and
 - (c) You set out clearly your reasoning for the opinion you express.

3. **Assumptions upon which your opinion is to be based**

3.1 In forming your opinion, please assume the following:

The Applicant

- (a) The Applicant:
- (i) is a former soldier and member of the SASR;
 - (ii) was deployed on six occasions to Afghanistan;
 - (iii) is one of Australia's most recognisable former soldiers;
 - (iv) is one of Australia's most decorated soldiers;
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- (b) On or around 9 June 2018, the article entitled "SAS's Day of Shame" was published in The Age newspaper (**First Article**). A version of the First Article was also published:
- (i) in the Sydney Morning Herald Newspaper; and
 - (ii) across various websites controlled by Fairfax Media, including the websites for:
 - (A) The Age;
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 - (ii) across various websites controlled by Fairfax Media, including the websites for:
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 - (B) The Sydney Morning Herald;
 - (C) The Canberra Times.

The Proceeding

- (e) The Proceeding has, to date, received significant media attention (both in the print and digital media).

- (f) It is likely that the Proceeding will, in the future, continue to receive significant media attention (both in the print and digital media).
- (g) The contents of Defence, when made public, will likely be reported by the media.
- (h) The Defence will include the particulars set out in paragraph 1.5 above.

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 - (b) an article dated 28 February 2012 entitled "*Circle slammed over hero soldier insults*" published on www.thecourier.com.au;
 - (c) an article dated 1 March 2012 entitled "*Ben Roberts-Smith accepts apology from Stynes, Negus*" published on www.tvtonight.com.au;
 - (d) comments published on the www.ausmilitary.com on a post entitled "*Re: A Brief from CPL Ben Roberts Smith*";
 - (e) comments on a Youtube clip of a Sky News report on Yumi Stynes' comments about the Applicant, published online at, <https://www.youtube.com/watch?v=Kc7CCwOeC9A>;
 - (f) the Facebook page entitled "*Yumi Stynes' brain found at bottom of pool alongside George's Viagra*".

Chris Masters

- (l) In or about October 2017 a book authored by Mr Masters, entitled "*No Front Line*" was published.
- (m) An article about Mr Master's book was published on *The Australian's* website on 20 October 2017, entitled "*No Front Line: An explosive account of death in Afghanistan*". A copy of that article is attached to this letter.
- (n) On 21 October 2017 an article entitled "*VC winner Ben Roberts-Smith speaks out*", was published online on the internet website www.morningmail.org, outlining Roberts-Smith's response to Chris Masters' book *No Front Line*. A copy of that article, including comments on the article, is attached to this letter.
- (o) On 23 October 2017 Mr Masters received an email from 61415572337@optusmobile.com.au which stated:
 - (i) "*Who the fuck do you think you are. I've never even read one of your books but to even remotely try a put our world's best elite soldiers in any spotlight other than the hero's that they are you must be scum scrape together any controversy to sell a headline oh and you must be a fucking idiot to piss off these blokes whose job is covert missions behind enemy lines haha if I was you don't walk down any dark alleys and ill(sic) watch that spineless back of yours too*"; In or about November 2017 a letter was sent to News Corp (in response to the article in *The Australian*). A copy of that letter is attached to this letter.
- (p) In or about November 2017 a letter was sent to News Corp (in response to the article referred to at paragraph (m) above), and subsequently provided to Mr Masters. A copy of that letter is attached to this letter.

Nick McKenzie

(q) On 9 June 2018 Mr McKenzie received a message with the subject line "SAS", as follows:

(i) *What a cowardly report - these guys put their lives at risk and all you arseholes do is criticise I am disgusted at this crap report - maybe you should go and talk to the many widows that we have as a result of these guys going out to protect our country or the many wives and partners and kids that have soldiers fighting for Australia and lose sleep every night not knowing the fate of their hero soldiers You are a disgrace and a coward as are most left wing journalist - if that's what you call yourself!!*

(r) On 11 August 2018 Mr McKenzie received a message from "tony Vietnam Vet blake" which stated "DICK HEAD! LEAVE BRS alone! your (sic) not fit to lick his boots".

(s) On 12 August 2018 Mr McKenzie received a message with the subject line "Cocksucker(sic)" which stated "You are a fucking cocksucker I bet you are a fag ever been in the military you fucking cut less (sic) cocksucker how many cocks have you taken in the Arsenal I bet your father is proud of you".

