

NOTICE OF FILING

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BROADCASTING CORPORATION PTY LTD ACN 000 019 796 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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Form 34
Rule 16.33

Reply

No. NSD442 of 2026

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

Kyle Dalton Sandilands and others

Applicants

Commonwealth Broadcasting Corporation Pty Ltd and another

Respondents

Except to the extent expressly admitted in this Reply, the Applicants (**Sandilands Applicants**) join issue in relation to the allegations of fact in the **Defence** filed 21 April 2026 by the Respondents (**ARN Parties**). To that extent, the Sandilands Applicants rely to the extent necessary on r 16.11 of the *Federal Court Rules 2011* (Cth). To the extent the Sandilands Applicants make admissions in this Reply, they are made for the purposes of these proceedings only.

In this document, the Sandilands Applicants use certain terms defined in their Statement of Claim filed 7 April 2026 or in the Defence.

The ARN Parties have misconstrued the Sandilands BSA

1. In reply to paragraph 6 of the Defence, the Sandilands Applicants:
 - (a) in reply to sub-paragraph (b):
 - (i) admit sub-paragraph (i) (Sandilands BSA entered into);
 - (ii) say that it is a term of the BSA (**Sandilands BSA**) that Quasar will be engaged to provide the "Program Services";

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- (iii) admit that, in the Sandilands BSA, “Program Services” is defined in the manner quoted in sub-paragraph (iii);
- (iv) admit that, in the Sandilands BSA, “Program” is defined in the manner quoted in subparagraph (iv);
- (v) admit that Item 5 of Schedule 1 to the Sandilands BSA contains the text quoted in sub-paragraph (v);
- (vi) in response to sub-subparagraph (vi):
 - A. say that it is a term of the Sandilands BSA that, subject to cl 5.5 of the Sandilands BSA, Quasar shall procure that Mr Sandilands will ensure that he complies with the specific obligations of the “Role” as set out in Item 7 of Schedule 1 to the Sandilands BSA;
 - B. say that these obligations include to work with Ms Henderson or any other agreed co-host and the production team towards achieving the objective of providing an entertaining and enlivening breakfast program for the Radio Station to be presented by Mr Sandilands and Ms Henderson or other co-host determined in accordance with the Sandilands BSA, and titled ‘The Kyle and Jackie O Show’ or as otherwise approved in writing by Quasar;

Particulars

Sandilands BSA cll 5.2, 5.5, Sch 1 (item 7).

- (vii) say that it is a term of the Sandilands BSA that, subject to cll 5.5 and 6(b)-(d) of the Sandilands BSA, Quasar shall procure that Mr Sandilands will comply with all Company Policies, applicable laws, codes of practice and broadcasting standards in place from time to time;

Particulars

Sandilands BSA cll 5.3(d), 5.5, 6(b)-(d).

- (viii) say that it is a term of the Sandilands BSA that, subject to cl 5.5 of the Sandilands BSA, Quasar shall procure that Mr Sandilands will ensure that he will utilise the necessary skills, qualifications, expertise and experience to perform the Program Services;

Particulars

Sandilands BSA cll 5.3(h), 5.5.

- (ix) say that it is a term of the Sandilands BSA that, subject to cl 5.5 of the Sandilands BSA, Quasar shall procure that Mr Sandilands will use his best endeavours to achieve the “Objectives” of the Position outlined in Item 8 of Schedule 1 to the Sandilands BSA;

Particulars

Sandilands BSA cll 5.3(l), 5.5.

- (x) admit subparagraphs (x)-(ix);
 - (b) otherwise deny the paragraph.
2. In reply to paragraph 9 of the Defence, the Sandilands Applicants:
- (a) admit subparagraph (a) (wording of cl 5.5 of the Sandilands BSA);
 - (b) in reply to subparagraph (b):
 - (i) deny sub-subparagraph (i) (asserted construction of cl 5.5);
 - (ii) admit sub-sub-subparagraphs (ii)(1) to (3) (on the understanding that sub-sub-subparagraph (ii)(3) was intended to be a sub-sub-sub-subparagraph to sub-sub-subparagraph (ii)(2)) and denies sub-sub-subparagraphs (ii)(4) to (7) (various allegations regarding the Censor and other personnel);
 - (iii) admit sub-sub-subparagraph (iii)(1), deny sub-sub-subparagraph (iii)(2) and say that material satisfies cl 5.5(c) of the Sandilands BSA if it “could not have been known by the Censor or the legal clearance personnel of the Company privy to the material prior to its exploitation” that the material “would, but for [cl 5.5], breach [the Sandilands BSA] or give rise to a Claim”;
 - (iv) in reply to sub-subparagraph (iv):
 - A. admit that cl 5.5 of the Sandilands BSA is an exclusion clause (but one subject to exceptions);
 - B. deny (if it be alleged) that the ordinary principles of contractual interpretation do not apply to exclusion clauses;
 - C. admit, at the level of principle, that where ambiguity remains after all other avenues of construction have been exhausted

it may in a particular case be permissible and appropriate to construe the clause *contra proferentem*;

