

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 59
Rule 29.02(1)

Affidavit

No. NSD442 of 2026

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

Kyle Dalton Sandilands and others named in the Schedule

Applicants

Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796)

First Respondent

Australian Radio Network Pty Ltd (ACN 065 986 987)

Second Respondent

Affidavit of: **Nerida Jessup**
Address: Level 34, 161 Castlereagh Street, Sydney NSW 2000
Occupation: Solicitor
Date: 17 April 2026

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Filed on behalf of (name & role of party) Commonwealth Broadcasting Corporation Pty Ltd, First Respondent
Australian Radio Network Pty Ltd, Second Respondent
Prepared by (name of person/lawyer) Nerida Jessup
Law firm (if applicable) Herbert Smith Freehills Kramer
Tel +61 447 975 133 Fax _____
Email nerida.jessup@hsfkramer.com
Address for service Level 34, 161 Castlereagh Street, Sydney NSW 2000
(include state and postcode)

I, Nerida Jessup, of 161 Castlereagh Street, Sydney NSW 2000, affirm:

1. I am a partner of the law firm Herbert Smith Freehills Kramer (**HSF Kramer**) which represents the First Respondent (**CBC**) and the Second Respondent (**ARN**) (collectively, **the Respondents**) in their defence of the proceedings designated NSD442/2026 (**Sandilands Proceedings**) and the proceedings designated NSD507/2026 (**Henderson Proceedings**) (collectively, **the Proceedings**). I have conduct of the Proceedings on behalf of the Respondents.
2. I have been a solicitor for 20 years and maintain a practice in employment and safety. I have particular, and extensive, experience in dealing with safety complaints (including psychosocial health and safety issues) and related prosecutions.
3. I make this affidavit in relation to the matters referred to in the Court's email of 2 April 2026, in particular:
 - a. Whether the two proceedings should travel together, including whether they should be heard together; and
 - b. What level of expedition or urgency there is in either Proceeding, but particularly having regard to what the prospects are of an order for specific performance ultimately being made in the Sandilands proceeding.
4. In short, the Respondents' position on these matters is:
 - a. in view of the obvious overlap in the circumstances giving rise to the claims in the Proceedings, the Proceedings should be case managed together and heard together; and
 - b. Both proceedings are in substance about money only and, while the Respondents have no desire to unduly delay them, neither of them involve a degree of expedition or urgency such as would justify them being given preferential treatment over other matters.
5. The Respondents' position on these matters will be addressed in more detail in submissions submitted in accordance with the Court's direction, by 10:15 am on 23 April 2026. This affidavit addresses the factual matters that will underlie those submissions (noting that to a large extent, the nature of the issues in the litigation and the evidence that will be required is evident from the pleadings themselves).
6. Unless otherwise stated, I make this affidavit from my own knowledge. Where I make statements based on information provided to me by another person, I identify that person and the basis on which I have received that information and believe that information to be true.



7. By making this affidavit, I do not intend, and have no authority, to waive privilege or confidentiality in any communication, or record of communication, that is the subject of CBC's or ARN's legal professional privilege or confidentiality. Nothing in this affidavit ought to be construed as constituting a waiver of privilege or confidentiality.

A. Procedural steps since the last case management hearing

8. A case management hearing in the Sandilands Proceedings occurred on 27 March 2026. A copy of the transcript is annexed to this affidavit and marked "Annexure NJ-1".
9. On 30 March 2026, the Henderson Proceedings were commenced.
10. On 1 April 2026, a Notice of Acting was filed in the Henderson Proceedings.
11. On 7 April 2026, the Sandilands Applicants filed and served their statement of Claim (**Sandilands SoC**).
12. On 21 April 2026, being the date of this affidavit, the Respondents filed their defence and cross claim in the Sandilands Proceedings. The Cross-respondents are the Sandilands Applicants, and Ms Henderson and Henderson Media, being the Henderson Applicants.
13. On 21 April 2026, being the date of this affidavit, the Respondents filed their defence and cross claim in the Henderson Proceedings. The Cross-respondents are the Henderson Applicants.

B. The evidence to be required – Sandilands Proceedings

14. I have considered the evidence that, in my opinion, based on my experience, is likely to be sought to be adduced in the Sandilands Proceedings. The following expresses my present opinion on that matter. As to the evidence adduced by the Respondents, the exact nature of the evidence that they will serve will be the subject of instructions in due course and I do not currently have instructions in respect of what evidence will be served.
15. Focussing initially on the evidence relevant to matters raised specifically by the Sandilands SoC, in my opinion, the following evidence is likely to be sought to be adduced in the Sandilands Proceedings:
- a. In respect of the particulars relied upon about the nature of the "relationship" in Sandilands SoC [16] and [22], it is my opinion that it is likely, and I expect, that both the Sandilands Applicants and the Respondents will seek to adduce evidence about the nature of that "relationship". This is likely to consist of business records and affidavit evidence of Mr Sandilands, people involved in the Respondents' business, or both.
 - b. In respect of the allegations in Sandilands SoC [16], [21] and [22] to the effect that Mr Sandilands did not engage in serious misconduct or a serious or persistent



breach of conduct, it is my opinion that it is likely, and I expect, that at least the Respondents will seek to adduce evidence about (a) the conduct in question and (b) prior conduct of Mr Sandilands, which prior conduct is pleaded in the defence to the Sandilands Proceedings filed by the Respondents on 21 April 2026 (**Sandilands Defence**) as being relevant to whether the misconduct or breaches of contract in question were objectively serious or persistent in all the circumstances. This is likely to consist of both business records and affidavit evidence of Ms Henderson, her manager and people involved in the Respondents' business.

