

30 April 2015

Ref 14/2042

Mr S Dowling
shanedowling@hotmail.com

Dear Mr Dowling

National Library of Australia release of documents in accordance with Office of Australian Information Commissioner (OAIC) decision

I am writing in reference to the decision of OAIC with respect to the release of documents relating to the Kangaroo Court website and also in response to your e-mail to the Director-General on 29 March 2015.

The National Library of Australia's key statutory role is to collect, preserve and make accessible Australia's documentary heritage and contemporary publications. The Library's web collecting and archiving activities contribute towards this responsibility.

The Library does not intentionally collect current publications which are illegal in Australia, whether print or digital. This includes material which has been found to be defamatory. If the Library has collected material which is subsequently found to be defamatory, when this is drawn to the attention of the Library, the material is removed from public access.

Once court proceedings are underway regarding whether or not a publication is defamatory, access is usually withheld from the publication until the matter is settled.

In the case of the Kangaroo Court website, when it was brought to the attention of the Library that court proceedings were underway, a decision was taken to remove access to the archived copies. When a court ordered the suppression of material on the website, the Library consequently decided not to make the archived copies accessible again. Currently the Library's technology does not allow for the partial suppression of archived websites. When a decision is made to restrict access, it is consequently to all archived copies of the site.

This approach is consistent with Library practice.

The Library has previously advised you of the reasons for not releasing certain documents that you requested.

In accordance with the decision of OAIC please find attached the following documents which are released to you:

- 1) Document 1, an e-mail dated 2 September 2013
- 2) Document 2, a letter dated 2 September 2013
- 3) Document 3, an edited e-mail chain, dated 5 September 2103

- 4) Document 5, an e-mail dated 11 September 2013
- 5) Document 6, an edited paper dated 26 September 2013
- 6) Document 7, an extract of minutes dated 1 October 2013

If you have any queries regarding the release of these documents please contact the following officer:

FOI Co-ordinator on, FOI@nla.gov.au

Yours sincerely



Rohan Goynne
Director
Contracts and Legal Support

Rohan Goyne

From: Paul Koerbin
Sent: Wednesday, 2 April 2014 1:50 PM
To: Rohan Goyne
Subject: FW: TRIM: Mr Kerry Stokes AC
Attachments: Letter to National Library of Australia re Kangaroo Court of Australia web pages.pdf

From: Justine Munsie [<mailto:justine.munsie@addisonslawyers.com.au>]
Sent: Monday, 2 September 2013 5:56 PM
To: Paul Koerbin
Cc: Web Archiving Section
Subject: TRIM: Mr Kerry Stokes AC

Dr Koerbin

Please see our attached letter. We would appreciate your prompt response.

Regards

Justine Munsie | Partner
ADDISONS

D +61 2 8915 1011 | M +61 414 695 092 | F +61 2 8916 2011
E: justine.munsie@addisonslawyers.com.au
Level 12, 60 Carrington Street, Sydney NSW 2000

www.addisonslawyers.com.au

Liability limited by a scheme approved under Professional Standards Legislation.
Important: This email and the attachments are confidential and subject to copyright. They may be subject to legal professional privilege. If you receive this email by mistake, please immediately advise the sender by return email and then delete this email and destroy all printed copies.





2 September 2013

Our Ref: JMM:SEV001/4037

Web Archiving Section
National Library of Australia
Parkes Place
Canberra ACT 2600

By Email:
pkoerbin@nla.gov.au
webarchive@nla.gov.au

Attention: Dr Paul Koerbin, Manager Web Archiving

Dear Sirs

Kerry Stokes AC

We act for Mr Kerry Stokes AC.

