

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD745/2022
File Title: HESTON RUSSELL v AUSTRALIAN BROADCASTING CORPORATION & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 9/09/2022 12:08:10 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Statement of claim

No. of 2022

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

HESTON RUSSELL

Applicant

AUSTRALIAN BROADCASTING CORPORATION

First Respondent

JOSHUA ROBERTSON

Second Respondent

MARK WILLACY

Third Respondent

Parties

1. The applicant (**Russell**) is and was at relevant times:
 - 1.1 a member of the Australian Defence Force from 2003 to 2019;
 - 1.2 a qualified commando officer within the 2nd Commando Regiment, Special Operations Command from 2010;
 - 1.3 the commander of the 2nd Commando Regiment's November Platoon from 2011 to 2012, including during November Platoon's deployment to Afghanistan within Special Operations Task Group Rotation Eighteen;
 - 1.4 a Major in the Australian Army from 2016.

Filed on behalf of (name & role of party) Heston Russell, the applicant
Prepared by (name of person/lawyer) Rebekah Giles
Law firm (if applicable) Company Giles
Tel 1300 204 602 Fax _____
Email service@companygiles.com.au
Address for service
(include state and postcode) 111 Elizabeth Street, Sydney NSW 2000

2. The first respondent (**ABC**) is and was at relevant times:
 - 2.1 a corporation able to be sued;
 - 2.2 Australia's national broadcaster headquartered in Ultimo, Sydney;
 - 2.3 the publisher of the digital platform www.abc.net.au which it makes available for publication throughout the State of New South Wales and the other States and the Territories of Australia on the World Wide Web (**ABC website**);
 - 2.4 a model litigant pursuant to the *Legal Services Directions 2017*;
 - 2.5 the user of the Twitter handle @abcnews;
 - 2.6 the user of the Facebook accounts @abc and @abcnews.au.
3. The second respondent (**Robertson**) is and was at relevant times:
 - 3.1 a journalist employed by or contracted to the ABC;
 - 3.2 a person for whom the ABC is vicariously liable in relation to his conduct as a journalist and reporter;
 - 3.3 the user of the Twitter handle @jrojourno.
4. The third respondent (**Willacy**) is and was at relevant times:
 - 4.1 a journalist employed by or contracted to the ABC;
 - 4.2 a person for whom the ABC is vicariously liable in relation to his conduct as a journalist and reporter;
 - 4.3 the user of the Twitter handle @markwillacy.

Publications

October Article

5. On or about 21 October 2020 and continuing thereafter, the ABC published on the ABC website, an article co-authored by Willacy entitled "*US marine says Australian special forces soldiers made 'deliberate decision to break rules of war'*" (**October Article**).

November Article

6. On or about 19 November 2021 and continuing thereafter, the ABC, Robertson and Willacy published an article entitled “*Defence confirms criminal investigation into conduct of Australian commando platoon in Afghanistan*” (**November Article**):
 - 6.1 a copy of the November Article is **Schedule A**;
 - 6.2 the November Article was uploaded onto the ABC website at about 3:24 pm on 19 November 2021;
 - 6.3 the ABC website is a mass media website read by tens of thousands of persons throughout Australia daily, including in the Australian Capital Territory and the Northern Territory;
 - 6.4 Robertson wrote the November Article;
 - 6.5 Willacy published the November Article on his personal Twitter account by a tweet at 4.29 pm (**Willacy Tweet**) which:
 - 6.5.1 promoted, endorsed and approved the November article to his over 20,000 followers and any other person who viewed the Willacy Tweet;
 - 6.5.2 directed and encouraged people to read the November Article by including a link to it on the ABC website embedded in the Willacy Tweet;
 - 6.5.3 caused the November Article to be read by persons unknown to Russell, evident from the Willacy Tweet being commented on by 18 people, retweeted by 68 people and liked by 143 people, disseminating the November article exponentially;
 - 6.6 the November Article was amended slightly on 23 November 2021, 19 January 2022 and 11 March 2022, described under the heading “ABC’s Conduct”, below;
 - 6.7 the November Article, as amended on about 11 March 2022 is still available for publication at URL: <https://www.abc.net.au/news/2021-11-19/defence-confirms-investigation-into-november-platoon/100633968>;
 - 6.8 each subsequent version of the November Article does not differ in substance to the original;