D. deny that the present case is such a case.

The Sandilands Applicants admit the 20 February 2026 conduct but join issue with the ARN Parties' characterisation of that conduct

3. In reply to paragraph 16B of the Defence (the 20 February 2026 conduct), the Sandilands Applicants:
 - (a) admit that Mr Sandilands made the comments referred to in the transcript attached to and constituting Schedule 2 to the Defence;
 - (b) otherwise join issue in relation to the paragraph including as to whether it is necessary or appropriate for the comments complained of to be characterised by reference to descriptions proffered by the ARN Parties that do not appear in the contractual provisions relevant to the determination of the parties' dispute.
4. In reply to paragraph 16C of the Defence, the Sandilands Applicants:
 - (a) admit that the 20 February 2026 conduct caused Ms Henderson to become visibly and audibly upset;
 - (b) say that that state of affairs was observable by the Censor;
 - (c) say that the Censor did not Dump the material constituted by the 20 February 2026 conduct;
 - (d) does not know and therefore cannot admit the balance of the paragraph.

The Sandilands Applicants deny the allegation of bullying, generally admit that Mr Sandilands said what is alleged to have been said on occasions other than on 20 February 2026 but join issue with the ARN Parties' characterisation of that conduct

5. The Sandilands Applicants deny paragraph 16D of the Defence (bullying allegation).
6. As to paragraphs 16E of the Defence, the Sandilands Applicants:
 - (a) admit that, on 20 August 2025, Mr Sandilands made the on-air comments referred to in the particulars to the paragraph;
 - (b) otherwise join issue in relation to the paragraph including as to whether it is necessary or appropriate for the comments complained of to be characterised by reference to descriptions proffered by the ARN Parties that do not appear in the contractual provisions relevant to the determination of the parties' dispute.

7. The Sandilands Applicants join issue in relation to paragraph 16F of the Defence including as to whether it is necessary or appropriate for the comments complained of to be characterised by reference to descriptions proffered by the ARN Parties that do not appear in the contractual provisions relevant to the determination of the parties' dispute.
8. In reply to paragraph 16H of the Defence, the Sandilands Applicants:
 - (a) admit that Ms Henderson and Mr Sandilands had an on-air exchange on 10 September 2025 during which Mr Sandilands used profanities;
 - (b) otherwise join issue in relation to the paragraph including as to whether it is necessary or appropriate for the comments complained of to be characterised by reference to descriptions proffered by the ARN Parties that do not appear in the contractual provisions relevant to the determination of the parties' dispute.
9. In reply to paragraph 16I of the Defence, the Sandilands Applicants admit that, on 10 September 2025, Mr Sandilands made the comments attributed to him by the paragraph (or substantially those comments).

The Sandilands Applicants admit that Ms Henderson complained about Mr Sandilands' conduct but say that neither Mr Sandilands nor his companies were told about those complaints

10. In reply to paragraphs 16J to 16R of the Defence, the Sandilands Applicants:
 - (a) admit that the written communications alleged in paragraphs 16J to 16M and 16O to 16R of the Defence occurred as alleged;
 - (b) do not know and therefore cannot admit whether the oral communication alleged in paragraph 16N occurred as alleged or at all;
 - (c) say that the Sandilands Applicants were not told that the communications referred to in paragraphs 16J to 16R had occurred (or were alleged to have occurred) until after CBC purported to terminate the Sandilands BSA.

The Sandilands Applicants admit that the Henderson Parties repudiated the Henderson BSA but say that, in breach of the Sandilands BSA, CBC did not use its best endeavours (or any endeavours) to ensure that Ms Henderson performed her services

11. In reply to paragraphs 16S to 16V of the Defence, the Sandilands Applicants:
 - (a) admit that, by the Complaint Letter, Henderson Media and Ms Henderson (collectively **Henderson Parties**) repudiated the Henderson BSA;

- (b) say that:
- (i) it is a term of the Sandilands BSA that CBC will use its best endeavours to ensure that Ms Henderson performs her services at all relevant times;

Particulars

Sandilands BSA cl 2A(c).