We are instructed to write to you regarding the inclusion, in your web archive PANDORA (Pandora archive), of a number of blog posts authored by Mr Shane Dowling and which appear on the website kangarocourtsofaustralia.com. We refer specifically to the following blog posts:

1. *"Kerry Stokes, Seven Group Chairman and Australia's number one perjurer, has been charged with contempt of court":*

<http://pandora.nla.gov.au/pan/130333/20111122-1058/kangarocourtsofaustralia.com/2011/05/23/kerry-stokes-seven-group-chairman-and-australias-number-one-perjurer-has-been-charged-with-contempt-of-court/index9a92.html>

2. *"Kerry Stokes threatens legal action against blogger".*

<http://pandora.nla.gov.au/pan/130333/20111122-1058/kangarocourtsofaustralia.com/2011/05/26/kerry-stokes-threatens-legal-action-against-blogger/index.html>

Mr Stokes is concerned by the accusations made in these blog posts, namely that:

- (a) he has been charged by the relevant authorities for contempt of court; and
- (b) he has been charged with and found guilty of perjury;

both of which are manifestly false.

Liability for Defamation

Mr Stokes regards the publishing of these accusations as a very serious matter.

The accusations are highly defamatory in nature and, as the publisher of the PANDORA archive, the National Library of Australia is liable for their publication on the archive.

ABN 55 365 334 124

Level 12, 60 Carrington Street
Sydney NSW 2000

GPO Box 1433
Sydney NSW 2001

DX 262
Sydney

Telephone +61 2 8915 1000
Facsimile +61 2 8916 2000

mail@addisonslawyers.com.au
addisonslawyers.com.au

Liability limited by a scheme approved under Professional Standards Legislation

994849_1

In those circumstances, Mr Stokes would be well-entitled to commence proceedings against the National Library of Australia seeking urgent interlocutory relief to have the blog posts removed and damages subsequently awarded to him for the damage which such false and defamatory accusations can create.

Mr Stokes has been and will continue to deal separately with the owner of the Kangaroo Court of Australia website, Mr Dowling.

PANDORA's policies

It would also appear that the blog posts and their content clearly fall foul of PANDORA's terms as set out in its Disclaimer, thereby warranting their immediate removal from the PANDORA archive.

For instance, the Disclaimer provides as follows:

"Content that is known to breach the law will not be included and access will be removed in respect to content that is subsequently proven to be in contravention of the the [sic] law."

The content on Mr Dowling's blog posts contravenes the law in that it, among other things, gives rise to an action for defamation against him. As such, it is content which should be removed from the PANDORA archive.

Moreover, it is difficult to see how these blog posts were deemed suitable for archiving by the National Library of Australia in the first place. To our understanding, the PANDORA archive is intended to be a selective archive where material is generally subjected to rigorous selection guidelines before being approved for archiving, with the ultimate aim of archiving material of national significance with long-term research value. It is unclear how these blog posts, and indeed the Kangaroo Court of Australia website as a whole, meet the selection guidelines or the overall purpose of the PANDORA archive.

Action required

In light of the above, Mr Stokes requests that:

- the Kangaroo Court of Australia website and its content; or
- in the alternative, the blog posts at 1 and 2 above and their content;

be immediately removed from the PANDORA archive.

In the meantime, Mr Stokes fully reserves its rights. Please note that if this matter is not resolved to our client's satisfaction in the manner outlined above, he will consider approaching the Court for the appropriate orders without any further notice to you.

Yours faithfully

Justine Munsie
Partner
Direct Line: (02) 8915 1011
Direct Fax: (02) 8916 2011
Email: justine.munsie@addisonslawyers.com.au

From: Gerry Linehan
Sent: Tuesday, 3 September 2013 8:48 AM
To: Rohan Goyne
Subject: FW: Mr Kerry Stokes AC
Importance: High

Can we discuss after cmg thanks

Gerry Linehan
Assistant Director-General
Corporate Services Division
National Library of Australia

6262 1222 (w)
0411 867 419 (m)
6273 4535 (f)

From: Amelia McKenzie
Sent: Tuesday, 3 September 2013 8:21 AM
To: Gerry Linehan; Anne-Marie Schwirtlich
Subject: FW: Mr Kerry Stokes AC
Importance: High

Anne-Marie, Gerry

FYI. I'm not aware of any prior approach from Kerry Stokes about this matter. In the meantime Paul will have the page blocked while we discuss our response.