(t) On 12 August 2018 Mr McKenzie received an email sent from bensmit74@hotmail.com (which was also sent to David Wroe) which stated:

"McKenzie & Wroe,

Your character assassination of Ben Roberts-Smith VC is nothing short of shameful and such gutter journalism is the reason why the SMH is going broke and why channel 9 will scrap your vile little cess pool of a newspaper. The offence of treason and capital punishment should be brought back so can swing. You gutless cretans (sic) should be attacking our enemies, not our brave soldiers who protect you at night.

I hope karma brings death and disease to you.

Regards

Ben Smit".

(u) On 20 August 2018 Mr McKenzie received an email from tony@muston.info (also sent to Chris Masters and David Wroe) which stated as follows:

(i) *What sad little men you are. Quite happy to sit behind your desk and let others do the hard yards. But so inadequate that when a soldier becomes a hero you are unable to understand or comprehend the personal commitments that are made on the battlefield. Should I say probably jealous of someone who is a much better person than you. It's one thing to even have your opinions but completely another to be so small minded and bitter to want to publicly try and harm someone doing an exceptional job. You might just reflect on why Fairfax has failed and consider what part you have played in its demise.*

Public comments about the Articles

(v) On about 10 August 2018 the article "Beneath the bravery of our most decorated soldier", which published on the internet website www.smh.com.au and then shared on Facebook by the Sydney Morning Herald Facebook page. A copy of that Facebook post, together with its comments, is attached to this letter.

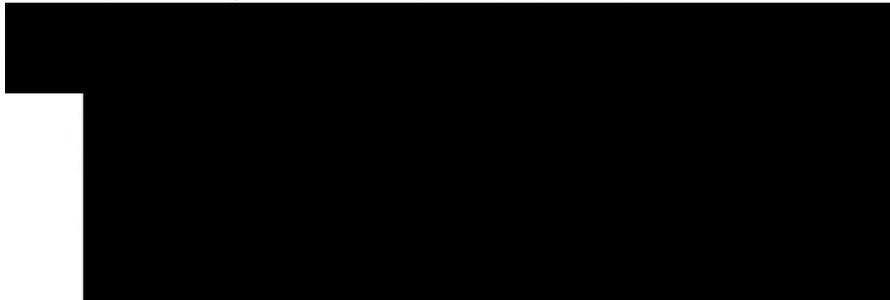
(w) On 10 August 2018 the article "Beneath the bravery of our most decorated soldier", was shared on twitter by Guns in Australia. A copy of that tweet is attached to this letter.

(x) On 10 August 2018 a blog post entitled "Fairfax hatchet job on Ben Roberts Smith VC MG" was published on the internet website www.michaelsmithnews.com. A copy of that blog post is attached to this letter.

- (y) On 11 August 2018 a blog post entitled "*Brendan Nelson – brilliant on Ben Roberts Smith VC MG. Well done Brendan. Lest We Forget*" was published online on the internet website www.michaelsmithnews.com. A copy of that blog post is attached to this letter.
- (z) On 18 August 2018 an article entitled "*Frustration at looking on led to making of hero Ben Roberts-Smith*" was published on the internet website www.theaustralian.com.au. [A copy of that article, together with its comments, is attached to this letter.](#)
- (aa) On 18 August 2018 an article entitled "*'I'm 100 per cent behind him': Widow of decorated SAS soldier comes to the defence of Victoria Cross recipient Ben Roberts-Smith after he denies allegations of war crimes and domestic violence*" was published online on the internet website www.dailymail.co.uk. [A copy of that article, together with its comments, is attached to this letter.](#)
- (bb) On 18 September 2018 an article entitled "*ABC and Fairfax pursuit of Ben Roberts-Smith 'malicious'*", was published online on the internet website www.morningmail.org. [A copy of that article, together with its comments, is attached to this letter.](#)

Person 17

- (cc) On 25 September 2018 article "*Police clear VC hero Ben Roberts-Smith of domestic violence claim*" which was first published on the internet website www.theaustralian.com.au. A copy of that article is attached to this letter.
- (dd) On 25 September 2018 the article referred to in the preceding paragraph was referred to on Facebook by Dallas Beaufort. A copy of that Facebook post and its comments is attached to this letter.
- (ee) On 25 September 2018 an article entitled "*Police clear Ben Robert-Smith after allegations of assault*" was published on the internet website www.couriermail.com and was then shared on Facebook by the Courier Mail Facebook page. A copy of that Facebook post, together with its comments is attached to this letter.
- (ff) On 26 September 2018 an article entitled "*War Hero Cleared of violence*" was published on the internet website www.theaustralian.com.au and then shared on Facebook at by the Facebook page, "Survive to Thrive – Dane Christison". A copy of that Facebook post, together with its comments is attached to this letter.
- (gg) On 26 September 2018 a person by the name of Liam Cherry published a Facebook post on his personal Facebook page in relation to The Australian article, "*War Hero Cleared of violence*". A copy of that Facebook post is attached to this letter.



