

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 23/03/2026 5:49:02 PM AEDT
Date Accepted for Filing: 23/03/2026 5:49:16 PM AEDT
File Number: NSD442/2026
File Title: KYLE DALTON SANDILANDS & ORS v COMMONWEALTH
BROADCASTING CORPORATION PTY LTD ACN 000 019 796
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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.



Affidavit

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 (ACN 000 019 796) and another
Respondents

Affidavit of: **Kevin Sebastian Lynch**
Address: Level 14, 50 Bridge Street, Sydney NSW 2000
Occupation: Solicitor
Date: 23 March 2026

I, Kevin Sebastian Lynch of Johnson Winter Slattery, Level 14, 50 Bridge Street, Sydney, Solicitor, make oath and say:

Introduction

1. I am the solicitor for the Applicants in these proceedings.
2. I make this affidavit in support of the Applicants' application for expedition of these proceedings.
3. Unless indicated otherwise, I make this affidavit on the basis of my own knowledge and belief and from information communicated to me by the First Applicant, Kyle Sandilands and by his manager, Bruno Bouchet, and from my review of records and documents in the conduct of this matter. Where I depose to matters on the basis of information communicated to me by Mr Sandilands or Mr Bouchet, I identify this.

Kyle Sandilands, First Applicant, Quasar Media Services Pty Ltd (ACN 672 323 830) as trustee for Quasar Media Services Trust (ABN 27 725 129 318), Second Applicant and Quasar Intellectual Property Pty Ltd (ACN 672 558 502), Third Applicant

Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) Kevin Lynch
Law firm (if applicable) Johnson Winter Slattery
Tel +61 2 8274 9555 Fax +61 2 8274 9500
Email kevin.lynch@jws.com.au and joseph.elhagg@jws.com.au
Address for service Level 14, 50 Bridge Street, Sydney NSW 2000
(include state and postcode)

[Version 3 form approved 02/05/2019]

A handwritten signature in blue ink, appearing to be 'jws'.

A handwritten signature in blue ink, appearing to be 'Kevin Lynch'.

4. Exhibited to me at the time of swearing this affidavit and marked:
 - (a) “**Exhibit KSL-1**” is a bundle of paginated documents which I refer to in this affidavit; and
 - (b) “**Confidential Exhibit KSL-2**” is a bundle of paginated documents which I refer to in this affidavit, which are confidential.

Parties and Background

5. Mr Kyle Sandilands is one of Australia's most prominent and recognisable radio broadcasters. He has been a continuous presence on Australian commercial radio for more than 25 years since his commencement on the commercial radio station known as “**2Day FM**” in 1999. Since approximately January 2004, Mr Sandilands has hosted The Kyle and Jackie O Show (the **Program**). The Program was originally broadcast on 2Day FM, before moving to its rival commercial radio station known as “**KIIS FM**” in January 2014. The Program is consistently the highest-rated FM breakfast show in the Sydney metropolitan market.
6. The Program is high-energy and controversial involving the broadcast of (amongst other things) material that is irreverent and naturally provocative, including using crude humour, ribald commentary and sexual innuendo. The Program is occasionally confrontational. Banter and tension between Mr Sandilands and Ms Henderson is a central dynamic to the Program. Mr Sandilands generally performs the role of the dominant and abrasive personality who is deliberately outrageous and often offensive, whilst Ms Henderson plays a moderating role as a warmer and more emotionally attuned character. The characters which Mr Sandilands and Ms Henderson play are designed to be an exaggeration of their respective personalities.
7. The Second Respondent, ARN Media Limited (**ARN**), is a major Australian commercial radio network and, through licencing arrangements held by its subsidiaries, operates a wide network of radio stations, including the KIIS Network, which broadcasts the Program.
8. The First Respondent, Commonwealth Broadcasting Corporation Pty Ltd (**CBC**), is the counterparty to the Agreement (defined at paragraph 11 below) the subject of these proceedings. ARN is the ultimate Australian holding company of CBC, and CBC is the corporate entity which holds the broadcasting license for the 106.5 MHz frequency (branded “**KIIS 1065**”), on behalf of ARN.
9. ARN is also the ultimate Australian holding company of Double T Radio Pty Ltd (**Double T**), the corporate entity which holds the broadcasting licence for the 101.1 MHz frequency (branded “**KIIS 1011**”), on behalf of ARN.



