

## NOTICE OF FILING

### Details of Filing

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|---------------------------|---------------------------------------------------------------------------------------------------------------|
| Document Lodged:          | Submissions                                                                                                   |
| Court of Filing           | FEDERAL COURT OF AUSTRALIA (FCA)                                                                              |
| Date of Lodgment:         | 26/08/2026 10:43:18 PM AEST                                                                                   |
| Date Accepted for Filing: | 26/08/2026 10:43:22 PM AEST                                                                                   |
| File Number:              | NSD507/2026                                                                                                   |
| File Title:               | JACQUELINE ELLEN HENDERSON & ANOR v COMMONWEALTH<br>BROADCASTING CORPORATION PTY LTD (ACN 000 019 796) & ANOR |
| Registry:                 | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA                                                         |



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



**NO. NSD507 of 2026**  
**FEDERAL COURT OF AUSTRALIA**  
**DISTRICT REGISTRY: NEW SOUTH WALES**  
**DIVISION: FAIR WORK**

**JACQUELINE ELLEN HENDERSON and anor**  
Applicants

**COMMONWEALTH BROADCASTING CORPORATION PTY LTD and anor**  
Respondents

**APPLICANTS' SUBMISSIONS REGARDING THE RESPONDENTS'**  
**INTERLOCUTORY APPLICATION DATED 19 AUGUST 2026 & THE DISCOVERY**  
**CATEGORIES SOUGHT BY THE PARTIES**

**A. INTRODUCTION**

1. On 19 August 2026, the Respondents' filed an interlocutory application (**Application**) seeking in substance leave to file and serve: (a) a proposed Amended Defence (**AD**) to the Applicants' (the **Henderson Parties**) Amended Statement of Claim (**ASOC**); and (b) an Amended Notice of Cross-Claim and Amended Statement of Cross-Claim (**AXC**). The Henderson Parties oppose parts of the proposed AD and the whole of the AXC.
2. These submissions deal with both the Application and the parties' dispute concerning categories of discovery.
3. The Henderson Parties rely on the Affidavit of Peta Cherie Tumpey dated 26 August 2026 (**Tumpey Affidavit**).

**B. THE AMENDED DEFENCE**

4. The Henderson Parties position in respect of the proposed AD is that:
  - (a) paragraphs [41], and [69(b)(ii)] (or amendments to those paragraphs) of the proposed AD are opposed; and

- (b) the balance of the amendments in the proposed AD are not opposed.
5. The opposed paragraphs all suffer from a common issue, being the attempt to insert prolix particulars that do not satisfy the primary purpose of a particular of putting the Henderson Parties “*on guard and prevent [her] from being taken by surprise at the trial*” of this proceeding<sup>1</sup>.
6. The purpose of particulars as opposed to pleading of material facts is settled. In *Trade Practices Commission v David Jones (Australia) Pty Ltd*<sup>2</sup>, Fisher J distinguished between the pleadings and particulars by citing the decision of Scott LJ in *Pinson v Lloyds and National Provincial Foreign Bank Ltd*<sup>3</sup>. His Honour cited the following passage (*Pinson* at 75):
- ... The proper function of particulars is not to state the material facts omitted from the statement of claim in order, by filling the gaps, to make good an inherently bad pleading, however common that pernicious practice may have become. On this topic ... I still hold the opinion that it is not the function of particulars to take the place of necessary averments in the pleading. Their function is to put the opposite party on his guard and prevent him being taken by surprise at the trial of an action, the ‘material facts’ of which should have been already averred. Nor have mere statements of evidence as such a place in particulars, any more than in the pleading, although the dividing line between statements which contain sufficient indication to prepare the opponent's mind for what he will have to meet at the trial and mere statements of evidence is sometimes hard to draw and should not invite meticulous criticism. The essential rules of modern pleading embody a common-sense view of litigation, and, if complied with substantially and in accordance with their real intention, are well calculated to keep the cost of litigation down.
7. The Henderson parties oppose those paragraphs for the following reasons:
8. **First**, the opposed paragraphs contain particulars that recite the content of documents that will likely form part of the documents to be adduced in evidence. For example, particular 3(aa) to [41] of the proposed AD contains a detailed summary of a letter prepared by Dr Justine Corry (a professional who treats Ms Henderson). Similarly, particular 3(e) to [41] summarises and quotes significant parts of Ms Henderson’s Complaint Letter.

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<sup>1</sup> *Pinson v Lloyds and National Provincial Foreign Bank Ltd* [1941] 2 KB 72 at 75 (Scott LJ), cited in *Trade Practices Commission v David Jones (Australia) Pty Ltd* (1985) 7 FCR 109 at 112-113 (Fisher J).

<sup>2</sup> (1985) 7 FCR 109.

<sup>3</sup> [1941] 2 KB 72.

9. In *Saw v Seven Network (Operations) Ltd*<sup>4</sup>, Perram J determined an application where an amended pleading sought to add substantive text from various emails, was contrary to the *Federal Court Rules 2011* (Cth) (**Rules**). His Honour stated (at [29]:

Seven also sought an order that the amendments to paragraphs 52, 54 and 56 of the amended statement of claim be disallowed. These amendments set out the texts of various emails. These are then given certain legal characterisations for the purposes of the Fair Work Act 2009 (Cth). FCR r 16.02(1)(d) requires a pleading to “state the material facts on which a party relies that are necessary to give the opposing party fair notice of the case to be made against that party at trial, but not the evidence by which the material facts are to be proved” (emphasis added). In some cases, such as a defamation case, the text of a communication will be a material fact. That is not, however, the case with these emails, as was accepted during argument. Consequently, the pleading is in breach of FCR r 16.02(1)(d). I will therefore disallow the amendments pursuant to FCR r 16.52.

10. This Court should find the Respondent’s recitation of documents (particularly within [41] of the proposed AD) is contrary to r 16.02(1)(d) of the Rules and not permit those amendments.
11. **Second**, the particulars proposed to be added to the Amended Defence are prolix. For example, the proposed particulars to [41] of the proposed AD run for 3 pages. There is no reasonable basis why particulars of that detail are necessary. The proposed particulars go well beyond the primary purpose of particulars identified in [5] above. The proposed particulars (e.g. to [41]) have an appearance more apt to written submissions than particulars to a pleading.
12. **Third**, in circumstances where there is a clear principle of pleadings that an opposing party should not plead to particulars<sup>5</sup>, and the nature of the pleadings goes well beyond the primary purpose of particulars identified in [5] above:
- (a) the Henderson Parties cannot properly join issue with the substantive allegations made through those particulars. For example, the inference sought to be drawn by the Respondents in particular 3(g) to [41] of the proposed AD is a significant allegation that the purpose of the Complaint

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<sup>4</sup> [2024] FCA 1210; (2015) 305 FCR 340.