- 6.9 the November Article was promoted and republished by the ABC on its Twitter account on or about 19 November 2021. As at the date of this pleading, the tweet has received 15 re-tweets, 10 comments and 30 likes;
- 6.10 the November Article was promoted and republished by Robertson on his Twitter account on or about 19 November 2021. As at the date of this pleading, the tweet has received 19 re-tweets, 6 comments and 24 likes;
- 6.11 the November Article was promoted and republished by Robertson on his Twitter account on or about 30 March 2022. As at the date of this pleading, the tweet has received 3 re-tweets and 6 likes;
- 6.12 the November Article was promoted and republished by ABC journalist Rachel Mealey on her Twitter account @rachelmealey on or about 19 November 2021. As at the date of this pleading, the tweet has received 2 likes;
- 6.13 the November Article was promoted and republished by ABC journalist Dan Harrison on his Twitter account @danharrison on or about 19 November 2021. As at the date of this pleading, the tweet has received 2 re-tweets and 2 likes;
- 6.14 Russell relies on the republications in the preceding paragraphs on the question of extent of publication of the November Article;
- 6.15 Russell relies on the grapevine effect in relation to the publication of the November Article, including because of its promotion on social media;
- 6.16 the extent of publication and republication of the November Article will be sought by way of admissions from the ABC.
- 7 The November Article was of and concerning Russell.
- 8 The November Article was defamatory of Russell and carried the following defamatory imputations (or imputations that do not differ in substance):
- 8.1 Heston Russell was the subject of an active criminal investigation by the Department of Defence into his conduct as a commando in Afghanistan in June or July 2012 as part of November Platoon;
- 8.2 Heston Russell was reasonably suspected by the Department of Defence of committing a crime or crimes when he was a commando in Afghanistan in June or July 2012 as part of November Platoon;

- 8.3 Heston Russell was reasonably suspected by the Office of the Special Investigator of committing a crime or crimes when he was a commando in Afghanistan in June or July 2012 as part of November Platoon;
- 8.4 Heston Russell, as commander of November Platoon, was involved in shooting and killing an Afghan prisoner during an operation in Helmand province in mid-2012;
- 8.5 Heston Russell, as commander of November Platoon, was involved in callously killing an Afghan prisoner in Helmand province in mid-2012 because the prisoner would not fit on a US aircraft;
- 8.6 Heston Russell, as former commander of November Platoon, dishonestly denied that his soldiers shot and killed an Afghan prisoner in mid-2012 as alleged by a US Marines helicopter crew chief;
- 8.7 Heston Russell, as former commander of November Platoon, was about to face criminal charges for unlawful killings in Afghanistan;
- 8.8 Heston Russell executed a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 8.9 Heston Russell killed a hogtied prisoner in mid-2012 in Helmand province in Afghanistan because there was no room for him on the aircraft;
- 8.10 Heston Russell participated in the execution of a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 8.11 Heston Russell participated in the unlawful killing of a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 8.12 Heston Russell committed a war crime by his involvement in the killing of an Afghan prisoner in Helmand province in Afghanistan in mid-2012;
- 8.13 Heston Russell, as a commando in Afghanistan, habitually and knowingly crossed the line of ethical conduct when he was deployed there.

Linked Article

- 9 On or about 19 November 2021 and continuing thereafter, the ABC, Robertson and Willacy published the November Article read together with the October Article (**Linked Article**):

- 9.1 a copy of the Linked Article is **Schedule B**;
- 9.2 the Linked Article became available for publication on the ABC website at about 3:24 pm on 19 November 2021 at the time of upload of the November Article;
- 9.3 the November Article contained three separate hyperlinks to the October Article as follows:
- 9.3.1 as a light blue arrow in a box under the heading 'We heard a pop' with a photograph of a soldier:



- 9.3.2 by the words in light blue "Last year, the ABC ran a story detailing the allegations of Josh (not his real name)"
- 9.3.3 by the heading of the October Article at the end of the November Article under the heading 'Related Stories' with a photograph of a soldier:

Related Stories



- 9.4 by reason of the matters set out in the preceding paragraphs, from about 19 November 2021 some readers of the November Article also read the October Article by clicking one of the 3 links in that article which directed them to the October Article;

