

NOTICE OF FILING

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File Title:	JACQUELINE ELLEN HENDERSON & ANOR v COMMONWEALTH 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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Federal Court of Australia
District Registry: New South Wales
Division: General

Henderson & Anor v Commonwealth Broadcasting Corporation Pty Ltd & anor
(NSD507/2026)

RESPONDENTS' SUBMISSIONS FOR CASE MANAGEMENT HEARING OF 28
AUGUST 2026

I. RESPONDENTS' APPLICATION TO AMEND THE DEFENCE

- 1 Upon receipt of the Applicants' submissions served today (AS), the dispute about the Respondents' application to amend their defence is limited to a dispute about proposed Amended Defence [41] and [69(b)(ii)].
- 2 Defence [41] already alleges a want of good faith and proper purpose. Propriety and fairness require such a pleading to be explicit and clear about each of the matters to be relied in support of such an allegation. That is what the proposed amendments do. This is entirely appropriate given the nature of the allegation and the entitlement of the Applicants to understand the basis upon which the Court will be asked to make that finding.
- 3 The Applicants' general complaint about these particulars is an unusual one: that they provide *too much* detail: see AS [8]-[13]. But if *that* is the complaint, the Applicants will not be able to take a pleading point if the matters that the Respondents propose to particularise are advanced at final hearing. Therefore the Applicants' real complaint is that these matters are set out in a pleading, not that they will be advanced at hearing.
- 4 It is otherwise difficult to understand the Applicants' complaints. The complaint at AS [8]-[10] that the particulars summarise and quote from certain documents is not a reason to reject the particulars where, as here, doing so particularises the facts and basis upon which the Court will be asked to find a want of good faith. The complaint at AS [11] that these particulars are 'prolix' and in the nature of submissions is tantamount to observing that the Respondents have gone to considerable effort to particularise the bases upon which they will contend for a lack of good faith, and there is no suggestion

that the Applicants will not be in a position to address any of this in evidence prior to hearing. The complaint at AS [12] that the Applicants cannot join issue with particulars is neither here nor there; nobody is asking them to. Moreover, if this was a real complaint, the remedy would be to plead these matters as material facts, not to exclude them altogether, which seems to be the opposite of what the Applicants want.

- 5 As to Amended Defence [69(b)(ii)], it is an answer to paragraph 69(c) of the Statement of Claim, which asserts (without any particularisation) that the ASX announcement was misleading or deceptive because it “*failed to disclose any material context of the matters specified in the Complaint Letter*”. The Applicants’ complaint is that it is illogical to assert that, since Ms Henderson insisted that the contents of her ‘Complaint Letter’ be kept confidential, any loss resulting from a failure for the Announcement to contain detail from the Complaint Letter was, in substance, caused by her insistence on confidentiality: AS [13]-[15]. This overlooks the fact that whether the alleged misleading or deceptive conduct caused the loss is dependent not just on ‘but for’ causation but also on matters of commonsense, policy considerations, and value judgments.¹ Put bluntly, the Respondents contend that ARN cannot be held responsible for any loss suffered because the Announcement did (as far as it could in light of continuous disclosure requirements) precisely what Ms Henderson wanted, which was not to disclose the detail of her complaints. In any event, this is a matter for hearing, and there is no suggestion that this pleading would cause any material prejudice to the Applicants in preparing their case.

II. RESPONDENTS’ APPLICATION TO AMEND THE CROSS-CLAIM

- 6 Having last night and today received some further explanation as to how the Applicants propose to utilise certain medical evidence in this case, the Respondents are content to not press the proposed amendments to the Cross-claim. Prayers 1(b) and (c) of the Interlocutory application may be put to one side.

¹ *March v Stramare* (1991) 171 CLR 506 at 515-517 (Mason CJ, with whom Toohey J and Gaudron J agreed at 524-525); followed in the context of misleading and deceptive conduct cases in *Wardley Australia Ltd v Western Australia* (1992) 175 CLR 514 at 525 (Mason CJ, Dawson, Gaudron and McHugh JJ).