<sup>5</sup> *Pinson*, at 75-76 (Scott LJ); *Chapple v Electrical Trades Union* [1961] 3 All ER 612 at 614 (Pennycuik J); and *Brand v Monks* [2009] NSWSC 1454, at [407]-[412] (Ward J).

Letter was something other than the exercise or proposed exercise of a workplace right by Ms Henderson; and

(b) the Respondents' desire to press the opposed paragraphs is contrary to progressing the overarching purpose.

13. In addition to the primary points above, the Henderson Parties take issue with the proposed amendment in [69(b)(ii)] of the proposed AD. That paragraph forms part of the Respondents' response to the allegation that ARN's announcement to the ASX was misleading or deceptive.
14. After quoting part of the Complaint Letter in which Ms Henderson expressed an expectation that the content of the Complaint Letter be kept confidential, proposed amendment in [69(b)(ii)] of the proposed AD pleads (emphasis added):

accordingly, if (which is denied) any loss or damage was suffered because the Announcement was misleading or deceptive insofar as it excluded material context of the matters specified in the Complaint Letter, that loss or damage was caused by Ms Henderson's insistence that those matters be kept confidential.

15. The emphasised allegation appears to be that Ms Henderson was responsible for any loss or damage occasioned by the misleading or deceptive ASX announcement made by ARN because of the insistence of confidentiality in the Complaint Letter. That allegation is embarrassing because it is wholly illogical in circumstances where there is no causal link (and no attempt to plead one has been made) between Ms Henderson's insistence on confidentiality and the content of ARN's ASX announcement. It should not be permitted to be added to the Amended Defence.
16. For the preceding reasons, the Court should not permit the proposed amendments to paragraphs [41] and [69(b)(ii)] of the proposed AD.

### **C. THE AXC**

17. The Henderson Parties oppose leave being granted to the Respondents to file and serve the AXC. Their opposition arises for the following reasons:
18. **First**, the amendments occasioned in the AXC is an alternative argument that, to the extent the Henderson Parties' establish their claim for non-economic loss (pain, suffering, hurt, humiliation and distress), that non-economic loss:

- (a) was caused or contributed by the failure of the Second Applicant (**Henderson Media** Pty Ltd) to ensure the health and safety of Ms Henderson in accordance with the terms of the Henderson BSA (AXC [11]) and Henderson Media is liable to indemnify the First Respondent (**Commonwealth Broadcasting Corporation** Pty Ltd) for that loss (AXC [12]); and
  - (b) was caused or contributed by Henderson Media breaching its duty of care in negligence to Ms Henderson (AXC [22]) to which CBC claims a contribution as a joint tortfeasor (AXC [23]).
19. The premise of both additional causes of action entirely misconceive the Henderson Parties' claim for non-economic loss under their Amended Statement of Claim dated 19 June 2026 (**ASOC**).
  20. Non-economic loss is claimed as a consequence of the Respondents' contravention of s.340 of the *Fair Work Act 2009* (Cth) (**FW Act**) because of the adverse action pleaded in [47] of the ASOC. Non-economic loss is not claimed as consequence of the Respondents' failures to ensure Ms Henderson's health and safety during the course of her engagement by the Respondents (or any injury sustained during the course of the engagement).
  21. The same issue arises in respect of the tortious cause of action proposed in the AXC. If Ms Henderson has suffered pain, suffering, hurt, humiliation and distress – it was caused by the Respondents' adverse action pleaded in [47] of the ASOC. She does not claim loss or damage for any pain, suffering, hurt, humiliation and distress caused during the period of her engagement.
  22. **Second**, even if the AXC were premised on a proper basis (which is denied), the AXC contains a pleading of “uncured breach of the Henderson Media’s obligation to ensure the health and safety of Ms Henderson whilst performing the Program Services” (AXC [10]). That pleading is embarrassing or evasive and ambiguous because it fails to plead any material facts said to constitute the “uncured breach”<sup>6</sup>. The Henderson Parties do

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<sup>6</sup> See for example, *KTC v David* [2022] FCAFC 60, at [120] (Wigney J) and the cases cited by His Honour in that paragraph; and *Fair Work Ombudsman v Eastern Colour Pty Ltd* [2011] FCA 803 at [18] (Collier J).

not know what is alleged by that term and will be taken by surprise at trial if it is permitted to be relied on by the Respondents.

23. **Third**, the Respondents seek to make these amendments months after the pleadings have closed. There is no reason why the proposed amendments to the AXC now sought could not have been pleaded on 21 April 2026 (the date of the original Statement of Cross-Claim). For example, the novel allegations in AXC [10]-[11] (alleging that Ms Henderson’s non-economic loss was caused by Henderson Media’s failure to ensure her health and safety, and not ARN’s failures to do so) arise from the non-economic loss pleaded in the ASOC and the terms of the Henderson BSA – both being matters known to the Respondents on 21 April 2026. No explanation for the delay in pleading that cause of action has been provided.
24. **Fourth**, the Henderson Parties will suffer prejudice if the AXC is permitted to be filed in being distracted away from the preparation of their reply evidence, and the substantive pre-trial steps in this proceeding. This is particularly so when the proposed amendments raise claims which are hopeless (for the reasons set out above).
25. **Fifth**, repeating the complaint in Part B of these submissions, the particulars to the AXC quote whole paragraphs of the parties’ evidence in a manner inconsistent with the case law referred to in Part B and r 16.02(1)(d) of the Rules.
26. For the reasons above, the Court should not permit the Respondents leave to file and serve the AXC.