10. KIIS 1065 and KIIS 1011 (together, **KIIS FM**) broadcast the Program live (subject to a mandatory 30 second delay) on a daily basis, Monday to Friday from 6:00am to 10:00am Sydney time (**Live Broadcast**). The Program was also broadcast via other means, which I detail below at paragraph 12.
11. On or about 21 November 2023, Mr Sandilands, Quasar Media Services Pty Ltd (**Quasar**), Quasar Intellectual Property Pty Ltd (**Quasar IP**), CBC, and Australian Radio Network Pty Limited (**ARN PL**) (a wholly owned subsidiary of ARN) entered into an agreement under which Mr Sandilands was engaged to present the breakfast programme on the KIIS Network for a further period of 10 years, from 1 January 2025 to 31 December 2034 (the **Agreement**). The Agreement comprised the following documents, dated 21 November 2023:
- (a) the **Broadcast Services Agreement** between CBC and Quasar;
 - (b) the **Inducement Agreement** between CBC, Quasar, and Mr Sandilands;
 - (c) the **Deed of Guarantee** and Indemnity between ARN PL, Quasar, and Mr Sandilands; and
 - (d) the **Trade Mark Sub-licence Agreement** between CBC and Quasar IP.
12. The Agreement not only provides for the Live Broadcast of the Program on KIIS FM, but also provides for the broadcast of the Program (or excerpts of the Program) across the broader KIIS Network and a myriad of other mediums, including:
- (a) the simulcast of the Program live on the iHeartRadio digital application (**iHeart**), operated exclusively by ARN in Australia and New Zealand, alongside the Live Broadcast (without any 'geo-blocking', such that the Program could be listened to by national or international audiences);
 - (b) the broadcast of the Program (or excerpts of the Program) on KIIS FM at other times, including "best of" versions of the Program commonly known as "the Hour of Power with Kyle and Jackie O" (**Hour of Power**). The Hour of Power would typically be broadcast on KIIS FM from 6:00pm to 7:00pm Sydney time;
 - (c) the "syndication" of the Program (or excerpts of the Program), including the Hour of Power, across other radio stations in Australia which are owned, controlled, or operated by ARN. This includes, but is not limited to, additional metropolitan radio stations that are part of the KIIS Network (Brisbane ("**KIIS 97.3**"), Adelaide ("**KIIS 102.3**"), and Perth ("**KIIS West DAB+**")); and
 - (d) use of excerpts of the Program across various social media, websites, and other digital platforms of ARN or a syndicate radio station.



13. ARN's 2025 Full Year Statutory Accounts released on 25 February 2026 is at **pages 1 to 116** of **Exhibit KSL-1 (ARN's 2025 Annual Report)**. ARN's 2025 Annual Report states, at page 6, that ARN:
 - (a) is a "leading Australian entertainment company, delivering ... content that connects 16 million Australians each month";
 - (b) "has ownership of 58 radio stations across 33 markets and 46 DAB+ stations reaching 11.8 million people every month"; and
 - (c) through iHeart, reaches "more than 7 million Australians every month", with "more than 3.1 million registered users".
14. The Agreement is the vehicle by which the continuity Mr Sandilands desired (along with other benefits) is secured.
15. A copy of the Agreement is contained at **Confidential Exhibit KSL-2**.

The Dispute

16. On 20 February 2026, during a live broadcast of the Program, Mr Sandilands made on-air comments to Ms Henderson about her focus and phone use during the Program (**Impugned Material**). A transcript of the Impugned Material is at **pages 117 to 132** of **Exhibit KSL-1**.
17. Following 20 February 2026, Ms Henderson took leave and Mr Sandilands presented the Program alone. On 24 February 2026, Kerri Elstub (Chief Content Officer, ARN) and Ros Reeves (Chief People Officer, ARN) directed Mr Sandilands that he not contact Ms Henderson.
18. On 3 March 2026, CBC issued a document styled as "Notification of Breach and Direction to Remedy" (**Purported Notice**) to Quasar and Mr Sandilands. A copy of the Purported Notice is at **pages 133 to 135** of **Exhibit KSL-1**. The Purported Notice, inter alia, alleged that Quasar (through Mr Sandilands) had breached the Agreement by reason of the Impugned Material, would be provided 14 days to remedy this alleged breach, and purported to suspend Mr Sandilands until 18 March 2026 (**Purported Suspension**).
19. As a consequence, Mr Sandilands has been absent from daily broadcast on Kiss FM since 3 March 2026, a period of almost 3 weeks.
20. The Purported Notice contained a series of directions to Mr Sandilands and Quasar including, inter alia, that they not "make any comment publicly about the circumstances referred to", "keep the issues referred to in this letter confidential", and "not contact any of the Group" (which included all officers, directors, employees, and contractors of ARN



or its related bodies corporate) without prior written consent from ARN's solicitors
(Purported Directions).