III. DISCOVERY SOUGHT BY THE APPLICANTS

A. General

- 7 There are 3 main issues in the case: (1) whether the First Respondent (**CBC**) was entitled to terminate its contract with the Applicants (the **Henderson BSA**); (2) whether CBC did so for a reason proscribed by the *Fair Work Act 2009* (Cth); and (3) whether the ASX Announcement (**Announcement**) of the Second Respondent (**ARN**) was misleading or deceptive.
- 8 Of these, broadly, in this case the only issue that could plausibly be materially affected by discovery from the *Respondents* is Issue (2). This is because Issue (1) concerns contractual interpretation and operation and so can only turn on *mutually known* facts, and Issue (3) turns on whether the Announcement was misleading or deceptive insofar as it characterises communications *between* the Applicants and the Respondents.
- 9 Thus, to a first approximation, and accepting that there might also be some discovery directed to calculating alleged loss or to filling gaps, the only necessary discovery by the Respondents is documents recording or evidencing the reasons for termination of the Henderson BSA. The Respondents have agreed to such a category. But the Applicants propose **47** categories. Of these:
- a) **14** are no longer pressed;
 - b) **16** are agreed;
 - c) a further **2** are agreed subject to a time limitation; and
 - d) the remaining **15** are opposed.
- 10 Annexure A to AS contains a table setting out those categories, including the Respondents' response to them. The receipt of the AS today was the first time that the Respondents have received the Applicants' responses to the disputed categories.
- 11 The Respondents' position is set out in the 'Respondents' Position' column of that Annexure. A few key (and non-exhaustive) points are made in Parts B to H below, addressing the disputed categories by reference to various 'buckets' of categories.

- 12 The applicable principles do not need to be rehearsed save to point out two matters. First, “as a general proposition, the issues which inform whether discovery may be ordered on a particular matter must be “directly relevant to the issues raised by the pleadings””.² Secondly, paragraph 10.6(d)(iv) of CPN-1 provides a further gloss on the test which is arguably more demanding still, being that the applicant for discovery must demonstrate “that the documents sought are, or are very likely to be, significantly probative in nature, or the documents materially support, or are materially adverse to, any party's case in the proceeding”.

B. Time limitations

- 13 For categories 7 and 9, the only dispute concerns time limits. Category 9 should be limited to documents created before the litigation commenced, ie 30 March 2026. After that date, the documents in question will overwhelmingly be documents created for the purposes of litigation rather than anything resembling a contemporaneous file note with probative value (and will likely be privileged). Category 7 should be limited to communications created after 26 February 2026. No party contends that the Henderson BSA was terminated because of anything other than what was in the ‘Complaint Letter’ that was sent on 26 February (see ASOC [38]-[43], [48]), so earlier communications could not have affected the decision. The Applicants’ case is that the BSA was terminated because of the exercise of a workplace right, which occurred in the Complaint Letter. The Applicants’ observation that evidence shows discussion about the 20 February incident prior to 26 February is immaterial, because the Respondents’ response to that incident is not relevant to a fact in issue.

C. Categories about communications between ARN employees (categories 17-19)

- 14 These categories seek discovery of communications by any two or more of various employees and directors of ARN that refer to Mr Sandilands, Ms Henderson, or their show. By way of illustration of the lack of discipline that has been brought to bear in proposing this category, some of the identified people (Mr Campbell, Mr Davis) were not employed by ARN at the time, and others (eg Ms Poole, Mr Dave Cameron) barely get a mention in the evidence at all and it is unclear why they are even suggested. Nor

² *The Epoch Holdings Group Pty Ltd v Katz (Disclosure of Documents)* (2025) 174 ACSR 546 at [56], [58], [71], [72] (Needham J).

is there any pleading, or basis in the evidence to assert (as the Applicants do in their table) that all of those listed in these categories materially contributed to the decision.

- 15 These categories are broader than can be justified. All of the board communications about Ms Henderson, Mr Sandilands, or their show will already be picked up by category 7. And to the extent that any of the communications referred to in categories 17 or 18 records or evidences the reasons for the decision to terminate the Henderson BSA – which is the only matter that is directly relevant to anything pleaded – this is already picked up by category 9. These broader categories simply seek to vacuum up *anything else* said about Mr Sandilands, Ms Henderson, or their show, whether directly relevant or not. The Applicants’ assertion that the “*relevant event occurred on 20 February 2026*” is simply wrong, because the 20 February incident is not directly relevant. No party contends that the Henderson BSA was terminated because of anything occurring before 26 February.