#### **D. DISCOVERY**

27. The Henderson Parties seek discovery by category pursuant to r.20.15 of the Rules, as do the Respondents. The relevant legal principles can be briefly summarised as follows:
  - (a) any application for non-standard discovery under r 20.15 of the Rules “*cannot be considered in isolation from r 20.11*”<sup>7</sup>. Reflecting the overarching purpose in s.37M of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), r.20.11 stipulates that a discovery order must not be made unless the making of the

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<sup>7</sup> *BrisConnections Finance Pty Limited (Receivers and Managers Appointed) v Arup Pty Limited* [2015] FCA 1077 at [15] (Flick J).

order will “*facilitate the just resolution of the proceeding as quickly, inexpensively and efficiently as possible*”;

- (b) the “*intent of discovery by categories is, in the usual case, to refine and narrow the range of discovery*”<sup>8</sup>, having regard to the test of ‘direct relevance’ in r.20.14 of the Rules.<sup>9</sup> The direct relevance test requires that the documents in question be directly on point, in that they “*tend... to prove or disprove a matter in issue, not if there is only a chance it will or if it merely tends to prove or disprove something that might be relevant to a matter in issue ...*”<sup>10</sup>;
- (c) the Court’s power to order discovery is discretionary, and will balance the costs<sup>11</sup>, time and possible oppression to the producing party against the importance and likely benefits which arise to the requesting party from production of the documents<sup>12</sup>. An order for discovery will not be made unless it is “*necessary for the just resolution of the proceeding and is proportionate in scope to the issues raised in the proceeding*”<sup>13</sup>; and
- (d) determining proportionality involves a number of considerations, including that “[t]he documents sought must be proportionate to the nature, size and complexity of the case”<sup>14</sup>. Other considerations include determining the “*...sufficiency of relevance to the case or materiality of its outcome*’, ‘*disproportionality to the case or unfairness in the circumstances*’ and ‘*unreasonable burden*’.”<sup>15</sup>

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<sup>8</sup> *Clifton (liquidator) v Kerry J Investment Pty Ltd trading as Clenergy* [2020] FCAFC 5, at [172]-[173] (Besanko, Markovic and Banks-Smith JJ).

<sup>9</sup> Unless the party seeking discovery seeks to depart from the criteria in r.20.14 of the Rules – which the Applicant does not: AS [10]-[14]; *Clifton*, at [172] (Besanko, Markovic and Banks-Smith JJ).

<sup>10</sup> *Power Infrastructure Pty Ltd v Downer EDI Engineering Power Pty Ltd (No 4)* [2012] FCA 143, at [18] (Katzmann J); cited with approval in *SMBC Leasing and Finance, Inc v Flexirent Capital Pty Ltd (Discovery)* [2025] FCA 459, [118] (Needham J); *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd (No 2)* [2011] FCA 1396; (2011) 212 IR 313, at [34] to [37] (Collier J).

<sup>11</sup> See in particular: *Power Infrastructure*, at [15] (Katzmann J).

<sup>12</sup> *Australian Broadcasting Commission v Parish* (1981) 48 FLR 292 at 295 (Franki J.)

<sup>13</sup> *Bain v International Capital Markets Pty Ltd (No 3)* [2025] FCA 599, at [11] (O’Byrne J).

<sup>14</sup> *Bain*, at [13] (O’Byrne J).

<sup>15</sup> *Reiche v Neometals Ltd* [2024] FCA 1202, at [8] and [10] (Feutrell J).

28. The parties agree that it is appropriate for the matter to proceed by way of discovery categories. The parties have exchanged their respective lists of categories, and their positions on those proposed lists.
29. The outcome of those discussions is that:
- (a) The Henderson Parties seek discovery of 47 categories from the Respondents. 14 categories are agreed. There is a debate as to the scope of four categories, and there is a debate about 14 further categories. The balance are not pressed. As it presently stands, the Court may be called upon to resolve 18 categories, each of which is marked in blue in **Annexure A**.
  - (b) The Respondents seek discovery of 29 categories from the Henderson Parties. Two categories are opposed (as not relevant to any fact in issue), and two categories are opposed as being too broad. The Henderson Parties have proposed alternative language (and are yet to be advised if the alternative wording is acceptable). The balance of the categories are agreed. As it presently stands, the Court may be called upon to resolve four categories, each of which is marked in blue in **Annexure B**.
30. The Respondents have also issued a subpoena to Ms O'Neill, one of the witnesses for the Henderson Parties, which largely mirrors the discovery categories sought by the Respondents (see Annexure B). The Court's resolution of the four remaining issues with respect to the Respondents' list of discovery categories should travel together with the subpoena issued to Ms O'Neill. Such that any discovery category which is rejected by the Court ought to be set aside in the O'Neill subpoena.

#### **E. DISPOSITION OF ISSUES**

31. For the preceding reasons, the Court should:
- (a) permit the Respondents leave to file and serve, with the exception of the proposed amendments to [41] and [69(b)], the proposed AD;
  - (b) refuse leave to the Respondent to file and serve the AXC in its entirety; and
  - (c) make discovery orders in accordance with the position expressed by the Henderson Parties in Annexures A and B.

32. Consistent with s.570 of the FW Act, there should be no order as to costs.

**Vanja Bulut**

12 Wentworth Selborne Chambers

**Daniel Delimihalis**

State Chambers

**Counsel for the Applicants**

**26 August 2026**

## ANNEXURE A

### APPLICANTS' LIST OF DISCOVERY CATEGORIES

| No                        | Category                                                                                                                                                                                                                                              | Respondents' position                                                                                                                                                                                                                  | Applicants' response |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| <b>ARN Board meetings</b> |                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                        |                      |
| 1.                        | All board papers for the meeting of the Second Respondent's board of directors on 22 October 2025 that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> .                                                           | Agreed.                                                                                                                                                                                                                                | -                    |
| 2.                        | All board papers for the meeting of the Second Respondent's board of directors on 10 December 2025 that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> .                                                          | Agreed.                                                                                                                                                                                                                                | -                    |
| 3.                        | All documents that record or summarise the meeting of the Second Respondent's board of directors on 24 February 2026, and the board papers for that meeting that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . | Agreed, subject to a time limitation:<br><br>All documents <u>created prior to 30 March 2026</u> that record or summarise the meeting of the Second Respondent's board of directors on 24 February 2026, and the board papers for that | Agreed.              |

## **ANNEXURE A**

| No | Category                                                                                                                                                                                                                                                                                              | Respondents' position                                                                                                                                                                                                                                                                                                                                                               | Applicants' response |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|    |                                                                                                                                                                                                                                                                                                       | meeting that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> .                                                                                                                                                                                                                                                                                   |                      |
| 4. | All board papers for the meeting of the Second Respondent's board of directors on 2 March 2026, that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> .                                                                                                             | Agreed.                                                                                                                                                                                                                                                                                                                                                                             | -                    |
| 5. | All documents that record or summarise the meeting of the Second Respondent's board of directors and any subcommittee of the board of directors on 3 March 2026, and the board papers for that meeting that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> .      | Agreed, subject to a time limitation:<br><br>All documents <u>created prior to 30 March 2026</u> that record or summarise the meeting of the Second Respondent's board of directors and any subcommittee of the board of directors on 3 March 2026, and the board papers for that meeting that refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . | Agreed.              |
| 6. | A copy of all communication (including text messages, messages and emails) between two or more of the Second Respondent's board of directors and/or Mr Stephenson between 1 October 2025 and 31 October 2025 referring to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance.                                                                                                                  | Not pressed.         |