- c. In respect of the allegations in Sandilands SoC [17] and [18] about serious and imminent injury to CBC's business and affecting or compromising the Program Services (as defined in the Sandilands Defence), it is my opinion that it is likely, and I expect, that the Respondents will seek to adduce evidence about how and to what extent the alleged conduct both caused serious and imminent injury and affected the Program Services. These issues are also raised by Sandilands Defence [20(b)] and [20A]. This is likely to consist of business records, affidavit evidence of people in the Respondents' business, and expert evidence.
- d. In respect of the allegation in Sandilands SoC [28], since Mr Sandilands' knowledge is uniquely within his mind, it is my opinion that it is likely, and I expect, that Mr Sandilands will give evidence about this matter.
- e. In respect of the allegation in Sandilands SoC [32] that it was unconscionable for CBC to terminate the Henderson BSA, it is my opinion that it is likely, and I expect, that the Respondents will lead evidence directed to establishing that the Henderson Applicants repudiated the BSA and that CBC was entitled to terminate it. Although the evidence of the alleged repudiatory conduct will be limited to the relevant correspondence, the evidence relevant to this issue includes evidence directed to establishing the surrounding circumstances of the Henderson BSA (as to which see [16.a]) below).
- f. In respect of the allegation in Sandilands SoC [37], it is my opinion that it is likely, and I expect, that the Sandilands Applicants will lead evidence:
 - i. from Mr Sandilands as to his alleged humiliation; and
 - ii. experts as to whether he has had any loss of reputation and if so the quantification, if any, of that loss, which I anticipate will be an accounting and commercial industry expert, respectively. In responding to this evidence, I expect that the Respondents would also adduce expert evidence of the same kind.



- g. In respect of the allegations at Sandilands SoC [36] and [38], it is my opinion that it is likely, and I expect, that the Respondents will also lead evidence regarding what actual loss could plausibly have been suffered, taking into account principles about the likelihood of Mr Sandilands obtaining alternative engagement, and deductions for vicissitudes and the present value of money not otherwise presently due and payable. I am of the view that such evidence would likely need to come from experts with accounting qualifications and industry experience, respectively.

16. Focussing on the evidence relevant to matters raised specifically by the Sandilands Defence, in my opinion, the following evidence is likely to be sought to be adduced in the Sandilands proceedings:

- a. In respect of the allegations made by the Respondents about the surrounding circumstances of the Henderson BSA and Quasar BSA in [6(b)], [9(b)] and [11(b)], it is my opinion that it is likely, and I expect, that they will lead evidence about the circumstances in which those contracts were entered into, including:
- i. evidence about the history of 'The Kyle and Jackie O Show';
 - ii. evidence about the mutually known pre-contractual communications between the parties;
 - iii. evidence about the nature of the Sydney commercial radio market; and
 - iv. evidence about the role of censors.

This is likely to consist of business records, affidavit evidence of people involved in the Respondents' business, and expert evidence about the industry.

- b. In respect of the allegations made by the Respondents about Mr Sandilands' conduct pleaded in Sandilands Defence [16A]-[16V], which is relied upon by the Respondents as either being, or as being relevant to the characterisation of, serious misconduct or serious or persistent breaches of contract (see Sandilands Defence [16Y]-[16Z], [20(b)], [20A] and [25A]), it is my opinion that it is likely, and I expect, that the Respondents will seek to adduce evidence about that conduct. I expect that they would seek to adduce evidence from Ms Henderson, her agent and other persons involved in the business of the Respondents.
- c. In respect of the allegations made by the Respondents at Sandilands Defence [20A], it is my opinion that it is likely, and I expect, that the Respondents will seek to adduce evidence about how and to what extent the alleged conduct both caused serious and imminent injury and affected or compromised the Program Services, and how it caused serious and imminent risk to the health and safety of the person.

I expect they would seek to adduce evidence from Ms Henderson, her agent, other persons involved in the business of the Respondents and expert evidence.