E. Categories about the 20 February incident (categories 25-26)

- 16 These categories are directed to interrogating ARN’s response to the 20 February incident between Ms Henderson and Mr Sandilands. None of this is relevant to any pleaded fact. All of the board communications about Ms Henderson, Mr Sandilands or their show will already be picked up by category 7; all communications evidencing the reasons for termination will already be picked up by category 9. Apart from the allegation at ASOC [28] that ARN did not intervene in the incident *as it was happening* (which, although pleaded, is not material to any of the Applicants’ causes of action), there is no pleading about the quality of ARN’s response to that incident. *A fortiori* there is no pleading that the Respondents failed to comply with any of their relevant obligations in respect of that incident. These categories represent an attempt to investigate matters that are wholly irrelevant to any of the pleaded causes of action.

F. Category 27

- 17 This category is misconceived. The Applicants’ justification is that this is “*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).*” This is wrong in law. Mr Stephenson’s perception is irrelevant to the issue of repudiation, which turns on the objective meaning of the Complaint Letter.

G. Categories otherwise about Mr Sandilands' conduct (categories 31, 33, 35, 38, 39)

- 18 There are a number of categories that seem to be aimed at trying to criticise Mr Sandilands for his historical workplace conduct, or to criticise the Respondents for their handling of Mr Sandilands, including by asking for documents about his previous conduct and investigations into it. None of that is relevant to any pleaded fact, and still less would it be material to any of the Applicants' causes of action, none of which could conceivably turn on the production of documents dealing with how the Respondents had historically dealt with any complaints about Mr Sandilands.
- 19 The Applicants' attempt to justify these categories with pleading references does not withstand a review of the pleadings referred to. The pleadings referred to are ASOC [33] and [38], and Defence [22(b)(ii)], [33] and [38], which plead what certain correspondence said. Pleadings about what correspondence says do not turn the matters set out in that correspondence into facts in issue.
- 20 The Applicants' also attempt to justify these categories by reference to the Respondents' evidence. What has occurred is that large tracts of the Applicants' evidence are concerned with historical grievances that can have no relevance to the causes of action the Applicants actually advance. Why that evidence has been included, and the costs consequences thereof, will be a matter for final hearing. In the meantime, the Respondents have sought to address those attacks in their own evidence. That they have done so does not make any of the issues the subject of this evidence facts in issue, and still less does it make them directly relevant to pleaded issues, and still less does it make the discovery sought likely to materially assist or harm any party's case.

G. Category 41

- 21 The documents sought by this category are not directly relevant to the pleadings identified. In any event, it is not genuinely in dispute that Mr Sandilands' contract was terminated. It is difficult to see what relevance this category has, beyond assertion.

H. Categories under the heading 'ASX Announcement' (categories 43-47)

- 22 Category 43 seeks drafts of the Announcement. Whether something is misleading or deceptive is an objective test. Drafts cannot possibly be relevant to that. The

Applicants' submission that "*The inclusion (and discussion) of the offending statements in the ASX announcement are relevant to test the Respondents' claims that the statements were not misleading or deceptive*" ignores basic principle.

- 23 Category 44 seeks documents "evidencing or referring to" a proposal for a program with Ms Henderson and Mr Karl Stefanovic as co-presenters. In response to the respondent's position that the category was not directly relevant, likely to be significantly probative or materially supportive of a party's case, the Applicants refer to a passing reference in an email exchange between Ms Elstub and Mr Cameron, both ARN personnel. This is far from satisfying the tests referred to in paragraph 12 above.
- 24 Category 46 seeks documents in relation to the Respondents' content/line up strategy on the purported basis that it is relevant to whether the Announcement is misleading or deceptive. Again, this ignores basic principle. The relevant part of the Announcement said "*ARN has also offered to Ms Henderson the possibility of an alternative show on the ARN network.*" Whether this was misleading or not depends entirely on what ARN communicated to Ms Henderson, not on ARN's internal documents.

IV. DISCOVERY SOUGHT BY THE RESPONDENTS

- 25 **Annexure A to these submissions** is a table setting out the discovery categories proposed by the Respondents, including the positions of the Applicants and the response of the Respondents. This should replace the corresponding Annexure to AS, because that version did not include the Respondents' response to the Applicants' position (though the Respondents' response had in fact been communicated to the Applicants some time before AS was filed).
- 26 Only a few categories are disputed. They are shaded. The Respondents' positions as to the disputed categories are set out in the table, and do not require written elaboration.