## ANNEXURE A

| No | Category                                                                                                                                                                                                                                                                                              | Respondents' position                                                                                                                                                                                                                                                                                                                                                                           | Applicants' response                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7. | A copy of all communications (including text messages, messages and emails) between two or more of the Second Respondent's board of directors and/or Mr Stephenson between 20 February 2026 and 8 March 2026 referring to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . | <p>Agreed, subject to time limitation:</p> <p>A copy of all communications (including text messages, messages and emails) between two or more of the Second Respondent's board of directors and/or Mr Stephenson between <del>20</del> <u>26</u> February 2026 and <del>8</del> <u>3</u> March 2026 referring to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i>.</p> | <p>Agree to limit to 3 March 2026, but <b>press for the first date of 20 February 2026</b>. That is the date of the incident, and the date that Ms Henderson took a period of leave.</p> <p>Evidence discloses that discussion between Board members about the events of 20 February and senior executives commenced on and from 20 February 2026. See for example, Stephenson at [96] <i>ff</i>; and McLennan, [61] <i>ff</i>.</p> |
| 8. | All messages exchanged on the "ARN NEDs" WhatsApp group between 20 February 2026 and 3 March 2026.                                                                                                                                                                                                    | Agreed.                                                                                                                                                                                                                                                                                                                                                                                         | -                                                                                                                                                                                                                                                                                                                                                                                                                                   |

## ANNEXURE A

| No         | Category                                                                                                                                                                                                                                                                                        | Respondents' position                                                                                                                                                                                                                                                                                                                 | Applicants' response                                                                                                                                                                                    |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.         | Documents recording or evidencing the reasons (of any of the decision makers) for the decision to terminate the contract with Ms Henderson and Henderson Media on 3 March 2026.                                                                                                                 | Agreed, subject to a time limitation:<br><br>Documents <u>created prior to 30 March 2026</u> recording or evidencing the reasons (of any of the decision makers) for the decision to terminate the contract with Ms Henderson and Henderson Media on 3 March 2026.                                                                    | <b>Not agreed.</b> If there are documents which post date 30 March 2026 that record the reasons of the decision makers for the termination of the Henderson BSA, those documents are clearly probative. |
| 10.        | All documents that record or summarise the meetings of the Second Respondent's senior leadership team (Mr Davis and Mr Stephenson, and their direct reports) which refer to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> between 1 October 2025 and 31 March 2026. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance (in terms of subject matter, date range, and the relevant persons). | Not pressed.                                                                                                                                                                                            |
| <b>MFW</b> |                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                         |
| 11.        | All documents that record or summarise the meeting between Jennie Hill of the Mad Fucking Witches, Michael Stephenson and Kerri Elstub on 18 February 2026.                                                                                                                                     | Agreed, subject to a time limitation:<br><br>All documents <u>created prior to 30</u>                                                                                                                                                                                                                                                 | Agreed.                                                                                                                                                                                                 |

## ANNEXURE A

| No  | Category                                                                                                                                                         | Respondents' position                                                                                                                                                                                                                                                              | Applicants' response |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|     |                                                                                                                                                                  | <u>March 2026</u> that record or summarise the meeting between Jennie Hill of the Mad Fucking Witches, Michael Stephenson and Kerri Elstub on 18 February 2026.                                                                                                                    |                      |
| 12. | All documents that record or summarise any meeting between representatives of the Second Respondent and Jennie Hill of the Mad Fucking Witches on 16 March 2026. | Agreed, subject to a time limitation:<br><br>All documents <u>created prior to 30 March 2026</u> that record or summarise any meeting between representatives of the Second Respondent and Jennie Hill of the Mad Fucking Witches on 16 March 2026.                                | Agreed.              |
| 13. | Documents evidencing advertising revenue attributable to the <i>Kyle and Jackie O Show</i> between July 2023 and February 2026.                                  | Not agreed. Proposed alternative:<br><br>a) Spot revenue reports sufficient to show monthly spot revenue attributable to The Kyle and Jackie O Show from 2022 to March 2026.<br><br>b) Profit and loss reports for KIIS Sydney and KIIS Melbourne for the period FY2020 to FY2026. | Agreed.              |

## ANNEXURE A

| No                               | Category                                                                                                                                                                                                                                                                                                                | Respondents' position                                                                                                                                                                                                                                                                                                                                                       | Applicants' response                                                                                                                                                    |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>20 February 2026 incident</b> |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                         |
| 14.                              | All replies to, forwards of, and emails containing the email from Ms Reeves to Ms Elstub, Mr Stephenson and Ms Poole dated 20 February 2026, 9:04:13 am.                                                                                                                                                                | Agreed.                                                                                                                                                                                                                                                                                                                                                                     | -                                                                                                                                                                       |
| 15.                              | All replies to, forwards of, and emails attaching and otherwise conveying the email from Mr Stephenson to Mr McLennan, Mr Connolly, Ms Rowe, Ms Cameron, copy to Ms Poole, Ms Elstub, Ms Reeves and Mr Child dated 20 February 2026, 8:02:49 pm.                                                                        | Agreed.                                                                                                                                                                                                                                                                                                                                                                     | -                                                                                                                                                                       |
| 16.                              | All replies to, forwards of, and emails containing the email from Ms Reeves to Ms Elstub, Mr Stephenson and Ms Poole dated 20 February 2026, 7:18 pm.                                                                                                                                                                   | Agreed.                                                                                                                                                                                                                                                                                                                                                                     | -                                                                                                                                                                       |
| 17.                              | All communications (including emails, text messages, or messages on other social media or communication platforms) involving two or more of Mr Stephenson, Ms Reeves, Ms Elstub, Ms Poole, Mr Cubis, Mr McLennan, Ms Cameron, Ms Rowe, Mr Connolly, Mr Campbell, Mr Davis, Mr Dave Cameron, and Mr Bargwanna between 20 | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. Further still, to the extent that any of these documents evidence the decisions of the relevant decision | <b>Pressed.</b> Communications between the decision-makers (and persons who materially contributed to the decision-maker's decision) and the reasons for adverse action |