21. On 10 March 2026, the Applicants' solicitors wrote to ARN's solicitors setting out the Purported Notice was invalid and that the breaches asserted were unsustainable. The Applicants' solicitors requested that ARN immediately withdraw the Purported Notice, Purported Suspension, Purported Directions, and otherwise comply with its obligations under the Agreement. The response indicated that the Applicants were and remained ready, willing and able to perform their obligations under the Agreement and that Mr Sandilands wished to return to broadcasting as soon as possible. A copy of that letter is at **pages 136 to 141** of **Exhibit KSL-1**.
22. On 15 March 2026, ARN's solicitors responded by indicating that ARN noted and disagreed with the contents of the 10 March 2026 letter, declining to withdraw the Purported Notice, Purported Suspension, and Purported Directions. A copy of that correspondence is at **pages 142 to 149** of **Exhibit KSL-1**.
23. On 17 March 2026, the Applicants' solicitors responded by reiterating the flawed characterisation of the Impugned Materials and the unsustainable nature of the Agreement breaches alleged. We requested that ARN withdraw the Purported Notice, Purported Suspension, and Purported Directions. This correspondence reiterated that the Applicants remained ready, willing and able to perform their obligations under the Agreement. A copy of that correspondence is at **pages 150 to 154** of **Exhibit KSL-1**.
24. At 12:03 am on 18 March 2026, ARN's solicitors sent a letter to the Applicants' solicitors, which indicated that ARN purported to terminate the BSA between it and Quasar **(Purported Termination)**. A copy of that correspondence is at **pages 155 to 158** of **Exhibit KSL-1**.
25. On 18 March 2026, the Applicants' solicitors responded to the Purported Termination setting out, relevantly, that it was invalid and that they did not accept ARN's repudiation and elected to keep the Agreement on foot. Our correspondence also indicated that the Applicants remained ready, willing and able to perform their obligations under the Agreement. A copy of that correspondence is at **pages 159 to 160** of **Exhibit KSL-1**.
26. Since 3 March 2026, ARN has, as a consequence of its Purported Suspension and Purported Termination, failed and refused to perform its obligations under the Agreement including by failing to produce, promote, and broadcast the Program on KIIS FM, by disallowing Quasar (through Mr Sandilands) to present the Program, despite being ready, willing, and able to do so.



Nature of the Harm to Mr Sandilands

27. Mr Bouchet instructs me that he has worked in Australian commercial radio for more than two decades. He began his career in Brisbane radio in 2004, producing programmes at 4BC 1116am and subsequently at 4KQ and 97.3FM for the Australian Radio Network. In 2008, he moved to Sydney, where he produced the breakfast programme on Mix 106.5 (now KIIS 106.5) and was appointed Executive Producer of that programme in 2009. From 2010 he worked as Guest and Talent Producer on The Kyle and Jackie O Show at 2Day FM. Mr Bouchet has been Mr Sandilands' manager since 31 January 2019. By reason of his longstanding professional relationship with Mr Sandilands and his extensive experience in commercial radio production, Mr Bouchet has direct knowledge of the matters deposed to in this affidavit concerning the nature and dynamics of Mr Sandilands' audience, the commercial value of his on-air presence, and the consequences of his absence from broadcast.
28. I am informed by Mr Bouchet that Mr Sandilands' career and livelihood are uniquely dependent upon the maintenance of a continuous, daily relationship with his radio audience. That relationship has been built over more than two decades of daily broadcasting.
29. Mr Sandilands and Mr Bouchet have each informed me that:
- (a) Mr Sandilands' audience loyalty is sustained by the regularity, immediacy and personal character of daily live radio broadcasting on radio and the mediums provided for in the Agreement — attributes that cannot be reproduced after a period of absence;
 - (b) every day that Mr Sandilands is absent from air, the audience relationship that Mr Sandilands has cultivated is subject to erosion as listeners migrate to competitor programmes and form new habits;
 - (c) Mr Sandilands' commercial identity — including the value of his personal brand to advertisers, sponsors and commercial partners — is directly and inextricably linked to his regular on-air presence and the audience engagement and ratings that presence generates;
 - (d) the harm flowing from Mr Sandilands' continued absence from the Program is compounding in character: the longer the absence, the more difficult and uncertain the task of audience recovery becomes;
 - (e) radio audience behaviour is such that listeners who are lost during a period of absence may not return, or may not return in the same numbers, once a broadcaster resumes. The loss is, to a significant degree, irreversible; and