- 9.5 the November Article and the October Article read together from about 19 November 2021 is one publication in relation to such readers, being the Linked Article;
- 9.6 the ABC website is a mass media website read by tens of thousands of persons throughout Australia daily, including in the Australian Capital Territory and the Northern Territory;
- 9.7 Robertson published the Linked Article by writing the November Article which contained the links to the October Article;
- 9.8 Willacy published the Linked Article on his personal Twitter account by the Willacy Tweet which:
- 9.8.1 promoted, endorsed and approved the November article to his over 20,000 followers and any other person who viewed the Willacy Tweet;
 - 9.8.2 directed and encouraged people to read the November Article by including a link to it on the ABC website embedded in the Willacy Tweet;
 - 9.8.3 caused the November Article to be read by persons unknown to Russell, evident from the Willacy Tweet being commented on by 18 people, retweeted by 68 people and liked by 143 people, disseminating the November article exponentially which contained the links to the October Article;
- 9.8 the Linked Article was amended slightly on 23 November 2021, 19 January 2022, 11 March 2022 and 18 March 2022, described under the heading “ABC’s Conduct”, below;
- 9.9 the Linked Article, as amended on about 18 March 2022 is still available for publication at URL: <https://www.abc.net.au/news/2021-11-19/defence-confirms-investigation-into-november-platoon/100633968> which links (as described above) to URL: <https://www.abc.net.au/news/2020-10-21/soldiers-killed-man-who-could-not-fit-on-aircraft-says-us-marine/12782756>;
- 9.10 each subsequent version of the Linked Article does not differ in substance to the original;

- 9.11 the Linked Article was promoted and republished by the ABC on its Twitter account on or about 19 November 2021. As at the date of this pleading, the tweet has received 15 re-tweets, 10 comments and 30 likes;
- 9.12 the Linked Article was promoted and republished by Robertson on his Twitter account on or about 19 November 2021. As at the date of this pleading, the tweet has received 19 re-tweets, 6 comments and 24 likes;
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- 9.15 the Linked Article was promoted and republished by ABC journalist Dan Harrison on his Twitter account @danharrison on or about 19 November 2021. As at the date of this pleading, the tweet has received 2 re-tweets and 2 likes;
- 9.16 Russell relies on the republications in the preceding paragraphs on the question of extent of publication of the Linked Article;
- 9.17 Russell relies on the grapevine effect in relation to the publication of the Linked Article, including because of its promotion on social media;
- 9.18 the extent of publication and republication of the Linked Article will be sought by way of admissions from the ABC.
- 10 The Linked Article was of and concerning Russell.
- 11 The Linked Article was defamatory of Russell and carried the following defamatory imputations (or imputations that do not differ in substance):
- 11.1 Heston Russell was the subject of an active criminal investigation by the Department of Defence into his conduct as a commando in Afghanistan in June or July 2012 as part of November Platoon;
- 11.2 Heston Russell was reasonably suspected by the Department of Defence of committing a crime or crimes when he was a commando in Afghanistan in June or July 2012 as part of November Platoon;

- 11.3 Heston Russell was reasonably suspected by the Office of the Special Investigator of committing a crime or crimes when he was a commando in Afghanistan in June or July 2012 as part of November Platoon;
- 11.4 Heston Russell, as commander of November Platoon, was involved in shooting and killing an Afghan prisoner during an operation in Helmand province in mid-2012;
- 11.5 Heston Russell, as commander of November Platoon, was involved in callously killing an Afghan prisoner in Helmand province in mid-2012 because the prisoner would not fit on a US aircraft;
- 11.6 Heston Russell, as former commander of November Platoon, dishonestly denied that his soldiers shot and killed an Afghan prisoner in mid-2012 as alleged by a US Marines helicopter crew chief;
- 11.7 Heston Russell, as former commander of November Platoon, was about to face criminal charges for unlawful killings in Afghanistan;
- 11.8 Heston Russell executed a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 11.9 Heston Russell killed a hogtied prisoner in mid-2012 in Helmand province in Afghanistan because there was no room for him on the aircraft;
- 11.10 Heston Russell participated in the execution of a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 11.11 Heston Russell participated in the unlawful killing of a hogtied prisoner in mid-2012 in Helmand province in Afghanistan;
- 11.12 Heston Russell committed a war crime by his involvement in the killing of an Afghan prisoner in Helmand province in Afghanistan in mid-2012;
- 11.13 Heston Russell, as the commander of November Platoon, habitually left "fire and bodies" in his wake when deployed in Afghanistan;
- 11.14 Heston Russell, as a commando in Afghanistan, habitually and knowingly crossed the line of ethical conduct when he was deployed there;
- 11.15 Heston Russell, as a commando in November Platoon, habitually killed people unnecessarily when deployed in Afghanistan;

- 11.16 Heston Russell, as a commando in Afghanistan taking part in a joint drug operation with USMC, was involved in the unlawful killing of an unarmed man in 2012;
- 11.17 Heston Russell, as a commando in Afghanistan taking part in a joint drug operation with USMC in 2012, was involved in planting a gun on a dead man, who had been killed by members of Russell's platoon despite being unarmed;
- 11.18 Heston Russell, as a commando in November Platoon, had behaved so immorally when deployed in Afghanistan, that American forces refused to work with him.