## ANNEXURE A

| No | Category                                                                                                                | Respondents' position                                                                                                                                                                                                                                               | Applicants' response                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | February 2026 and 8 March 2026 referring to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . | makers, they are caught by category 9. We note also that (1) neither Mr Campbell nor Mr Davis was employed by the Respondents at this time and (2) no party contends that the Henderson BSA was terminated due to anything that occurred prior to 26 February 2026. | <p>advanced in the communications is significant probative evidence.</p> <p>Taking into account the Respondent's position regarding Mr Campbell and Mr Davis, proposed revised category is set out below. There is no basis to limiting the temporal period to 26 February 2026 onwards. The relevant event occurred on 20 February 2026</p> <p>Revised category:</p> <p>All communications (including emails, text messages, or messages on other social media or</p> |

## ANNEXURE A

| No  | Category                                                                                                                                                                                                                                                                                                                                       | Respondents' position                                                                                                                                                                                                                                                                                                  | Applicants' response                                                                                                                                                                                                                                                                                                           |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                        | communication platforms) involving two or more of Mr Stephenson, Ms Reeves, Ms Elstub, Ms Poole, Mr Cubis, Mr McLennan, Ms Cameron, Ms Rowe, Mr Connolly, Mr Dave Cameron, and Mr Bargwanna between 20 February 2026 and 8 March 2026 referring to (any of) Ms Henderson, Mr Sandilands or the <i>Kyle and Jackie O Show</i> . |
| 18. | All communications (including emails, text messages, or messages on other social media or communication platforms) involving two or more of Mr Stephenson, Ms Reeves, Ms Elstub, Ms Poole, Mr Cubis, Mr McLennan, Ms Cameron, Mr Connolly, Mr Dave Cameron, and Mr Campbell between 26 February 2026 and 3 March 2026 referring to "leverage". | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further still, to the extent that any of these documents evidence the decisions of the decision makers, they are caught by category 9. We note | <b>Pressed.</b> Communications between the decision-makers (and persons who materially contributed to the decision-maker's decision) and the reasons for adverse action advanced in the                                                                                                                                        |

## ANNEXURE A

| No  | Category                                                                                                             | Respondents' position                                                                                                                                                                                                                                   | Applicants' response                                                                                                                                                                                                                                                                                                               |
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|     |                                                                                                                      | also that Mr Campbell was not employed by the Respondents at this time.                                                                                                                                                                                 | communications is significant probative evidence.<br><br>See McLennan, [95] – being a discussion between Mr McLennan and Mr Stephenson.                                                                                                                                                                                            |
| 19. | Mr Stephenson's phone records (recording all outgoing and incoming calls) between 20 February 2026 and 3 March 2026. | Agreed, subject to a time limitation and a limitation as to persons:<br><br>Mr Stephenson's phone records (recording all outgoing and incoming calls) <u>with ARN Board members</u> between <del>26</del> <sup>20</sup> February 2026 and 3 March 2026. | Agreed to limit persons to Ms Reeves, Ms Elstub, Ms Poole, Mr Cubis, Mr McLennan, Ms Cameron, Mr Connolly, Mr Dave Cameron, and Mr Campbell being the decision makers and persons who may have materially contributed to the decision, but <b>press for the first date of 20 February 2026</b> . That is the date of the incident, |

## **ANNEXURE A**

| No | Category | Respondents' position | Applicants' response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----|----------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |          |                       | <p>and the date that Ms Henderson took a period of leave. Proposed revised category wording:</p> <p>“Mr Stephenson’s phone records (recording all outgoing and incoming calls) with Ms Reeves, Ms Elstub, Ms Poole, Mr Cubis, Mr McLennan, Ms Cameron, Mr Connolly, Mr Dave Cameron, and Mr Campbell between 20 February 2026 and 3 March 2026.”</p> <p>Evidence discloses that discussion between Board members about the events of 20 February and senior executives commenced on and from 20 February</p> |

## **ANNEXURE A**

| No  | Category                                                                                                                                                                                                                                                                                                                                                                   | Respondents' position                                                                                                                                                                                                                                              | Applicants' response           |
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|     |                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                    | 2026. See Stephenson, [95] ff. |
| 20. | All communications (including emails, WhatsApp and text messages, and messages using other social media or communication platforms) sent by Mr Stephenson between 20 February 2026 and 8 March 2026 referring to Ms Henderson (including her agents), Mr Sandilands (including his agents), the event on 20 February 2026, and/or the Respondents' response to that event. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                   |
| 21. | Communications between 20 February 2026 and 3 March 2026, sent to or from Ms Reeves referring to the 20 February 2026 incident, and/or the Respondents' response to it.                                                                                                                                                                                                    | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                   |
| 22. | Documents that evidence a report or note from the censors for the <i>Kyle and Jackie O Show</i> which refers to the 20 February 2026 broadcast or the reason for not censoring or dumping those parts of the 20 February 2026 particularised in paragraph 20 of the Amended Statement of Claim filed on 19 June 2026.                                                      | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                   |

## **ANNEXURE A**

| No                                    | Category                                                                                                                                                                                                                                                                                 | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                                                                               |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 23.                                   | Communications to or from Mr Bargwanna, Ms Penfold, Mr Brouchet, or any other producer of the <i>Kyle and Jackie O Show</i> which refer to an instruction to edit any part of the 20 February 2026 broadcast of the <i>Kyle and Jackie O Show</i> for the purpose of the show's podcast. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                                                                                       |
| 24.                                   | Communications between (any of) Ms Brooke Cashell, Ms Elstub, Mr Stephenson and Mr Bargwanna referring to communications from third-party journalists concerning the 20 February 2026 broadcast of the <i>Kyle and Jackie O Show</i> .                                                   | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                                                                                       |
| <b>Investigation conducted by ARN</b> |                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                    |                                                                                                                                                                                    |
| 25.                                   | Documents created in relation to, or as part of, the investigation conducted by (or at the directions of) Ms Reeves and/ or Ms Elstub following (and as a result of) the incident on 20 February 2026.                                                                                   | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>Evidence discloses that the investigation and the interviewed were being discussed by Board members before the decision was made to terminate the Henderson |

## ANNEXURE A

| No  | Category                                                                                                                                         | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                                                                                                                                                 |
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|     |                                                                                                                                                  |                                                                                                                                                                                                                                                                    | BSA: see, for example, Exhibit BR-1, pg 127. Any investigated facts likely informed Board members' decision to terminate the Henderson BSA.                                                                                                          |
| 26. | A copy of all interview notes taken during (or transcripts of) the interviews with staff referred to in the affidavit of Mr Stephenson at [124]. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>Evidence discloses that the investigation and the interviewed were being discussed by Board members before the decision was made to terminate the Henderson BSA: see, for example, Exhibit BR-1, pg 127; and McLennan, [107]. |