- (ii) in breach of the said term, CBC did not use its best endeavours (or any endeavours) to ensure that Ms Henderson performed her services at all relevant times after it received the Complaint Letter;
- (iii) instead, CBC elected to terminate the Henderson BSA (and not rescind that termination) in circumstances where it could have instead elected to affirm that contract (or rescind the termination) and endeavoured to ensure that Ms Henderson performed her services at all relevant times;
- (c) otherwise join issue in relation to the paragraphs.

The ARN Parties' unspecified and unparticularised allegations of further misconduct are embarrassing and should be struck out

12. In reply to paragraph 16W of the Defence, the Sandilands Applicants:
- (a) say that the paragraph is embarrassing and should be struck out;
- (b) otherwise join issue in relation to the allegation of fact in the paragraph.
13. In reply to paragraph 16X of the Defence (which repeats subparagraph 6(b) of the Defence), the Sandilands Applicants repeat subparagraph 1(a) above (which replies to subparagraph 6(b) of the Defence).

The conduct complained of by CBC was not "*serious misconduct*" for the purposes of the Sandilands BSA; CBC is estopped from asserting that it is in circumstances where it encouraged or induced the Sandilands Applicants to engage in conduct of that kind

14. The Sandilands Applicants deny paragraphs 16Y and 16Z of the Defence and further say that:
- (a) they adopted an assumption that conduct of the kind of the 20 February 2026 conduct (and of the kind of the conduct pleaded in paragraphs 16E, 16H and 16I of the Defence) would not be treated by CBC as misconduct, as conduct that constitutes a breach or non-observance of any term of the Sandilands

BSA or as conduct entitling CBC to exercise any power adverse to the Sandilands Applicants (or adverse to any of them) (**Assumption**);

Particulars

See **Schedule A**. Further particulars may be provided following the service of evidence.

- (b) CBC encouraged or induced the Sandilands Applicants to adopt the Assumption;

Particulars

CBC:

- (i) publicly exploited and thereby sought to monetise the conduct referred to in Schedule A (with the exception of the conduct pleaded at paragraph 16I of the Defence) and publicly exploited and thereby sought to monetise conduct of a similar kind engaged in by Ms Henderson (including the conduct referred to in **Schedule B**) without directing or requesting Mr Sandilands (either directly or through Quasar) or, to the Sandilands Applicants' knowledge, Ms Henderson (either directly or through Henderson Media) not to engage in conduct of that kind;
- (ii) knew that Mr Sandilands had engaged in the conduct referred to in Schedule A and did not direct or request Mr Sandilands (either directly or through Quasar) not to engage in conduct of that kind.

Further particulars may be provided following the service of evidence.

- (c) if (which is denied) the 20 February 2026 conduct constituted "serious misconduct" for the purposes of cl 17.1(a) of the Sandilands BSA and if (which is denied) that provided a basis on which CBC was entitled under the Sandilands BSA to terminate that contract:

- (i) Quasar would suffer detriment if CBC were permitted to depart from the Assumption;

Particulars

If on the identified contingency, CBC would be entitled to terminate the Sandilands BSA and thereby cause Quasar to lose the benefit of the Sandilands BSA on a basis that it inconsistent with the Assumption that CBC encouraged or induced.

- (ii) in the premises:
 - A. it would be unconscionable for CBC to depart from the Assumption;
 - B. CBC is estopped from asserting that the 20 February 2026 conduct constituted “serious misconduct” for the purposes of cl 17.1(a) of the Sandilands BSA or from asserting that that conduct entitled CBC to terminate the Sandilands BSA.

15. In reply to paragraph 16AA of the Defence, the Sandilands Applicants:

- (a) say that of the paragraphs of the Defence identified in paragraph 16AA of the Defence (paragraphs 16B to 16T and 16W) only paragraphs 16B, 16E, 16H, 16I and 16W plead conduct of Mr Sandilands;
- (b) repeat paragraph 12(a) above (paragraph 16W of the Defence is embarrassing and should be struck out);
- (c) repeat subparagraphs (a) and (b) of the previous paragraph (Assumption and inducement);
- (d) say that if (which is denied) the conduct referred to in paragraphs 16B, 16E, 16H and 16I constituted “serious misconduct” for the purposes of cl 17.1(a) of the Sandilands BSA and if (which is denied) that provided a basis on which CBC was entitled under the Sandilands BSA to terminate that contract:
 - (i) Quasar would suffer detriment if CBC were permitted to depart from the Assumption;

Particulars

On the identified contingency, CBC would be entitled to terminate the Sandilands BSA and thereby cause Quasar to lose the benefit of the Sandilands BSA on a basis that is inconsistent with the Assumption that CBC encouraged or induced.

