

## NOTICE OF FILING

### Details of Filing

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| Court of Filing           | FEDERAL COURT OF AUSTRALIA (FCA)   |
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| Date Accepted for Filing: | 23/04/2026 10:10:23 AM AEST  |
| File Number:              | NSD442/2026  |
| File Title:               | KYLE DALTON SANDILANDS & ORS v COMMONWEALTH<br>BROADCASTING CORPORATION PTY LTD ACN 000 019 796 & ANOR |
| 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.



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD442/2026

**Kyle Dalton Sandilands and others**

Applicants

**Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) and another**

Respondents

No: NSD507/2026

**Jacqueline Ellen Henderson and another**

Applicants

**Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) and another**

Respondents

## **RESPONDENTS' SUBMISSIONS FOR CASE MANAGEMENT HEARING**

1. The Respondents' position is that (a) the Proceedings should be heard together and (b) though the Respondents do not wish to delay the Proceedings, there is nothing about them that would justify expedition. The Respondents rely upon the affidavit of Ms Nerida Jessup, solicitor, affirmed 21 April 2026 (**Jessup Afft**).

### **I. THE PROCEEDINGS SHOULD BE HEARD TOGETHER**

2. The two proceedings involve overlapping facts and circumstances. Jessup Afft also addresses overlapping issues in each Proceeding that require evidence.<sup>1</sup> Some of the more obvious points of commonality that arise from the pleadings are now set out.
3. *First*, both Proceedings arise from the same business, radio show, and business relationships. They thus involve basic common facts including the nature of the business and the show, the relationships, the people involved, and underlying events.
4. *Secondly*, each Proceeding requires the interpretation and operation of very similar contracts: (eg Sandilands Defence [6(b)] and [11(b)], Henderson Defence [5(b)]). Accordingly, the commercial context and objects of those contracts are common to each proceeding: see eg Sandilands Defence [6(b)(x)]-[6(b)(xxi)], Henderson Defence [10(d)(i)]-[10(d)(xii)], [11(c)(i)].
5. *Thirdly*, Mr Sandilands relies upon CBC's conduct in terminating, or purporting to terminate, the Henderson BSA in several ways, including in alleging that it constituted unconscionable conduct: Sandilands SoC [17], [19], [24], and [32]. The termination of the Henderson BSA is at the heart of the Henderson proceedings. Moreover, to defend the Sandilands Proceeding, the Respondents plead that CBC was entitled to, and did, terminate the Henderson BSA and plead the factual and legal basis for it (Sandilands Defence [16P]-[16V], [17(b)], [24], and [32]). The Henderson Applicants are thus necessary and proper parties to the Sandilands Proceeding. The cross-claim in the *Sandilands* Proceeding therefore seeks a declaration that the *Henderson* BSA was validly terminated, and the Henderson Applicants are parties in both Proceedings.
6. *Fourthly*, the conduct that the Respondents rely upon in the Sandilands Proceeding as being "serious misconduct" and breaches of contract is largely relied upon by Ms Henderson in the Henderson Proceeding: cf Henderson SOC [14]-[35] with Sandilands Defence [16]-[16Z]. There will inevitably be a significant overlap of subject matter, witnesses, and evidence.

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<sup>1</sup> See eg Jessup Afft [15(b)], [16(b)], and [25(a)] (Mr Sandilands' conduct), [15(c)], [16(c)], [17] and [27] (effects of Ms Henderson not presenting), [15(e)] and [25(c)] (reasons for and circumstances of termination of Henderson BSA), [16(a)] and [26(a)] (context/surrounding circumstances of the services agreements).

7. *Fifthly*, the Respondents in each of the Proceedings raise the same quantification issue, being the loss suffered by the Respondents as a result of Ms Henderson refusing to present with Mr Sandilands. That issue also relates to whether Ms Henderson refusing to present with Mr Sandilands affected or compromised the ‘Program Services’ and caused serious and imminent injury to CBC’s business: Sandilands SOC [17], [18].
8. While the proceedings remain at an early stage, there is likely to be substantial overlap in terms of evidence, witnesses and issues. As to witnesses, the overlap is likely to involve at least Ms Henderson, expert witnesses, witnesses dealing with commercial and business issues, and witnesses to Mr Sandilands’ interactions with Ms Henderson: see Jessup Afft [20], [30], [34].
9. Jessup Afft [34] opines that there will be considerable efficiencies if the Proceedings are heard together. Plainly that is correct.