## ANNEXURE A

| No                                                  | Category                                                                                                         | Respondents' position                                                                                                                                           | Applicants' response                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Interaction with Ms Henderson and Ms O'Neill</b> |                                                                                                                  |                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                        |
| 27.                                                 | All communications referring to the meeting between Mr Stephenson and Ms O'Neill on 26 February 2026.            | Not agreed. Proposed alternative:<br><br>Any file notes of the meeting between Mr Stephenson and Ms O'Neill on 26 February 2026 created prior to 30 March 2026. | <b>Pressed.</b><br><br>The meeting is important as it preceded (and foreshadowed) the Complaint Letter and explained the position of Ms Henderson and her ability (or lack thereof) to work with Ms Sandilands. Relevant to the question of repudiation. The Applicants are entitled to test Mr Stephenson's perception of the meeting with Ms O'Neill as at 26 February 2026 (or shortly thereafter). |
| 28.                                                 | Documents recording or referring to the "legal strategy" referred to in the affidavit of Mr Stephenson at [170]. | Agreed, subject to a time limitation.<br><br>Documents <u>created prior to 30 March</u>                                                                         | Agreed.                                                                                                                                                                                                                                                                                                                                                                                                |

## ANNEXURE A

| No                                                           | Category                                                                                                                                                                              | Respondents' position                                                                                                                                                                                                                                                                                                                   | Applicants' response                                                                          |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
|                                                              |                                                                                                                                                                                       | <u>2026</u> recording or referring to the "legal strategy" referred to in the affidavit of Mr Stephenson at [170].                                                                                                                                                                                                                      |                                                                                               |
| 29.                                                          | Documents prepared for, or which record or refer to, the meeting with Ms Henderson, Ms O'Neill and HWLE on 3 March 2026.                                                              | <p>Agreed, subject to a time limitation, and removal of 'or refer to'. The existence of the meeting is not a fact in issue (and is common ground).</p> <p>Documents prepared for, or <u>created prior to 30 March 2026</u> which record <del>or refer to</del>, the meeting with Ms Henderson, Ms O'Neill and HWLE on 3 March 2026.</p> | Agreed.                                                                                       |
| <b>Interaction with safety and communications regulators</b> |                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                         |                                                                                               |
| 30.                                                          | Documents recording any interaction with SafeWork NSW (or a safety regulatory in any other jurisdiction) in February and March 2026, or in relation to the event on 20 February 2026. | Agreed.                                                                                                                                                                                                                                                                                                                                 | -                                                                                             |
| 31.                                                          | Documents recording any interaction with SafeWork NSW (or a safety regulatory in any other jurisdiction) in relation to Mr Sandilands' conduct in the period prior to February 2026.  | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's                                                                                                                                                                       | <p><b>Pressed.</b></p> <p>See Cubis, [85]; ASOC [38], Defence [38(b) and (c)] and [33(c)]</p> |

## ANNEXURE A

| No  | Category                                                                                                                                                                                            | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                   |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                                     | case. Further and in any event, it is broader than could be justified by any possible relevance.                                                                                                                                                                   |                                                                                        |
| 32. | Any safety risk assessment conducted by the Respondents in relation to Mr Sandilands.                                                                                                               | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                           |
| 33. | Documents recording the assessment, control measures, and other measures to eliminate or minimise risks to the health and safety of workers at the Respondents' workplace created by Mr Sandilands. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>See Cubis, [85]; ASOC [38], Defence [38(b) and (c)] and [33(c)] |
| 34. | Communications with ACMA concerning Mr Sandilands' conduct.                                                                                                                                         | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                           |

## ANNEXURE A

| No                                                      | Category                                                                                                                                                                                                                                                                                                                                                                                     | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| <b>Mr Sandilands' conduct prior to 20 February 2026</b> |                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                    |                                                                                                                     |
| 35.                                                     | <p>All records kept by "P&amp;C" in response to the request made by the Board on 22 October 2025 as recorded in the Board meeting minutes, namely:</p> <p><b><i>KIIS workplace</i></b></p> <p><i>Requested that P&amp;C ensure records are kept of compliance training, and ongoing monitoring of Jackie O in light of claims against Kyle (made through Gemma) regarding behaviour.</i></p> | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <p><b>Pressed.</b></p> <p>See Cubis, [85]; Exhibit MS-1, pg 245; ASOC [38], Defence [38(b) and (c)] and [33(c)]</p> |
| 36.                                                     | <p>In relation to Mr Sandilands' comments made during an on-air broadcast on 20 August 2025 about Ms Henderson's character and personal dating life:</p> <p>(a) documents prepared for, and/or presented to, the ARN Board concerning that broadcast;</p> <p>(b) minutes of the ARN Board concerning that broadcast; and</p>                                                                 | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                        |

## ANNEXURE A

| No  | Category                                                                                                                                                                                                                                                                                                                                                                         | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                              |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
|     | (c) documents recording ARN's response to that broadcast.                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                    |                                                                                                                   |
| 37. | <p>In relation to Mr Sandilands' comments made during an on-air broadcast on 10 September 2025 which was 'dumped' by the Show's censor:</p> <p>(a) documents prepared for, and/or presented to, the ARN Board concerning that broadcast;</p> <p>(b) minutes of the ARN Board concerning that broadcast; and</p> <p>(c) documents recording ARN's response to that broadcast.</p> | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                      |
| 38. | Documents evidencing or recording measures taken by the Respondents to address or investigate the complaint made by Ms Henderson about Mr Sandilands regarding the 10 September 2025 broadcast.                                                                                                                                                                                  | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>See Defence, [22(b)(iii)]; Bargwanna [115]-[116], [123], and [129]-[138]; Davis [80]-[84]. |
| 39. | Documents evidencing the operating procedures or circumstances in which live broadcasting content could be                                                                                                                                                                                                                                                                       | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly                                                                                                                                                         | <b>Pressed.</b>                                                                                                   |