Serious Harm

November Article

- 12 The November Article caused, or is likely to cause, serious harm to Russell's reputation by reason of the following facts and matters:
 - 12.1 the ABC website is a mass media website, published to many thousands of readers daily;
 - 12.2 the ABC, Robertson and Willacy encouraged and facilitated the sharing of the November Article on social media, which occurred to an extent as yet unknown to Russell;
 - 12.3 the ABC promoted the November Article on ABC radio and television on at least 19 November 2019, including by naming Russell;
 - 12.4 the ABC portrays itself as a respected and reliable news source such that the content of the November Article would be considered by readers as reliable.
 - 12.5 the ABC presented an "eyewitness" to the alleged killing, giving credence to the allegations;
 - 12.6 the ABC reported that November platoon was the subject of a criminal investigation;
 - 12.7 the ABC's stubborn adherence to the content of the November Article, despite criticism;
 - 12.8 the imputations carried by the November Article are extremely serious;
 - 12.9 the allegation that a person was killed so callously was memorable and likely to stay in the mind of any person who read the November Article;

- 12.10 Russell is pictured prominently in the November Article;
- 12.11 Russell is the only commando named in the November Article, thus directing all of the allegations to him;
- 12.12 the November Article (albeit amended in a manner that does not differ in substance to the original) continues to be published online on the ABC website;
- 12.13 the November Article was promoted on social media by the ABC and its journalists;
- 12.14 the promotion on social media referred to in the preceding sub-paragraph incited adverse comments about November Platoon and/or Russell;
- 12.15 Russell received hateful messages from people as a result of the publication of the November Article;
- 12.16 Russell has been approached and spoken to by people about the allegations in the November Article;
- 12.17 Russell's friends, family and colleagues have been approached and spoken to by people about the allegations in the November Article;
- 12.18 the ABC's conduct in accepting a failure of its editorial standard of accuracy in relation to the Linked Article (described under the heading "ABC's Conduct" below) and despite that, refusing to publicly retract, apologise or withdraw the allegations about Russell in the November Article;
- 12.19 further particulars of serious harm will be provided as and when they become available.

Linked Article

- 13 The Linked Article caused, or is likely to cause serious harm to Russell's reputation by reason of the following facts and matters:
 - 13.1 each of the matters set out in paragraph 12 above are relied on and apply equally to the Linked Article;
 - 13.2 one of the authors of the October Article (which forms part of the Linked Article), Willacy, has a reputation of being a careful investigative journalist who has won a Gold Walkley and an Investigative Journalism Walkley for his reporting on alleged war crimes committed by Australian SAS soldiers in Afghanistan, thus lending credence to the content of the Linked Article;

13.3 the Linked Article, by including allegations first made in October 2020 and repeating and emphasising them in a further article in November 2021, lends credence to the content of the Linked Article;

13.4 further particulars of serious harm will be provided as and when they become available.

Concerns Notice

14 On 26 July 2022, being more than 28 days before the date of this pleading, Russell, through his lawyers, gave a Concerns Notice to each of the ABC, Robertson and Willacy in accordance with the *Defamation Act 2005* (NSW) (**Act**) and its counterparts in the other States and Territories in relation to the November Article and the Linked Article (**Concerns Notice**).

15 The ABC, Robertson and Willacy did not respond at all to the Concerns Notice within the 28 day statutory period to make amends.

16 In the evening of 24 August 2022, the ABC, Robertson and Willacy, through the ABC's in-house lawyers, sent a dismissive and factually inaccurate response to the Concerns Notice in which they made no offer to make amends under the Act, or otherwise.

ABC's Conduct

17 At no time prior to publication did the ABC give Russell a proper opportunity to respond to the serious allegations it intended to make about him in the November Article or the Linked Article.

18 On or before about 23 November 2021 the ABC realised that the November Article/Linked Article was incorrect. It amended the November Article to, according to the ABC "*better reflect the ABC's FOI application*".

19 In fact, dates in the November Article were plainly wrong and they were altered. The editorial note explaining the change on 23 November 2021 was knowingly false in that the FOI application sought documents from June or July 2012 and the deletion of those months from the November Article in fact did not "*better reflect the ABC's FOI application*".

20 The amended November Article/Linked Article continued to be published on the ABC website from about 23 November 2021 until about 19 January 2022.