3.2 Please identify in your report all assumptions provided to you or made by you upon which your opinion is based.

4. Materials provided to you

4.1 Annexure 1 to this letter lists the documents **enclosed** with this letter and with which you are briefed.

4.2 Please let us know if you require any additional information and/or materials.

5. Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia

- 5.1 The Proceeding is in the Federal Court of Australia (New South Wales District Registry). As foreshadowed above, your conduct as an expert witness is therefore governed by the Harmonised Expert Code of Conduct (**Code**).
- 5.2 Your report must also be prepared in accordance with the Expert Evidence Practice Note (**Practice Note**) and the Federal Court Rules, and specifically, rule 23.13. We **enclose** a copy of the Practice Note (which annexes the Code referred to in paragraph 6.1, above) and rule 23.13 for your attention.
- 5.3 You must also acknowledge in your report that your opinions are based wholly or substantially on specialised knowledge arising from your training, study or experience.
- 5.4 If you consider that your opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
- 5.5 If you change your opinion on a material matter after providing an expert's report to us, you must forthwith provide us with a supplementary report to that effect.
- 5.6 We **enclose** a checklist for your reference when preparing your report.

6. Confidentiality

- 6.1 You will be provided with confidential information in the course of your retainer.
- 6.2 You are required to comply with the confidentiality undertakings set out in Annexure 2 of this brief. Please confirm in writing that you have read Annexure 2, understand it and agree to be bound by it.

7. Timing

- 7.1 We require your final report to be delivered by 18 October 2018.
- 7.2 Finally, as stated above, it is possible that we will require your attendance at the hearing of the Application, which is yet to be listed.

Please contact Sam White or Dean Levitan of our office with any questions concerning any aspect of this letter.

Yours faithfully
MinterEllison



Contact: Sam White T: +61 3 8608 2037
F: +61 3 8608 1088 sam.white@minterellison.com
Partner: Peter Bartlett T: +61 3 8608 2677
OUR REF: SFW PLB 1183220

Enclosures

Annexure 1

Documents briefed to Konrad Buczynski on 15 October 2018

No	Description of document
1.	Statement of Claim (NSD 1486)
2.	Articles
3.	Article "Vicious Circle: Death threats against Yumi as advertisers flee" published on www.news.com.au on 6 March 2012
4.	Article "Circle slammed over hero soldier insults" published on www.thecourier.com.au on 28 February 2012
5.	Article "Ben Roberts-Smith accepts apology from Stynes, Negus" published on www.tvtonight.com.au on 1 March 2012 with the relevant comments
6.	Comments from post "Re: A Brief from CPL Ben Roberts Smith" on www.ausmilitary.com
7.	Comments made on the Youtube posting of a clip of a Sky News report on Yumi Stynes' comments about the Applicant
8.	Tom Strasser's comment from Facebook page "Yumi Stynes' brain found at bottom of pool alongside George's Viagra"
9.	Article "No Front Line: An explosive account of death in Afghanistan" from <i>The Australian's</i> website published on 20 October 2017
10.	Article "VC winner Ben Roberts-Smith speaks out", published on www.morningmail.org on 21 October 2017 with comments
11.	Letter sent to NewsCorp in November 2017 making threats against Chris Masters
12.	Article "Beneath the bravery of our most decorated soldier", published on www.smh.com.au on 10 August 2018, including comments from the SMH Facebook page when the article was cross-posted
13.	Tweet and comment from Guns in Australia twitter feed linking to the article "Beneath the bravery of our most decorated soldier", first published on the internet website www.smh.com.au on 10 August 2018
14.	Blog post "Fairfax hatchet job on Ben Roberts Smith VC MG" published on www.michaelsmithnews.com on 10 August 2018, with comments
15.	Blog post "Brendan Nelson – brilliant on Ben Roberts Smith VC MG. Well done Brendan. Lest We Forget" published on www.michaelsmithnews.com on 11 August 2018, with comments
16.	Article "Frustration at looking on led to making of hero Ben Roberts-Smith", published on <i>The Australian</i> on 18 August 2018, with comments
17.	Article "I'm 100 per cent behind him': Widow of decorated SAS soldier comes to the defence of Victoria Cross recipient Ben Roberts-Smith after he denies allegations of war crimes and domestic violence", published on www.dailymail.co.uk
18.	Article "ABC and Fairfax pursuit of Ben Roberts-Smith 'malicious'", published on www.morningmail.org on 18 September 2018, with comments
19.	Article "Police clear VC hero Ben Roberts-Smith of domestic violence claim", published on <i>The Australian</i> on 25 September 2018
20.	Comments on Dallas Beaufort Facebook page made on 25 September 2018 in relation to <i>The Australian</i> article "Police clear VC hero Ben Roberts-Smith of domestic violence claim"
21.	Article "Police clear Ben Robert-Smith after allegations of assault", published on www.couriermail.com and subsequently the Courier Mail Facebook Page on 25 September 2018, with comments