Regards
Amelia

From: Paul Koerbin
Sent: Monday, 2 September 2013 9:44 PM
To: Amelia McKenzie
Cc: Alison Dellit; Russell Latham
Subject: FW: Mr Kerry Stokes AC
Importance: High

Amelia

I am happy to respond to this, but given Mr Stokes connections with the Library and the fact that he is threatening legal proceedings; you may prefer a response from a more senior officer. I am not aware of any less formal approach made by Mr Stokes or his representatives before this letter from his lawyers.

I can arrange to have the offending content in the archive blocked to public access. While the opinion about our selection processes is to my mind misguided and slightly offensive, it is probably of no advantage to respond to provide any justification for our processes which aim to collect as broadly and comprehensively as feasible to collect a range of views.

Paul

From: Justine Munsie [justine.munsie@addisonslawyers.com.au]
Sent: Monday, 2 September 2013 5:55 PM
To: Paul Koerbin
Cc: Web Archiving Section
Subject: Mr Kerry Stokes AC

Dr Koerbin

Please see our attached letter. We would appreciate your prompt response.

Regards

Justine Munsie | Partner
ADDISONS

D +61 2 8915 1011 | M +61 414 695 092 | F +61 2 8916 2011
E justine.munsie@addisonslawyers.com.au
Level 12, 60 Carrington Street, Sydney NSW 2000

www.addisonslawyers.com.au

Liability limited by a scheme approved under Professional Standards Legislation.
Important: This email and the attachments are confidential and subject to copyright. They may be subject to legal professional privilege. If you receive this email by mistake, please immediately advise the sender by return email and then delete this email and destroy all printed copies.

Rohan Goyne

From: Amelia McKenzie
Sent: Tuesday, 4 March 2014 4:17 PM
To: Rohan Goyne
Subject: FW: Kangaroo Court access

FYI
Amelia

From: Anne-Marie Schwirtlich
Sent: Wednesday, 11 September 2013 12:31 PM
To: Amelia McKenzie
Subject: Re: Kangaroo Court access

Afternoon Amelia

Thank you. We have now blocked access to both archived instances of the whole site which is okay immediately but a bit draconian. As would be any request to delete the archived instances.

Will catch up with you again once I have spoken to the Chairman.

AM

On 11/09/2013, at 11:52 AM, "Amelia McKenzie" <amckenzie@nla.gov.au> wrote:

For information.

Regards

Amelia

From: Paul Koerbin
Sent: Wednesday, 11 September 2013 11:48 AM
To: Amelia McKenzie
Subject: Kangaroo Court access

Amelia

I have removed the links to the archived instances of KC from the Pandora title entry page.

I have also added a short note to say access is not currently available. Personally I would like to say the reason, i.e. 'for legal reasons', but I have not added that as it may incite a reaction from the parties involved (although it would be helpful for the general public).

<http://pandora.nla.gov.au/tep/130333>

Having removed the instance links from the title entry page I have changed the restriction to an authenticated restriction. The reason for this is that internal (staff) users searching Trove would still be able to get through to the content from the Trove links (external users would not). The authentication restrictions means that internal staff and external users cannot access the content. To see what I mean click on this Trove search link and try to view one of the 'matching pages' under Kangaroo Court of Australia.

<http://trove.nla.gov.au/website/result?q=kangaroo+court+stokes+kerry>

That is probably the best I can do to lock it down without having IT delete the content altogether.

Paul

Dr Paul Koerbin | Manager Web Archiving | National Library of Australia

E: pkoerbin@nla.gov.au | T: (02) 6262 1411

ITEM 3.4

CMG PAPER

For Official Use Only

DATE 26 September 2013

REF NLA13/37

FOR LIMITED DISTRIBUTION TO CMG

FROM Alison Dellit, Director Australian Collections Management

SUBJECT Policy on removal of allegedly defamatory collection material

Purpose

To update CMG on the current status of two requests for removal of material alleged to be defamatory.