- 21 On about 24 November 2021, the Department of Defence made a public statement that it did not confirm (to the ABC or anyone else) that there was a criminal investigation into November platoon in relation to its conduct in Afghanistan in 2012.
- 22 By reason of the matters set out in the preceding paragraph, the entire premise of the November Article and its headline was false.
- 23 Despite becoming aware of the falsity of the allegation in the headline of the November Article, the ABC persisted in its false claims about November platoon, including Russell.
- 24 At no time prior to the publication of the November Article did the ABC seek any confirmation from the Department of Defence of the matters referred to in the preceding paragraphs.
- 25 The ABC's stated basis in making that very serious false assertion was at best tenuous, and frankly so illogical that it must have been knowingly false, or at least wilfully blind.
- 26 On or about 19 January 2022 the ABC amended the November Article again to include Russell's denial of the allegation made by the US marine who said Australian commandos shot and killed an Afghan prisoner.
- 27 The further amended November Article/Linked Article continued to be published on the ABC website from about 19 January 2022 until about 11 March 2022.
- 28 On or before about 11 March 2022 the ABC realised that the further amended November Article/Linked Article was false and breached the ABC's editorial standard of accuracy. It amended it again to note that the US marines helicopter crew chief had not identified a platoon that killed an Afghan prisoner.
- 29 The second further amended November Article/Linked Article continued to be published on the ABC website from about 11 March 2022 until about 18 March 2022.
- 30 On or before about 18 March 2022 the ABC realised that the October Article/Linked Article was still misleading. It amended it to note (in the October Article) that the "*US Marine Corps helicopter crew chief did not claim that the commandos he alleged killed a prisoner were from November Platoon and nor did the ABC's story*".
- 31 The ABC's claim that the October Article did not suggest that the allegation made by the US Marines helicopter crew chief concerned November Platoon is knowingly false.
- 32 The version of the November Article/Linked Article amended on 18 March 2022 continues to be published on the ABC website as at the date of this pleading.

- 33 Despite the amendments referred to in the preceding paragraphs, the ABC has never retracted any of the allegations about Russell in the November Article or Linked Article.
- 34 The ABC and its journalists promoted the November Article and the Linked Article on social media, including on Twitter. They also posted social media posts defending the patently erroneous journalism when errors were pointed out to them.
- 35 When Russell publicly responded to the false allegations in the November Article and the Linked Article, the ABC made cursory amendments but did not retract the allegations or apologise.
- 36 On 17 October 2021 Russell made a formal complaint requesting independent review of the October Article.
- 37 The formal complaint was provided directly to the head of the ABC David Anderson on 5 November 2021.
- 38 The formal complaint referred to a conversation Russell had with Willacy on 28 September 2021 at the Avid Reader Bookstore in Brisbane, in which Willacy acknowledged the impossibility of the US Marines helicopter crew chief seeing Australian soldiers tackling and hog-tying prisoners at night, and admitting that the allegation related to a previous daytime mission.
- 39 The November Article was published on 19 November 2021 despite the complaints made by Russell about the October Article, which forms part of the Linked Article.
- 40 On about 4 December 2021 on the ABC website, to harm Russell, the ABC published an article about conduct it alleged Russell had engaged in in April 2020 – 20 months earlier (**December Article**).
- 41 The December Article included links to each of the October Article and November Article and repeated some of the false claims in them.
- 42 On 16 December 2021 Russell made a complaint to ABC Audience and Consumer Affairs pointing out egregious errors in the November Article.
- 43 In March 2022 the ABC admitted that it had breached its own standards in the publication of the November Article (having previously denied such breach).
- 44 Despite admitting that it breached its own standards of investigative journalism, the ABC refused to publicly apologise to Russell or to withdraw the allegations it had made about him and November Platoon.

- 45 The story in the Linked Article was wrong to the ABC's knowledge and despite knowing that shortly after publication of the November Article, it stubbornly persisted in its defence of "journalism" that was indefensible.
- 46 No rational explanation has been provided for the ABC's failure to publicly apologise to Russell.
- 47 On 26 July 2022 Russell gave a Concerns Notice to the ABC, Robertson and Willacy setting out his concerns about the conduct set out above.
- 48 On 24 August 2022 the ABC responded with a letter (**ABC letter**) that made disingenuous and ridiculous claims, such as reliance on election qualified privilege (where the election was not called until April 2022).
- 49 On 31 August 2022 the ABC attempted to put pressure on Russell to not commence these proceedings by asserting that the production of documents by the ABC to the Office of the Special Investigator somehow supported its claimed defences set out in the ABC letter.
- 50 On 6 and 8 September 2022 Willacy sought an interview from Russell about a story he said he had been working on for 8 months concerning his rotation in Afghanistan in 2012, without setting out the details of the story, or what allegations he intended to make about Russell.
- 51 On 7 September 2022 the ABC claimed it was "not able to provide any additional information" in relation to its assertions on 31 August 2022, despite request by Russell on 1 September 2022 that it do so.