Tom Blackburn
Peter Gaffney
Beata Szabo

27 August 2026

ANNEXURE A

PARTIES' POSITION ON RESPONDENTS' LIST OF DISCOVERY CATEGORIES

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

A. LIST OF DISCOVERY CATEGORIES

Cat.	Requested document	Date range	Applicants' response	Respondents' position
Recordings and notes of discussions referred to in the Applicants' evidence				
1.	Any recording or file note of any communication of which Ms Henderson or Ms O'Neill give evidence in their affidavits		Agreed.	
2.	All Documents referring to or evidencing one or more of the following: • Ms Henderson's mental health; • Ms Henderson's intention not to work with Mr Sandilands; • Ms Henderson's intention to convey	July 2025 to 3 March 2026	Agreed.	

Cat.	Requested document	Date range	Applicants' response	Respondents' position
	to ARN that she will not work with Mr Sandilands; • Ms Henderson's intention not to work the breakfast daypart; and • Ms Henderson's intention to convey to ARN that she will not work the breakfast daypart			
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	Opposed. Too broad. Will capture clearly irrelevant communications. Proposed alternative category: 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.	Proposed slightly broader category: <i>All Documents constituting or recording communications between Ms Henderson and Ms O'Neill referring to, or relating to, one or more of the following:</i> - <i>the provision of services by Ms Henderson and/or Henderson Media to any person or other entity;</i> - <i>The Kyle and Jackie O Show;</i> - <i>Mr Sandilands;</i> - <i>the Respondents, any related body corporate of either of them, (together, the ARN Group Companies) and any officer or employee of any of ARN Group Company;</i>

Cat.	Requested document	Date range	Applicants' response	Respondents' position
				- <i>the Henderson BSA; or</i> - <i>these proceedings.</i>
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.	
Documents relevant to the financial positions of the Henderson Parties				

Cat.	Requested document	Date range	Applicants' response	Respondents' position
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.	
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	FY21 to	Agreed.	

Cat.	Requested document	Date range	Applicants' response	Respondents' position
	Henderson	FY26 inclusive		
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.	Pressed. This goes directly to the loss claimed in ASOC [50] and [62] (particulars (A) and (B)). Henderson Media is a company that operates a business. The amounts it received under the Henderson BSA are (at least part of) its revenue, and its relevant profits are that revenue less the costs of deriving that revenue. Any loss as a result of alleged repudiation of the Henderson BSA therefore can only be determined after identifying the costs saved as a result of the Henderson BSA terminating.
Future working arrangements and alternative show proposals				
20.	All Documents constituting or recording communications between Ms Henderson and Ms O'Neill	3 March 2026 to 30 March 2026	Opposed. Too broad. Will capture clearly irrelevant communications. Proposed alternative category: 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.	Proposed to be identical to category 4 (but using this time period) ie: <i>All Documents constituting or recording communications between Ms Henderson and Ms O'Neill referring to, or relating to, one or more of the following:</i> - <i>the provision of services by Ms Henderson and/or Henderson Media to any person or other entity;</i> - <i>The Kyle and Jackie O Show;</i> - <i>Mr Sandilands;</i> - <i>the Respondents, any related</i>

Cat.	Requested document	Date range	Applicants' response	Respondents' position
				<i>body corporate of either of them, (together, the ARN Group Companies) and any officer or employee of any of ARN Group Company;</i> - <i>the Henderson BSA; or</i> - <i>these proceedings.</i>
21.	All Documents recording or referring to the possibility of Ms Henderson presenting a radio show for ARN, or engaging in other work for ARN, other than presenting The Kyle and Jackie O Show	3 March 2026 to 30 March 2026	Agreed.	
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: • television show approaches of the kind referred to in paragraph 294 of Ms O'Neill's affidavit; or • brand partnership approaches of the kind referred to in paragraph 294 of Ms O'Neill's affidavit	1 January 2023 to 31 December 2025	Agreed.	
Medical records				
24.	All Documents constituting, recording, or referring to communications between Dr Justine Corry and the Henderson Parties,	17 May 2023 to present	Agreed.	

Cat.	Requested document	Date range	Applicants' response	Respondents' position
	including through their solicitors			
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.	
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.	
Mystic Mums				
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.	This goes to whether the Court should: - accept Ms Henderson's evidence that she told ARN that no further action was necessary in respect of her September 2025 complaint because she wanted to be loyal to Mr Sandilands (Henderson Affidavit [339]); or - alternatively, find (as Ms Henderson told Mr Bargwanna) that she thought that no further action was necessary because she had formed the view that Mr Sandilands' behaviour had improved because the Mystic

Cat.	Requested document	Date range	Applicants' response	Respondents' position
				Mums exorcised Mr Sandilands' demons (Bargwana Affidavit [133]-[137]).