Mr Konrad Buczynski| 15 October 2018

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No	Description of document
22.	Survive to Thrive Facebook post of article " <i>War Hero Cleared of violence</i> ", on 26 September 2018, with comments
23.	Facebook post and comment by Liam Cherry in relation to The Australian article " <i>War Hero Cleared of violence</i> " published on 28 September 2018
24.	Expert Evidence Practice Note
25.	<i>Federal Court Rules 2011</i> (Cth) No.134, 2011, rule 23.13

Annexure 2

Confidentiality and use of information and documents

1. Definitions

- (a) In this Annexure 2:

Confidential Information means information and documents of Fairfax Media Publications Pty Ltd (**Fairfax Media**) and Nick McKenzie (**Respondents**) or any related entity (as defined in section 9 of the *Corporations Act 2001* (Cth)) of Fairfax Media provided to you in connection with your engagement in relation to the Proceeding in the Federal Court of Australia] (**Proceeding**), including all notes and other records prepared by you based on or incorporating information or documents referred to above and all copies of the information, documents, notes and other records referred to above, other than information or documents that are public knowledge.

2. Use and disclosure

- (a) You:

- (i) may use Confidential Information only for the purposes of performing your engagement in accordance with the brief which this Annexure accompanies; and
- (ii) must keep confidential all Confidential Information except:
 - (A) for disclosure permitted pursuant to the terms of this Annexure 2;
 - (B) to the extent (if any) you are required by law to disclose any Confidential Information; and
 - (C) to the extent agreed to in writing by or on behalf of the Respondents.

- (b) You may disclose Confidential Information to your officers and employees who:

- (i) have a need to know for the purposes of the performance of your engagement in accordance with the brief which this Annexure accompanies; and
- (ii) before disclosure is made, have agreed to abide by the terms of this Undertaking.

3. Disclosure by law

- (a) If you are required by law to disclose any Confidential Information to a third person (including, but not limited to, government) you must:

- (i) before doing so:
 - (A) notify MinterEllison, the solicitors for the Respondents; and
 - (B) give the Respondents a reasonable opportunity to take any steps that the Respondents consider necessary to protect the confidentiality of that information; and
- (ii) notify the third person that the information is confidential information of the Respondents.

4. Security and control of Confidential Information

- (a) You must:

- (i) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised under these terms;

- (ii) keep Confidential Information under your control; and
 - (iii) immediately notify MinterEllison of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.
- (b) You must provide assistance reasonably requested by the Respondents in relation to any proceedings it may take against any person for unauthorised use, copying or disclosure of Confidential Information.

5. Return of Confidential Information

- (a) You must return all Confidential Information to MinterEllison within 14 days of:
- (i) the last day of your attendance at the trial of this Proceeding; or
 - (ii) any request by MinterEllison,
- whichever is the earlier.

6. Third party information

Where in the course of your engagement you are permitted to inspect or copy a document of any party to the Proceeding or any other person which has been produced under compulsory process of the Court in relation to the Proceeding (whether under subpoena or on discovery) you are subject to an obligation not to use, or permit to be used, any such copy, or any knowledge acquired from any such inspection, otherwise than for the purposes of the Proceeding, without the consent of the owner of the documents, or leave of the Court (at least where the document is of a confidential nature.). Breach of this Undertaking may constitute contempt of court.

MinterEllison

19 October 2018

By email: konrad@askewandassociates.com.au

Mr Konrad Buczynski
Askew & Associates
PO Box 24
MASCOT NSW 1460

Dear Mr Buczynski

**Fairfax Media, The Age and The Federal Capital Press ats Ben Roberts-Smith
Federal Court proceeding numbers NSD 1486, 1486 and 1487 of 2018**

We confirm that we act for Fairfax Media Publications Pty Ltd, The Age Company Pty Ltd and The Federal Capital Press of Australia Pty Limited (**Fairfax Media**) and Nick McKenzie, Chris Masters and David Wroe (**Respondents**) in the Proceeding and in respect of a suppression order that has been filed in the Proceeding (**Application**). We refer to our letter of instruction to you dated 17 October 2018.