Damages

- 52 By reason of the publication and republication of the November Article and Linked Article, Russell has been gravely injured in his character, his personal reputation, and his professional reputation as a former member of the armed forces, and has suffered and will continue to suffer substantial hurt, distress and embarrassment.
- 53 Russell's hurt and harm caused by the publication of the November Article and the Linked Article has been aggravated by his knowledge of the conduct of the ABC set out under the heading "ABC's Conduct", above.

Injunctive relief

- 54 The ABC has published, promoted and republished the November Article and the Linked Article as set out above in this pleading.

- 55 The 18 March 2022 version of the November Article and Linked Article remains available for publication and is being published as at the date of this pleading from the ABC website.
- 56 The ABC has repeatedly refused to remove the November Article and the Linked Article, despite demand.
- 57 The ABC has stubbornly and irrationally adhered to its unreasonable position in relation to the October Article, November Article and Linked Article, as to the imputations carried by them and the errors contained therein.
- 58 The ABC will continue to publish the November Article and the Linked Article unless restrained by the Court.

Date: 8 September 2022



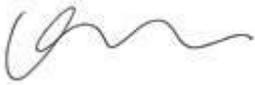
Signed by Rebekah Giles
Solicitor

This pleading was prepared by Sue Chrysanthou SC and Rebekah Giles solicitor.

Certificate of lawyer

I, Rebekah Giles, certify to the Court that, in relation to the statement of claim filed on behalf of the applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 September 2022



Signed by Rebekah Giles
Solicitor

Schedule A

Defence confirms criminal invest: x +

https://web.archive.org/web/20211119042806/https://www.abc.net.au/news/2021-11-19/defence-confirms-investigation-into-november-platoon/100633968?utm_campaign=abc_news_web&utm_content=twitter&utm_medium=content_...

INTERNET ARCHIVE Wayback Machine 2 captures 18 Nov 2021 - 18 Nov 2021

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Defence confirms criminal investigation into conduct of Australian commando platoon in Afghanistan

ABC Investigations / By Josh Robertson
Posted 3m ago



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3:26 PM 3/09/2022



Defence has denied an ABC Freedom of Information request for documents about November platoon's operations in 2012. (Supplied)

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abc.net.au/news/defence-confirms-in-... COPY LINK SHARE

The Defence Department has revealed there is an active criminal investigation into the conduct of an Australian commando platoon in Afghanistan in 2012.

Defence has refused to release audio recordings and reports relating to missions by 2nd Commando Regiment's November platoon, saying to do so could compromise a current investigation and any future trial.

Last year the ABC reported the allegations of a US marine who said Australian commandos shot and killed an Afghan prisoner after being told he would not fit on a US aircraft during an operation in Helmand province in 2012.

Former November platoon commander Heston Russell later said he was present on operations and denied that his soldiers had ever harmed a prisoner, calling on the

Key points:

- A US Marines helicopter crew chief alleged November platoon killed an Afghan prisoner after being told he would not fit on an aircraft
- The former commander of the platoon says his soldiers never harmed a prisoner
- Defence denied an ABC FOI request on the grounds that the release could prejudice a current investigation

Nurses to leave the workforce

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had ever harmed a prisoner, calling on the ABC to retract the story and apologise.

ABC Investigations lodged a Freedom of Information request seeking audio copies of mission communications in Afghanistan, mission summary reporting, and any complaints or disciplinary action taken against members of November platoon covering June and July 2012, when the alleged killing took place.

[In response, Defence denied access to all documents sought by the ABC](#), saying it could "reasonably be expected to prejudice the conduct of a current investigation of a possible breach of the law."

It said the documents "may be used as evidence by the investigating body".

"The release of this information prior to the conclusion of the investigation could impact the direction of the investigation [and] also jeopardise the outcome of the investigation."

Defence said releasing the documents could also "prejudice the fair trial of a person, or the impartial adjudication of a particular case".

Last year the federal government established the Office of the Special Investigator (OSI) in response to the Brereton war crimes inquiry report, which detailed alleged unlawful killings by Australian special forces in Afghanistan.