- (f) damage arising from the above matters is difficult (and perhaps impossible) to quantify.
30. I am instructed by Mr Sandilands and Mr Bouchet that Mr Sandilands' platform, his daily programme, and the audience connection it sustains are being progressively and materially diminished with each day that he remains off air.
31. Mr Sandilands instructs me that the cultural currency, commercial identity and audience loyalty upon which his career depends are assets that deteriorate with each day of absence, and that this deterioration is of real concern to him.
32. The nature of Mr Sandilands' audience and reach is described in ARN's 2025 Annual Report, contained at **pages 1 to 116 of Exhibit KSL-1**. That report states at page 5:
- (a) that KIIS1065 "continues to deliver in Sydney, led by Kyle & Jackie O who are now the city's #1 FM Breakfast show for 56 consecutive surveys. The station reaches 1.14 million weekly listeners and closed the year with a 10+ station share of 9.5%, highlighting its dominance and resilience in Australia's most competitive radio market"; and
- (b) that KIIS1011 "increased its 10+ audience share from 5.1% in Survey 8 2024 to 5.4% in Survey 8 2025, while the critical 25–54 demographic grew strongly from 6.1% to 7.3% across the same period. The station now reaches 913,000 weekly listeners, providing clients with a highly engaged and commercially valuable audience".
33. The loyal audience that Mr Sandilands has built in over the past 25 years was also stated by ARN as a significant asset. ARN's 2023 Annual Report released on 22 February 2024, some three months after the negotiation and signing of the Agreement, is at **pages 161 to 268 of Exhibit KSL-1 (ARN's 2023 Annual Report)**. ARN's 2023 Annual Report states:
- (a) on page 5, that ARN "connect[s] over 8 million people to their communities each week through unparalleled live and local content" and "enrich[es] 6.8 million podcast listeners lives, who access our podcasts on demand via every available major digital audio platform", hailing the Program (with a large image of Mr Sandilands alongside Ms Henderson) as the "#1 FM Sydney Breakfast show" for 40 survey periods in a row;
- (b) on page 8, that the Agreement with Mr Sandilands reflected a "long term, significant investment in our key talent", "equivalent to other media companies investment in sports rights which bring the certainty of audiences, commercial sponsors and provide the best prospect of delivering long-term value for shareholders";

Yess

K. Bouchet

- (c) on page 17, that the Agreement was “a landmark deal that will see the world’s most successful radio show remain on air with the KIIS Network until the end of 2034”;
- (d) on page 17, that:
 - i. “Since launching KIIS 1065 in 2014, The Kyle & Jackie O Show has cemented its position as Australia’s most successful radio show. Its audience share reached an impressive 17.9% in June 2023, accompanied by a record cumulative audience of 921,000 listeners, marking a milestone unmatched by any other show”;
 - ii. “ARN and The Kyle & Jackie O Show’s partnership has seen the show maintain its position as #1FM breakfast show for an incredible 40 surveys straight while also claiming #1 overall in Sydney, six of eight times across 2023”;
 - iii. “In Sydney, ARN has maintained its Breakfast duopoly leadership with KIIS 1065’s Kyle & Jackie O and WSFM’s Jonesy & Amanda finishing in the #1FM and #2FM spots respectively in 2023”; and
 - iv. the Program had “Record breaking come, reaching more listeners than any other show in the country”, boasting a “Total Audience Reach Number (includes Hour of Power)” of 1,396,000 weekly listeners.

34. The most recent survey period results published by GfK Media Measurement, the official provider of radio audience measurement in Australia, are at **pages 269 to 275 of Exhibit KSL-1 (GfK S1 2026 Sydney Report)**. The GfK S1 2026 Sydney Report reflects the survey period of 18 January 2026 to 28 February 2026. Despite Ms Henderson’s absence from the Program for a proportion of that survey period from 20 February 2026 onwards, the GfK S1 2026 Sydney Report:

- (a) states, at page 1, that KIIS1065 maintained its 12.7% breakfast radio audience share, reflecting an increase in the Program’s dominance as the number one FM Breakfast show to 57 consecutive survey periods; and
- (b) states, at page 2, that KIIS1065 maintained a cumulative audience of 1,039,000 weekly listeners across the breakfast (5:30am – 9:00am, during which the Program is broadcast), and drive (4:00pm – 7:00pm, during which the Hour of Power is broadcast) time slots.