## **ANNEXURE A**

| No                      | Category                                                                                                                                                                                             | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                         |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
|                         | 'dumped' or otherwise subject to censorship from 1 January 2025 to 20 February 2026.                                                                                                                 | probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance.                                                                                                            | ASOC, [17]; Defence, [28(b)(ii)]; Bargwanna [54]-[55], and Stephenson [73].                                  |
| <b>Mr Sandilands</b>    |                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                    |                                                                                                              |
| 40.                     | Documents recording or referring to any offer for a new or revised contract for Mr Sandilands, or any company associated with Mr Sandilands, after 20 February 2026.                                 | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                 |
| 41.                     | Documents referring to or recording the option (or election) of terminating the contract with Mr Sandilands, or any company associated with Mr Sandilands between 20 February 2026 and 8 March 2026. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>Relevant to the cross-claim: see SXC [3]-[5]. Also see, McLennan [85]; and Rowe [30]. |
| <b>ASX Announcement</b> |                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                    |                                                                                                              |
| 42.                     | Documents evidencing or referring to the Respondents' offer (or proposed offer) of an alternative show on the ARN network made on or before 3 March 2026 at 5.31pm.                                  | Not agreed. Propose alternative wording.<br><br>Documents <u>created prior to 30 March</u>                                                                                                                                                                         | Agreed, <b>subject to minor amendment below:</b>                                                             |

## ANNEXURE A

| No  | Category                                                                                                                                                                         | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                                                                                                                                                             |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                  | <u>2026</u> evidencing or referring to the Respondents' offer (or proposed offer) <u>of the possibility of an</u> alternative show on the ARN network made on or before 3 March 2026 at 5.31pm.                                                                    | Documents created prior to 30 March 2026 evidencing or referring to the Respondents' offer (or proposed offer) <b>or</b> of the possibility of an alternative show on the ARN network made on or before 3 March 2026 at 5.31pm.                                  |
| 43. | Draft versions of the ASX announcement made by the Second Respondent on 3 March 2026, including all emails attaching or referring to any draft versions of the ASX announcement. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed.</b><br><br>Evidence discloses that the ASX announcement was circulated amount the board before it was released. The inclusion (and discussion) of the offending statements in the ASX announcement are relevant to test the Respondents' claims that |

## ANNEXURE A

| No  | Category                                                                                                                                                             | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                                                                                                |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                      |                                                                                                                                                                                                                                                                    | the statements were not misleading or deceptive.                                                                                                                                                    |
| 44. | Documents evidencing or referring to a proposal for a broadcast programme (on any format) with Mr Karl Stefanovic and Ms Henderson as co-presenters.                 | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | <b>Pressed</b><br><br>See Exhibit KE-1, 44-45: <i>"... do you see this breakfast show with Karl just for sydney only ... or is this remaining a sydney/Melbourne breakfast offering like KJ?"</i> . |
| 45. | Communications with Mr Karl Stefanovic (or his agent) concerning a broadcast programme (on any format) between Mr Karl Stefanovic and Ms Henderson as co-presenters. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                                                                                                        |
| 46. | Documents evidencing the Respondents' programming/content and line up strategy and which refer to                                                                    | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's                                                                                                  | <b>Pressed.</b><br><br>Relevant to the ACL claim as to the misleading or                                                                                                                            |

## **ANNEXURE A**

| No  | Category                                                                                                                                                                                     | Respondents' position                                                                                                                                                                                                                                              | Applicants' response                                                                                                   |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
|     | the expiry of talent contracts for all periods between 3 March 2026 to 31 December 2027.                                                                                                     | case. Further and in any event, it is broader than could be justified by any possible relevance.                                                                                                                                                                   | deceptive nature of the ASX announcement and the evidence led by the Respondents as to the offer made to Ms Henderson. |
| 47. | All board papers and communications to members of the Second Respondent's Board (or any of them) referring to the expiry of talent contracts in the period 3 March 2026 to 31 December 2027. | Not agreed. This is not directly relevant to issues raised by the pleadings, or likely to be significantly probative in nature, or materially support any party's case. Further and in any event, it is broader than could be justified by any possible relevance. | Not pressed.                                                                                                           |

## **ANNEXURE B**

### **RESPONDENTS' LIST OF DISCOVERY CATEGORIES**

| <b>Cat.</b>                                                                        | <b>Requested document</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Date range</b>                    | <b>Applicants' response</b>                                                                                      |
|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>Recordings and notes of discussions referred to in the Applicants' evidence</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                      |                                                                                                                  |
| 1.                                                                                 | Any recording or file note of any communication of which Ms Henderson or Ms O'Neill give evidence in their affidavits                                                                                                                                                                                                                                                                                                                                                                                            |                                      | Agreed.                                                                                                          |
| 2.                                                                                 | <p>All Documents referring to or evidencing one or more of the following:</p> <ul style="list-style-type: none"> <li>• Ms Henderson's mental health;</li> <li>• Ms Henderson's intention not to work with Mr Sandilands;</li> <li>• Ms Henderson's intention to convey to ARN that she will not work with Mr Sandilands;</li> <li>• Ms Henderson's intention not to work the breakfast daypart; and</li> <li>• Ms Henderson's intention to convey to ARN that she will not work the breakfast daypart</li> </ul> | July 2025 to 3 March 2026            | Agreed.                                                                                                          |
| 3.                                                                                 | Any Document constituting or recording the instruction referred to in paragraph 462 of Ms Henderson's affidavit affirmed 10 June 2026                                                                                                                                                                                                                                                                                                                                                                            | 20 February 2026 to 26 February 2026 | Agreed.                                                                                                          |
| 4.                                                                                 | All Documents constituting or recording communications between Ms Henderson and Ms O'Neill                                                                                                                                                                                                                                                                                                                                                                                                                       | 20 February 2026 to 3 March 2026     | <p>Opposed. Too broad. Will capture clearly irrelevant communications.</p> <p>Proposed alternative category:</p> |

## **ANNEXURE B**

| <b>Cat.</b> | <b>Requested document</b>                                                                                                                                                                              | <b>Date range</b>                | <b>Applicants' response</b>                                                                                                                                                                                                                                                                         |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |                                                                                                                                                                                                        |                                  | All Documents constituting or recording communications between Ms Henderson and Ms O'Neill referring to, or relating to, services provided by Ms Henderson and/or Henderson Media to ARN, the Kyle and Jackie O Show, Mr Sandilands, the termination of the Henderson BSA and/or these proceedings. |
| 5.          | All Documents constituting, recording, or referring to any request to Dr Justine Corry to provide a letter in relation to her consultations with Ms Henderson                                          | June to August 2025              | Agreed.                                                                                                                                                                                                                                                                                             |
| 6.          | All Documents comprising recordings of the Her Best Life podcast that have been removed from Spotify or Apple Podcasts after the filing of the Defence to Amended Statement of Claim                   |                                  | Agreed.                                                                                                                                                                                                                                                                                             |
| 7.          | All Documents recording or referring to the reasons why recordings of Her Best Life podcast were removed from Spotify or Apple Podcasts after the filing of the Defence to Amended Statement of Claim  |                                  | Agreed.                                                                                                                                                                                                                                                                                             |
| 8.          | All Documents constituting, recording, or evidencing any communications, including any documents merely evidencing or recording the fact of any communications, between Ms Henderson and Mr Sandilands | 20 February 2026 to date         | Agreed.                                                                                                                                                                                                                                                                                             |
| 9.          | All Documents constituting or recording communications between the Henderson Parties and Peter Ford                                                                                                    | 20 February 2026 to 3 March 2026 | Agreed.                                                                                                                                                                                                                                                                                             |