[Read the redacted IGADF report here.](#)

current investigation

'We heard a pop'



During their deployment in Afghanistan, Australian special forces had a bad reputation among some US colleagues. One marine says Australians "would see the line and hop right over it".

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[Read the redacted IGADF report here.](#)

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The former commander of November platoon, Heston Russell has called for the ABC to retract its story. (Facebook: Heston Russell)

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US marine Josh worked alongside Australian special forces soldiers. (Supplied)

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He said the Americans only had room on the aircraft for six.

"And the pilot said, 'That's too many people, we can't carry that many passengers.' And you just heard this silence and then we heard a pop. And then they said, 'OK, we have six prisoners.'"

"So it was pretty apparent to everybody involved in that mission that they had just killed a prisoner that we had just watched them catch and hogtie," he said.

Do you know more?

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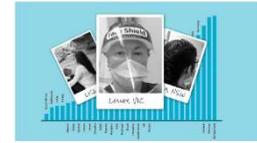
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Defence confirms criminal investigation into conduct of Australian commando platoon in Afghanistan

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Defence has denied an ABC Freedom of Information request for documents about November platoon's operations in 2012. (Supplied)

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The Defence Department has revealed there is an active criminal investigation into the conduct of an Australian commando platoon in Afghanistan in 2012.

Defence has refused to release audio recordings and reports relating to missions by 2nd Commando Regiment's November platoon, saying to do so could compromise a current investigation and any future trial.

Last year the ABC reported the allegations of a US marine who said Australian commandos shot and killed an Afghan prisoner after being told he would not fit on a US aircraft during an operation in Helmand province in 2012.

Former November platoon commander Heston Russell later said he was present on operations and denied that his soldiers had ever harmed a prisoner, calling on the

Key points:

- A US Marines helicopter crew chief alleged November platoon killed an Afghan prisoner after being told he would not fit on an aircraft
- The former commander of the platoon says his soldiers never harmed a prisoner
- Defence denied an ABC FOI request on the grounds that the release could prejudice a current investigation

Nurses to leave the workforce

PM defends 'sympathy for Australians who have had a gutful, as premiers accuse him of chasing extremist votes

Victorian MP who supports pandemic bill says attack on daughter may have been politically motivated

Peter just wanted to get his thongs. Moments later, he was pinned to the ground by a police officer

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had ever harmed a prisoner, calling on the ABC to retract the story and apologise.

ABC Investigations lodged a Freedom of Information request seeking audio copies of mission communications in Afghanistan, mission summary reporting, and any complaints or disciplinary action taken against members of November platoon covering June and July 2012, when the alleged killing took place.

[In response, Defence denied access to all documents sought by the ABC](#), saying it could "reasonably be expected to prejudice the conduct of a current investigation of a possible breach of the law."

It said the documents "may be used as evidence by the investigating body".

"The release of this information prior to the conclusion of the investigation could impact the direction of the investigation [and] also jeopardise the outcome of the investigation."

Defence said releasing the documents could also "prejudice the fair trial of a person, or the impartial adjudication of a particular case".

Last year the federal government established the Office of the Special Investigator (OSI) in response to the Brereton war crimes inquiry report, which detailed alleged unlawful killings by Australian special forces in Afghanistan.

[Read the redacted IGADF report here.](#)

current investigation

'We heard a pop'



During their deployment in Afghanistan, Australian special forces had a bad reputation among some US colleagues. One marine says Australians "would see the line and hop right over it".

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The former commander of November platoon, Heston Russell has called for the ABC to retract its story.
(Facebook: Heston Russell)

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US marine says Australian special forces soldiers made 'deliberate decision to break the rules of war'

ABC Investigations / Exclusive by Mark Willacy, Alexandra Blucher and Dan Oakes
Posted Tue 20 Oct 2020 at 6:51 pm, updated Tue 20 Oct 2020 at 11:13pm



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US marine Josh* worked alongside Australian special forces soldiers in Afghanistan. (Supplied)

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A United States Marine Corps (USMC) helicopter crew chief says Australian special forces shot and killed a bound Afghan prisoner after being told he would not fit on the US aircraft coming to pick them up.

Josh* flew 159 combat missions for the USMC's Light Attack Helicopter Squadron 469 (HMLA-469).

He has allowed the ABC to publish pictures of him but has asked that we don't use his real name because he fears retribution.