Background

Collection Management Division is currently dealing with two requests to remove, or prevent all access to, material from the Library's collections which are alleged to be defamatory.

Kangaroo Court

On 2 September 2013, the Library received a letter from Mr Kerry Stokes AC's legal firm (Appendix 2), demanding the removal of content from the PANDORA archive, specifically the kangarocourtofaustralia.com domain, or alternatively two specific blog posts on that domain. The letter alleged that the content of the blogs, which is still publicly available, was defamatory. The letter explains that Mr Stokes may choose to take legal action against the Library if the posts are not removed. It indicated that separate action may be taken against the blog site owner.

PANDORA excludes material which contravenes Australian law. Similar to other collection areas, this has to date been defined as material which has been found to be defamatory in a court of law, a condition which the Kangaroo Court website does not meet. Given the importance of the Library's relationship with Mr Stokes, the material has been restricted from access to the public while CMG considers how to act on this matter.

In addition, Mr Stokes' lawyer challenged the inclusion of the website in PANDORA, stating: "It is unclear how these blog posts, and indeed the Kangaroo Court of Australia website as a whole, meet the selection guidelines or the overall purpose of the PANDORA archive." This may indicate a lack of understanding of the purpose of the web archive, as a representative sample of social commentary on the Australian domain of the World Wide Web.

Issues

The Library has a core function to maintain a comprehensive collection of library material relating to Australia and the Australian people, and to make that collection accessible to users in the national interest. To date, that has involved providing access to material whose content has been challenged, providing it has not proven to have breached the law. While temporary restrictions have been placed upon material during court processes, permanent restriction in such circumstances appears to be unprecedented.

The Library is protected from legal action taken in relation to material which the Library could not be aware is defamatory, but this protection does not extend once potentially defamatory content has been brought to the Library's attention. There is not clear legal protection for the Library's role in providing access to material which may be defamatory, but has not yet proven to be in court proceedings. While Ashurst's advice indicates that a legal defence in such circumstances may exist, this has not been tested in court.

The Library receives not infrequent requests to restrict material due to disputed views of the content. Generally, these disputes are settled through explaining the purpose of the Library, and occasionally by the inclusion of extra material with the items concerned. It is possible that removing items from the collection where the content is alleged to be, but not proven to be, defamatory would set a precedent.

Recommendations

The issue of the Kangaroo Court website is essentially similar in principle to [redacted]. While access to the website is currently blocked this is not a desirable long term outcome as the material has not yet been found defamatory. It is recommended that the Library negotiate directly with stakeholders to advance the view that the site be made accessible on the grounds of its public duty as required by the National Library Act, and after an appropriate period remove the block. It is not suggested that a response be offered on the Library's decision to include the website in the collection.

Financial implications

Defending against legal action for defamation would involve considerable cost to the Library.

Appendix 2 is the letter from
Addisons already identified as Document N° 2.

CORPORATE MANAGEMENT GROUP
MEETING 875: TUESDAY 1 OCTOBER 2013

9.00 am

EXECUTIVE MEETING ROOM

CONFIRMED MINUTES

Present: Ms A Schwirtlich (Chair), Dr M Ayres, Mr G Linehan, Ms A McKenzie, Ms C Pilgrim, Ms Aileen Weir, Mr David Wong, Mr Paul Stewart (for items 3.1, 3.2 and 3.5)

Apologies: Ms M Burn (on leave), Mr M Corbould (on leave)

Minutes: Ms D Dahlitz

1. MINUTES OF THE MEETING HELD ON 24 SEPTEMBER 2013

The minutes of the meeting held on 24 September 2013 were confirmed.

3.4 Policy on removal of allegedly defamatory collection material

Ms McKenzie spoke to the report providing background information on the two separate cases currently subject to removal requests.

CMG considered two recommendations, and:

Agreed that the second case involving the archiving of a website requires further consideration. The Director-General and Ms McKenzie will discuss the issue further.

ACTION: The Director-General and Ms McKenzie