35. Mr Sandilands’ current 20 day absence from broadcast radio is the largest period of continuous absences in Mr Sandilands 25 year career, outside of annual leave timed to coincide with non-survey periods. I am instructed that Mr Sandilands’ continued absence from broadcast radio and his audience of at least a million listeners each week, and the

[Handwritten signature]

[Handwritten signature]

corresponding progressive deterioration of same, will irreparably harm in a way which cannot be compensated through ordinary damages.

Grounds for Expedition

36. The Applicants seek an order that the proceedings be expedited, including for the following reasons:
- (a) If the hearing of the proceeding does not take place at the earliest convenient time, Mr Sandilands will continue to suffer the ongoing erosion of his audience, his commercial identity and his livelihood. Each day of continued absence from air compounds the harm in a manner that is irreversible and incapable of adequate assessment in monetary terms. This is not a case in which the harm is confined to lost income; it extends to the progressive destruction of a unique professional asset — a daily audience relationship — that has been built over 25 years and cannot simply be reconstituted after a period of interruption;
 - (b) Mr Sandilands' livelihood is directly and immediately at stake. His capacity to earn income from broadcasting, from associated media engagements, and from advertising and sponsorship arrangements is dependent upon his being on air and maintaining the audience engagement that his daily presence generates. Each day he remains off air diminishes that capacity, potentially permanently;
 - (c) the Agreement has approximately nine years to run. The subject matter of the dispute — Mr Sandilands' platform, his programme, and the audience it sustains — is being diminished in the interim. The grant of final relief at trial, even if entirely favourable to Mr Sandilands, will be of reduced practical utility if his audience has been substantially eroded in the meantime; and
 - (d) the proceedings involve a relatively confined factual matrix and discrete legal questions involving the construction of a number of terms of the Agreement and characterisation of CBC conduct against the statutory norm set out in s 21(1) to the *Australian Consumer Law 2010* (Cth). The hearing of the Applicants' application is estimated to be about 2 days. These proceedings should not occupy substantial Court time.
37. I also note that:
- (a) an order for specific performance is sought by the Applicants. Further, orders under s 237(1) of the ACL requiring, in effect, the reinstatement of Mr Sandilands are also sought. The utility of granting this relief may diminish the longer Mr Sandilands is off air. Moreover, audience attrition, erosion of advertiser confidence and diminution of Mr Sandilands' personal brand will occur. It is difficult to



contemplate how these intangibles could be compensated by an award of damages;

- (b) restoring Mr Sandilands to air does not require ARN to undertake any novel or onerous course of conduct. It requires only that ARN continue to perform the Agreement in the manner in which both parties had been performing it prior to the dispute. The infrastructure of the Program, the production team and the broadcast slot already exist. Mr Sandilands is willing to work with a co-presenter or, if Ms Henderson is willing, with Ms Henderson. He presented the Program without Ms Henderson and without issue on previous occasions, including in the days immediately following 20 February 2026. ARN has not considered or attempted to allow either such course; and
- (c) there is a significant public interest in the resolution of this dispute. Mr Sandilands' programme has a substantial daily audience. His absence from air affects not only Mr Sandilands personally but also his co-host, the production staff, advertisers, and his listeners. In the event the matter is resolved in Mr Sandilands' favour, the harm to all of these interests is arrested; if it is not resolved expeditiously, the damage to the audience relationship and the commercial value of the programme will continue to compound, potentially rendering the ultimate vindication of Mr Sandilands' contractual rights a hollow one.

Communications with the Respondents about expedition

38. On 20 March 2026:

- (a) at approximately 6:00pm, I caused unsealed copies of the Originating Application and Concise Statement to be served on ARN's solicitors. A copy of that correspondence is at **pages 276 to 291 of Exhibit KSL-1**; and
- (b) at approximately 7:58pm, I caused an email to be sent to ARN's solicitors, requesting that ARN confirm their position on the Applicants' application for expedition and proposed timetable by 2:00 pm on the next business day. A copy of that correspondence is at **pages 292 to 294 of Exhibit KSL-1**.

39. On 23 March 2026 at approximately 10:15am, ARN's solicitors responded by letter stating, amongst other things, that ARN were not yet in a position to confirm their stance on expedition. A copy of that correspondence is at **pages 295 to 298 of Exhibit KSL-1**. At the time of swearing this affidavit, ARN's solicitors have not yet confirmed their stance on expedition.



Sworn / Affirmed by the deponent
at Sydney
in New South Wales
on 23 March 2026
Before me: *ALISON JONES*

)
)
)
)



Signature of deponent


Signature of witness

Name: Alison Jones
Capacity: Solicitor