He has told ABC Investigations he was a door gunner providing aerial covering fire for the Australian soldiers of the 2nd Commando Regiment during a night raid

Key points:

- A US marine says Australians were known to leave "fire and bodies" in their wake in Afghanistan
- Australian soldiers from 2nd Commando Regiment told the ABC the US Drug Enforcement Administration refused to work

Tennis star Peng Shuai is the latest high-profile figure to disappear in China. But her case stands out

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Peter just wanted to get his thongs. Moments later, he was pinned to the ground by police officers

for the Australian soldiers of the 2nd Commando Regiment during a night raid in mid-2012.

The operation took place north of the HMLA-469 base at Camp Bastion in Afghanistan's Helmand Province.

It was part of a wider joint Australian special forces-US Drug Enforcement Administration (DEA) campaign targeting illicit drug operations that were financing the Taliban insurgency.

"We had done the drug raid, the Aussies actually did a pretty impressive job, wrangling all the prisoners up," Josh said.

"We just watched them tackle and hogtie these guys and we knew their hands were tied behind their backs."



Administration refused to work with the November platoon in Afghanistan

It is unclear if the alleged killing is covered in the Inspector-General of the Australian Defence Force's inquiry

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An Australian special forces soldier in Helmand province, southern Afghanistan in December 2012. (Supplied: Defence Force)

He says the commandos then called up the US aircraft to pick them and about seven prisoners up.

He says the Americans only had room on the aircraft for six.

"And the pilot said, 'That's too many people, we can't carry that many passengers.' And you just heard this silence and then we heard a pop. And then they said, 'OK, we have six prisoners'.

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was a very deliberate decision to break the rules of war.

"I think that was the first thing that happened that didn't quite sit right with us, where we were like, 'OK, there's no excuse, there's no ambiguity, there's no going around this one!'"

Do you know more?

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'Lots of fire and bodies were often left in their wake'

ABC Investigations understands that — as part of its inquiry into alleged special forces war crimes in Afghanistan — the Inspector-General of the Australian Defence Force (IGADF) is investigating the killing of at least one prisoner by Australian commandos.

It is unclear if this alleged killing is one of those being investigated.

When contacted for a response to this story, an Australian Defence Force spokesperson said: "It is not appropriate for Defence to comment on matters that may or may not be the subject of the Afghanistan Inquiry."



Afghanistan Inquiry.

Josh says he did between one and two dozen drug missions with the Australians from 2nd Commando in 2012, mainly providing aerial cover fire and sometimes dropping sniper teams on overwatch positions.



Josh* led a helicopter crew in the US Marine Corps. (Supplied)

"A lot of us wanted to work with the Australians because we were all like — I don't know if bloodthirsty is the right term — but we wanted action. They wanted to shoot. And when you worked with the Aussies you get involved pretty often," he said. "Lots of breaching of walls with explosives and lots of fires and bodies were often left in their wake."

He says on a mission early in his 2012 deployment, one of his USMC comrades was shocked by what he witnessed the commandos do on a joint drug operation.

"They go down for a landing. As soon as the Aussies exit, there was somebody just sitting on a wall watching them land. They got off and popped the guy a few times in the chest."

Josh says his fellow marine later confronted the commandos about the killing.

"My buddy came and asked, 'Hey, what happened to that guy?' And he said, 'Oh, he's dead mate.' And he's like, 'Why? He wasn't even armed. What happened there?' He said, 'Oh, he was armed when we got through with him.'"

'We're not going to work with those f***ing guys'

A member of 2nd Commando's Oscar platoon who served on that deployment has confirmed that the Americans were unhappy with the conduct of some of his comrades.

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comrades.

"Our platoon commander pulled our platoon together and said that the [DEA] has said in no uncertain terms that they won't operate with [2nd Commando] November platoon any more due to their behaviour in the field," he said.

Another commando from Oscar platoon who was on that deployment confirmed to ABC Investigations that November platoon had a bad reputation among the Americans.

"I remember talking to [DEA agent] afterwards, and he said, 'We're not going out with those f***ing guys ever again'. Every DEA team that went through there loved working with us and had no problem, but November platoon was the first platoon that the DEA said they wouldn't work with," the former commando said. "Something obviously went down."

Former USMC helicopter crew chief Josh says he flew dozens of missions with other special forces, including USMC special operations and the British SAS.

"The [British] SAS always had an incredible restraint, at least in the times when me and my friends worked with them. Sometimes a frustrating amount," he said.

"Everybody else would step on the lines, but the Aussies would just see the line and just hop right over it."

* *Name has been changed*

'In my books, it's murder'



For years, the secrets about what the SAS did in the valleys, fields and mud villages of Afghanistan have remained hidden. Until now.

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