## **ANNEXURE B**

| Cat.                                                                          | Requested document                                                                                                                                       | Date range             | Applicants' response |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------|
| <b>Documents relevant to the financial positions of the Henderson Parties</b> |                                                                                                                                                          |                        |                      |
| 10.                                                                           | All Documents sufficient to show the terms and conditions of Ms Henderson's employment with Henderson Media Pty Ltd as at 20 February 2026               | N/A                    | Agreed.              |
| 11.                                                                           | All policies and procedures applicable to Ms Henderson in her employment with Henderson Media Pty Ltd                                                    | N/A                    | Agreed.              |
| 12.                                                                           | All Documents recording the terms and conditions of the engagement of Ms O'Neill or GJO Business Pty Ltd by the Henderson Parties as at 20 February 2026 | N/A                    | Agreed.              |
| 13.                                                                           | The financial statements of Henderson Media Pty Ltd                                                                                                      | FY21 to FY26 inclusive | Agreed.              |
| 14.                                                                           | Management accounts (including the income statement and balance sheet) of Henderson Media Pty Ltd                                                        | FY21 to FY26 inclusive | Agreed.              |
| 15.                                                                           | Corporate tax returns submitted for Henderson Media Pty Ltd                                                                                              | FY21 to FY26 inclusive | Agreed.              |
| 16.                                                                           | Business activity statements submitted by Henderson Media Pty Ltd                                                                                        | FY21 to FY26 inclusive | Agreed.              |

## **ANNEXURE B**

| <b>Cat.</b>                                                       | <b>Requested document</b>                                                                                                                                                                                                                | <b>Date range</b>                     | <b>Applicants' response</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17.                                                               | All Documents recording or referring to a breakdown of total revenue per month by source and customer for Henderson Media Pty Ltd                                                                                                        | FY21 to FY26 inclusive                | Agreed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 18.                                                               | Personal tax returns submitted for Ms Henderson                                                                                                                                                                                          | FY21 to FY26 inclusive                | Agreed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 19.                                                               | Any agreements between Ms Henderson and/or Henderson Media Pty Ltd and any third party service providers that directly or indirectly assisted Ms Henderson and/or Henderson Media Pty Ltd to obtain income pursuant to the Henderson BSA | 1 July 2020 to 30 June 2026 inclusive | Opposed. Not relevant to any fact in issue.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Future working arrangements and alternative show proposals</b> |                                                                                                                                                                                                                                          |                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 20.                                                               | All Documents constituting or recording communications between Ms Henderson and Ms O'Neill                                                                                                                                               | 3 March 2026 to 30 March 2026         | <p>Opposed. Too broad. Will capture clearly irrelevant communications.</p> <p>Proposed alternative category:</p> <p>All Documents constituting or recording communications between Ms Henderson and Ms O'Neill referring to, or relating to, services provided by Ms Henderson and/or Henderson Media to ARN, the Kyle and Jackie O Show, Mr Sandilands, the termination of the Henderson BSA, these proceedings, and/or any opportunities for Ms Henderson and/or Henderson Media to provide services to any person or entity.</p> |
| 21.                                                               | All Documents recording or referring to the possibility of Ms Henderson presenting a radio show for ARN, or engaging in                                                                                                                  | 3 March 2026 to 30 March 2026         | Agreed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## **ANNEXURE B**

| <b>Cat.</b>            | <b>Requested document</b>                                                                                                                                                                                                                                                                                                | <b>Date range</b>                  | <b>Applicants' response</b> |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-----------------------------|
|                        | other work for ARN, other than presenting The Kyle and Jackie O Show                                                                                                                                                                                                                                                     |                                    |                             |
| 22.                    | All Documents recording or referring to the possibility of Ms Henderson engaging in work other than for ARN                                                                                                                                                                                                              | 20 February 2026 onwards           | Agreed.                     |
| 23.                    | All Documents constituting, recording, or referring to: <ul style="list-style-type: none"> <li>• television show approaches of the kind referred to in paragraph 294 of Ms O'Neill's affidavit; or</li> <li>• brand partnership approaches of the kind referred to in paragraph 294 of Ms O'Neill's affidavit</li> </ul> | 1 January 2023 to 31 December 2025 | Agreed.                     |
| <b>Medical Records</b> |                                                                                                                                                                                                                                                                                                                          |                                    |                             |
| 24.                    | All Documents constituting, recording, or referring to communications between Dr Justine Corry and the Henderson Parties, including through their solicitors                                                                                                                                                             | 17 May 2023 to present             | Agreed.                     |
| 25.                    | All Documents referring to Dr Justine Corry                                                                                                                                                                                                                                                                              | 17 May 2023 to present             | Agreed.                     |
| 26.                    | All Documents constituting, recording, or referring to communications between Dr Emma Agnew and the Henderson Parties, including through their solicitors                                                                                                                                                                | 27 March 2026 to present           | Agreed.                     |

## **ANNEXURE B**

| <b>Cat.</b>        | <b>Requested document</b>                                                                                                                                                                                                      | <b>Date range</b>                    | <b>Applicants' response</b>                 |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------------|
| 27.                | All Documents referring to Dr Emma Agnew                                                                                                                                                                                       | 27 March 2026 to present             | Agreed.                                     |
| 28.                | All Documents recording or referring to Ms Henderson consulting with medical professionals or other therapists (excluding Dr Justine Corry, Dr Emma Agnew and Dr Jonathan Phillips) in respect of Ms Henderson's mental health | 17 May 2023 to date                  | Agreed.                                     |
| <b>Mystic Mums</b> |                                                                                                                                                                                                                                |                                      |                                             |
| 29.                | All Documents constituting or recording communications between the Henderson Parties and the group referring to themselves as the Mystic Mums, referring to Kyle Sandilands                                                    | 10 September 2025 to 8 December 2025 | Opposed. Not relevant to any fact in issue. |