The purpose of this letter is to set out some further assumptions on which the opinion sought in our letter dated 17 October 2018 is to be based.

1. Further assumptions upon which your opinion is to be based

1.1 In addition to the assumptions referred to in section 3 of our letter dated 17 October 2018, in forming your opinion, please assume the following:

Yumi Stynes

- (a) Following the comments made by Ms Stynes on 27 February 2012 (referred to in paragraph 3.1(i) of our letter dated 17 October 2018), she was the subject of a campaign on social media, including comments made:
 - (i) on the Facebook Page "Axe the Circle"; and
 - (ii) on Twitter.
- (b) By way of example, there was a Facebook post published by the *Axe the Circle* on its Facebook page on 1 March 2012, which included the following comments by supporters of the Facebook page:
 - (i) "Let me guess you'll only be happy when she kills herself?", posted by Damien Des (on page 25 of the attachment);
 - (ii) "I'll settle for sliced wrists", posted by Rhys Hyatt (on page 25 of the attachment);
 - (iii) "I will settle for petrol bombing the set", posted by Aaron Mac Phail (on page 25 of the attachment); and
 - (iv) "...Well here's my 2 cents worth Yumi's a complete c***t as we all now know, let's keep on track and smash ch Ten till they f**k her right off, and for that f***ing worm George Nm let's hope he stays hudden under that rock he's hiding under, and as

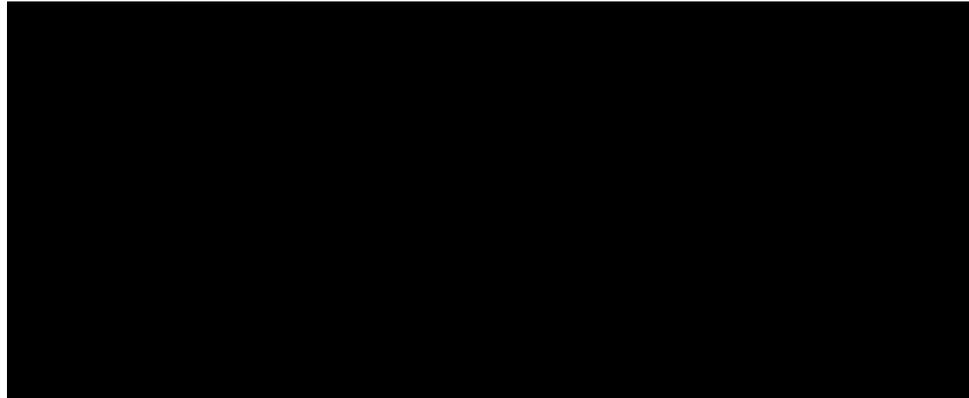
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soon as he pop he's [sic] disrepecting mug up will smash him till he's f**ks off and retires from show bis like he should have done years ago....", posted by Matt Pirrone.

- (c) Screenshots of various additional posts and comments, including racist and sexist remarks and violent threats made on the abovementioned Facebook page are attached to this letter.
- (d) The Herald Sun newspaper published an editorial calling for a 'ceasefire' to stop the "online hate campaign against television host Yumi Stynes". A copy of that editorial is attached to this letter.



Person 17

- (a) Person 17 received vitriol on social media, some of which was seemingly directed towards her by people who view her as a woman trying to bring men down unfairly.
- (b) Screenshots of various social media posts and comments of this kind are attached to this letter.

2. Materials provided to you

- 2.1 Attachment 1 to this letter lists the further documents **enclosed** with this letter and with which you are briefed.
- 2.2 Please let us know if you require any additional information and/or materials.

Please contact Sam White or Dean Levitan of our office with any questions concerning any aspect of this letter.

Yours faithfully
MinterEllison



Contact: Sam White T: +61 3 8608 2037
F: +61 3 8608 1088 sam.white@minterellison.com
Partner: Peter Bartlett T: +61 3 8608 2677
OUR REF: SFW PLB 1183220

Enclosures

Attachment 1

Supplementary documents briefed to Konrad Buczynski on 19 October 2018

No	Description of document
1	Screenshots of various social media posts and comments about Yumi Stynes
2	Herald Sun Editorial
3	Screenshots of various social media posts and comments about Person 17



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