## II. LACK OF URGENCY

10. In the Henderson Proceeding no-one seeks expedition; the Henderson BSA has been terminated: Henderson SoC [48], [62], Henderson Defence [48(a)], [59(c)(i)].
11. The Sandilands Proceeding does not warrant expedition. Three contentions are made.
12. *First*, the prospects of an order for specific performance are vanishingly small. Specific performance is *not available* if the contract involves the performance by one party of services to the other or requires their continued co-operation.<sup>2</sup> Even if that is a matter of discretion rather than power,<sup>3</sup> whatever narrow exceptions there are to this principle do not apply here.<sup>4</sup> To the contrary, the nature of the contract and the breakdown of the parties’ relationship is such that this case nicely illustrates rationales for the general principle.<sup>5</sup>
13. The **relationship between the parties** is hopelessly broken.<sup>6</sup> If there was any doubt about that from the fact of the litigation and the Respondents’ notice to terminate the Quasar BSA, the Court would note the specific matters pleaded at Sandilands Defence [31A]-[31N]. There is unlikely to be debate about their fundamental accuracy. An order forcing CBC to put Mr Sandilands back on the air is unlikely given (eg) his attitude is that “*the bosses have no control whatsoever over what we do on this show. Zero. None*”, and “*I don’t give a shit [about shareholders]. I got my money*”: Sandilands Defence [31A]. The Court might be especially reluctant to *require* Mr Sandilands be returned to radio given his attitude to sub judice contempt:

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<sup>2</sup> *JC Williamson Ltd v Lukey* (1931) 45 CLR 282 at 298 (Dixon J).

<sup>3</sup> As to which see *JC Williamson* at 298, D Ong, *Ong on Specific Performance* (2013) at 99, and D Heydon, *Heydon on Contract: The General Part* (2019) at [27.460], [27.530].

<sup>4</sup> Cf *Downe v Sydney West Area Health Service (No 2)* (2008) 71 NSWLR 633 at 686 [442] – 688 [455] (Rothman J).

<sup>5</sup> As to which see *Heydon on Contract* at [27.480]-[27.510].

<sup>6</sup> See eg *Tradition Australia Pty Ltd v Gunson* (2006) 152 IR 395 at [27]-[30] (Barrett J).

*“we have to hide from the audience that I was threatened with contempt of court...I don’t give a shit. I’d rather go to jail. I’d rather be raped in jail than puppeteered by losers. ... Judges can shove it in their ass. ACMA can shove it in their ass. So can the management of the radio station. Two hands straight up the anus. And clap”*: Sandilands Defence [31F].

14. The lack of trust and confidence between the parties is particularly acute in circumstances where Mr Sandilands’ role as a radio presenter naturally exposes the Respondents to risks relating to defamation, contempt, obscenity, and disciplinary action by the regulator, ACMA – in addition to risks about workplace safety that this case has brought squarely in view.
15. A decree would require **court supervision** as to whether the parties had complied with it when they disagree over their rights and obligations.<sup>7</sup> The Quasar BSA requires co-operation for many years and gives Quasar a high degree of discretion in providing services: see eg cl 3(b). It also includes specific clauses that require consultation and co-operation, including terms that give Quasar the right to give far reaching directions to CBC: see cll 9, 2A(c), (d), and (e). Specific performance would turn every dispute about these matters into a contempt case, and require CBC to make every commercial decision in its business under the threat of contempt.
16. There is a **risk of evasion**. The relationship has broken down, and the services involve live performance. There is every possibility that Quasar (through Mr Sandilands) would not comply with its obligations in ways that are impossible to police; *“for who could say whether the imperfections of performance were natural or self-induced?”*<sup>8</sup>
17. The Sandilands Applicants’ position is not improved by asserting, as occurred at the last case management hearing, that what is sought is specific performance *in specie*.<sup>9</sup> This assertion seemed to involve some confusion, because it was *also* asserted that what was sought is specific performance *“in the true sense”*.<sup>10</sup> But specific performance ‘properly so called’ (where there is an executory agreement requiring parties to adopt some other instrument or do some other act which then governs the parties’ rights and obligations) is usually identified in *contradistinction* to specific performance ‘*in specie*’ (where there is a final instrument and the parties are ordered to do something to perform their obligations under it).<sup>11</sup> More importantly, it is precisely in cases of specific performance *in specie* where the Court has developed principles about its reluctance to decree specific performance for contracts for services.

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<sup>7</sup> See eg *Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] AC 1 at 13 (Lord Hoffman).

<sup>8</sup> *CH Giles & Co Ltd v Morris* [1972] 1 WLR 307 at 318-319 (Megarry J).

<sup>9</sup> Transcript of 27 March 2026 at page 24, line 14-16.

<sup>10</sup> Transcript of 27 March 2026 at page 24, line 12-14.

<sup>11</sup> See the discussion in *Heydon on Contract* at [27.50]-[27.70] and *Ong* at 1-5.