- (ii) in the premises:
 - A. it would be unconscionable for CBC to depart from the Assumption;
 - B. CBC is estopped from asserting that the conduct referred to in paragraphs 16B, 16E, 16H and 16I constituted “serious misconduct” for the purposes of cl 17.1(a) of the Sandilands

BSA and thereby entitled CBC to terminate the Sandilands BSA.

Date: 5 May 2026



Signed by Kevin Lynch
Lawyer for the Applicant

This pleading was prepared by Scott Robertson SC and Philip Boncardo of counsel.

Certificate of lawyer

I Kevin Lynch certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 May 2026



Signed by Kevin Lynch
Lawyer for the Applicant

Schedule A

Conduct of Mr Sandilands that constituted the adoption of an assumption as to a kind of conduct that was not acceptable to CBC

By the conduct referred to in this Schedule, the Sandilands Applicants adopted an assumption that conduct of the kind of the 20 February 2026 conduct (and of the kind of the conduct pleaded in paragraphs 16E, 16H and 16I of the Defence) would not be treated by CBC as misconduct, as conduct that constitutes a breach or non-observance of the terms of the Sandilands BSA or as conduct entitling CBC to exercise any power adverse to the Sandilands Applicants (or adverse to any of them).

1. The 20 February 2026 conduct and the conduct pleaded at paragraphs 16E, 16H and 16I of the Defence itself.
2. On 25 November 2024, Mr Sandilands and Ms Henderson used ChatGPT as a therapist on the Program. Mr Sandilands relevantly asked ChatGPT: *“How should I deal with a colleague’s constant mood swings?”*; *“How Should I stop making Drug related jokes around my colleague Who’s currently a recovering Addict”*; and *“I’ve got one. How do I tell my work colleague I think she’s dating way too many different fellas”*. This segment and these comments were replayed during the Program on 12 February 2025, 12 June 2025 and 25 November 2025.
3. On 26 February 2025, Ms Henderson and Mr Sandilands had an argument off-air, during which Mr Sandilands complained about Ms Henderson’s work performance including saying *“you were on it hard that morning. Like you were away with the fairies”* and *“There’s no accusations. You were, we were laughing because you were off with the fairies and you weren’t paying attention. And everyone spoke to you six times”*. Ms Henderson said she was *“Constantly getting fucking gas lit around here”* and Mr Sandilands replied *“Don’t go pulling up those fucking lying statements. We can’t mention anything to you ever. Gas lit. Can you believe it?”* This off-air argument was referred to in the 27 February 2025 broadcast of the Program by Mr Sandilands and Ms Henderson and then played during a couples’ counsellor segment on 5 May 2025. The argument was included on a Podcast entitled *“Kyle & Jackie’s unheard EXPLOSIVE off air fight”* of 5 May 2025.

Schedule B

Conduct of Ms Henderson that was publicly exploited by CBC and which exploitation encouraged or induced the Sandilands Applicants to adopt an assumption that conduct of that kind was not unacceptable to CBC

1. On 28 November 2023, Mr Sandilands became agitated during a discussion with Ms Henderson and walked out of the studio. On 29 November 2023, Mr Sandilands took sick leave. During the broadcast of the Program on 29 November 2023, Ms Henderson said in relation to whether the fight the day before would be broadcast *“Why didn’t we put it? Oh, well, what are you going to do, put a podcast? Which is the fight People would tune in for that”* and *“They would actually probably get our highest ratings. No, we had a fight. It was so stupid. People said to me, what was it over? And I was like, I don’t know.”* The podcast of the 29 November 2023 show was posted as *“🙄 The REAL reason Kyle left the show yesterday...”* and given the description *“Yesterday’s show ended quite abruptly when Kyle left. It all seemed quite heated but Jackie has cleared the air with what really happened. Have a listen for all the details”*.
2. On 29 October 2024, Ms Henderson criticised Mr Sandilands for taking sick days by asking him how many he had taken and saying *“Yeah, there’s like so many”*.
3. On 25 November 2024, Mr Sandilands and Ms Henderson used ChatGPT as a therapist on the Program. Ms Henderson relevantly asked ChatGPT: *“How do I tell my colleague that I get annoyed When he always calls in sick”;* and *“This is bullshit. Don’t listen to him. He’s a liar That’s my truth. How do I tell my colleague all he does is exaggerate and lie? He’s a gaslighter. Is my truth not important?”*. This segment and these comments were replayed during the Program on 12 February 2025, 12 June 2025 and 25 November 2025.
4. On 23 January 2026, Mr Sandilands was unable to present the Program because he was ill and Ms Henderson hosted the Program and questioned whether Mr Sandilands was genuinely sick and made disparaging comments about him on air.