18. In short, such an order would require CBC, on threat of contempt, to remain unwillingly in a broken services relationship for many years. It would require CBC, at hazard, to offer up its employees, studio, equipment, and radio licence. It is submitted that the prospects of an order for specific performance are so remote that they can be given no weight in the present analysis.
19. This is a case about money. Whether the Sandilands Applicants' claims for money are successful or unsuccessful, expedition will not have made any difference. Quasar will continue to be paid its fees, whether Mr Sandilands is on the air or not. Mr Sandilands is using the nominal prospect of an order for specific performance to say that Quasar's money claim should jump the queue over the public. That is not a justified use of the power of expedition.
20. *Secondly*, that dispositive point aside, it is submitted that specific performance is not relief that has any connection with the claims actually made.
21. The Sandilands Applicants seek to justify expedition by reference to prejudice to Mr Sandilands: Lynch Afft [36]. But Mr Sandilands is not a party to the Quasar BSA. His claim for specific performance is thus part of a claim for relief for unconscionable conduct: Sandilands SoC [39(b)]. Leaving aside the questionable assumption that the Court might decree specific performance of a contract at the suit of a stranger to it, that claim for relief is a nonstarter. That is because specific performance is not apt to prevent or reduce, and is not even directed to, the loss Mr Sandilands claims to have suffered from the alleged unconscionable conduct.
22. Mr Sandilands' claimed loss is humiliation and loss of reputation because of the "suggestion" that his conduct justified giving him a default notice, and a notice of termination: Sandilands SoC [37]. But an order for specific performance under s 237 of the *Australian Consumer Law* can *only* be made to prevent or reduce the loss or damage suffered or likely to be suffered from the unconscionable conduct: see s 237(2)(b). An order for specific performance of the Quasar BSA would not prevent or reduce any humiliation or loss of reputation that came from issuing those notices, and certainly would not be necessary or appropriate for that purpose.
23. While Quasar/Quasar IP seek specific performance (Sandilands SoC [31], [39(b)]) there is no pleading (or suggestion in Lynch Afft) they will suffer any loss other than not receiving payment under the relevant contracts. *A fortiori* there is no suggestion or evidence that expedition is justified because of prejudice that may be caused to them by delay in receiving payment. It follows that no reason has been offered as to why specific performance might be decreed for Quasar/Quasar IP, let alone why any delay in obtaining such a decree justifies expedition.
24. *Thirdly*, there is no connection between the loss or damage that is *actually alleged by Mr Sandilands in his pleading* and the loss that Mr Lynch says, on information and belief, that Mr Sandilands is suffering to justify expedition. There is no pleaded allegation that Mr Sandilands is suffering any loss, at all, from not being on the radio.

25. For completeness, to the extent necessary given what is said above, Lynch Afft [27]-[31], [35], and [36(a)]-[36(c)] should be given no weight. This is opinion evidence given on information and belief, by two persons who (a) are far from independent and (b) have placed another person between themselves and their oath so as to avoid the possibility that their evidence may be tested in cross-examination. Moreover, the evidence is high level, *ipse dixit* assertions about vague concepts like ‘commercial identity’ and ‘cultural currency’ (see eg Lynch Afft [29(c)], [31]). It is self-serving evidence of the most transparent kind, which the Respondents are not able to fairly test. If it is admitted at all, it should be given no weight.

### **III. ORDERS SOUGHT**

26. The orders sought by the Respondents are annexed. They provide for the pleadings to be closed, the Proceedings heard together, and evidence served.

23 April 2026

Tom Blackburn  
Banco Chambers

**Counsel for the Respondents**

Peter Gaffney  
7 Wentworth Selborne

**ANNEXURE**

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD442/2026

**Kyle Dalton Sandilands and others**

Applicants

**Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) and another**

Respondents

No: NSD507/2026

**Jacqueline Ellen Henderson and others**

Applicants

**Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) and another**

Respondents

**ORDER**

**JUDGE:** JUSTICE STEWART

**DATE OF ORDER:** 24 April 2026

**WHERE MADE:** Sydney

**THE COURT ORDERS THAT:**

**Close of pleadings**

1. By [##] 2026:
  - (a) the Applicants in proceedings NSD442/2026 (**Sandilands Proceeding**) and NSD507/2026 (**Henderson Proceeding**) are to file and serve any Reply; and
  - (b) the Cross-Respondents in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any Defence to Cross-Claim.
2. By [##] 2026, the Cross-Claimants in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any Reply.

**Directions for the matters to be case managed and heard together**

3. Pursuant to rules 1.32 and 30.11 of the *Federal Court Rules 2011* (Cth), the Henderson Proceeding and the Sandilands Proceeding are to be heard together, with:
  - (a) evidence in each proceeding being evidence in the other;
  - (b) any document required to be produced to all parties in either proceeding also required to be produced to all parties in the other proceeding; and
  - (c) any document produced in either proceeding able to be used for the purposes of the other proceeding.

**Evidence**

4. By [##], the Applicants in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any affidavit evidence in support of their respective claims by [##].
5. By [##], the Respondents in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any affidavit evidence:
  - (a) in response to the Sandilands Proceeding and the Henderson Proceeding; and
  - (b) in support of their cross-claims.
6. By [##]:
  - (a) the Applicants in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any affidavit evidence in reply; and
  - (b) the Cross-Respondents in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any affidavit evidence in response to the cross-claims.
7. By [##] the Cross-Claimants in the Sandilands Proceeding and the Henderson Proceeding are to file and serve any affidavit evidence in reply.

**Other**

8. The Sandilands Proceeding and the Henderson Proceeding be listed for case management on [##].
9. Order 4 of the orders of Stewart J dated 27 March 2026 is vacated.
10. The parties have liberty to apply on 3 days' notice in writing.