- d. In respect of the allegations made by the Respondents at Sandilands Defence [31]-[31N], it is my opinion that it is likely, and I expect, that the Respondents will adduce evidence about all of the factual matters alleged in those paragraphs and about why, in the circumstances, an order for specific performance would not be appropriate, including because of those pleaded factual matters and the particular risks that would arise in the specific context of commercial radio. I expect that they would seek to adduce evidence from persons involved in the business of the Respondents, and potentially an expert.
17. In respect of the cross-claim that the Respondents have filed against the Sandilands Applicants on 21 April 2026, it is my opinion that it is likely, and I expect that the Respondents will seek to adduce evidence as to the loss that their business has and will sustain as a result of Ms Henderson not presenting the Program. I expect that such evidence would need to be provided from multiple experts including experts with relevant industry experience and accounting / financial expertise.
 18. The pleadings have not closed in respect of the litigation referred to above. The Sandilands SoC was filed 14 days ago. The Sandilands Defence was filed today, as was the cross-claim in the Sandilands Proceedings. No evidence has yet been served by any party. Moreover, in the time since this matter was last before the Court, the Respondents have been served with new proceedings (the Henderson Proceedings) and in that time have prepared, filed and served a defence and cross-claim in those proceedings.
 19. In those circumstances, the Respondents have not yet prepared their evidence. The evidence that they will ultimately serve will depend upon a number of matters yet to be determined, including whether there is any narrowing of issues in dispute as a result of any Reply, and the contents of the defence to the cross-claim filed in the Sandilands Proceedings. Above, I have done my best to identify the evidence that I expect my client will instruct me and HSF Kramer to prepare, and if appropriate, serve.
 20. On that basis, doing the best I can, I estimate that the hearing of the Sandilands Proceedings (including the cross-claim) would involve:
 - a. Mr Sandilands, Ms Henderson and Ms Henderson's manager being called to give evidence;
 - b. potentially up to 12 lay witnesses whom I have so far identified as being witnesses to the conduct of Mr Sandilands relied upon in the Sandilands Defence;

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

- c. 1 or perhaps 2 additional lay witnesses who can give evidence about the commercial issues referred to above (although it may be possible for those witnesses to be drawn from the lay witnesses already referred to above); and
 - d. 3 expert witnesses, being an expert in accounting, an expert in the commercial radio market and potentially an expert in work health and safety.
21. Doing the best I can, I estimate that it would take the Respondents 2-3 months to prepare that evidence from the time that the Sandilands Applicants' evidence is received. That is, in my opinion, the quickest it could reasonably be prepared is in 2 months. In my opinion, it would be difficult to prepare this evidence even in 3 months.
22. In relation to document production processes, it is my opinion that the Respondents would seek to issue:
- a. subpoenas to Ms Henderson and her manager in relation to broadly any documents or recordings they possess in relation to:
 - i. the bullying that Ms Henderson claims Mr Sandilands has engaged in;
 - ii. her complaints about Mr Sandilands' conduct; and
 - b. notices to produce to Mr Sandilands in relation to documents going to damages, such as documents regarding the likelihood of alternative engagement and documents regarding his claims of humiliation and loss of reputation.
23. Doing the best I can, in my opinion, the hearing of this matter will take at least 10 hearing days. In making that estimate, I have assumed conservatively that most of the lay witnesses other than Mr Sandilands and Ms Henderson will not be cross-examined for any extensive period of time. If that assumption is wrong, then it seems to me that more than 10 hearing days will be required. Given the issues at stake in the case, in my opinion that is not a disproportionate hearing time.
24. The Respondents are considering whether to bring other applications, such as an application for security for costs. However, in my opinion, any such application(s) would not affect the critical path for hearing.

C. The evidence to be required – Henderson Proceedings

25. Focussing initially on the evidence relevant to matters raised specifically by the statement of claim filed by the Henderson Applicants on the Henderson Proceedings on 30 March 2026 (**Henderson SoC**), in my opinion, the following evidence is likely to be sought to be adduced in the Henderson Proceedings:
- a. In respect of the matters alleged in Henderson SoC [14]-[29] in relation to previous conduct of Mr Sandilands and communications about that with the Respondents'

personnel, it is my opinion that it is likely, and I expect, that the Respondents will need to adduce evidence about what occurred to the extent that there is dispute about it. This is likely to consist of both business records and affidavit evidence of Ms Henderson, her manager and people involved in the Respondents' business.

- b. In respect of the matter alleged in Henderson SoC [33] that Ms Henderson had previously contended in correspondence that CBC had not acted in compliance with its obligations to provide a safe place of work, it is not presently alleged in these proceedings that this is the case. Any such allegation is denied, see Henderson Defence [33(c)]. If such an allegation is made in these proceedings, it is my opinion that it is likely, and I expect, that the Respondents will need to adduce a great deal of evidence about that topic and it is likely that Mr Sandilands, Henderson Media and Quasar would be respondents in a cross-claim for contribution.
- c. In respect of the matter alleged in Henderson SoC [48] in relation to the alleged reasons for terminating the Henderson BSA, it is my opinion that it is likely, and I expect, that the Respondents will need to adduce evidence about the reasons for termination (in circumstances where the relevant legislative provisions impose a reverse legislative onus on CBC). This is likely to consist of both business records and affidavit evidence of people involved in the Respondents' business.
- d. In respect of the matters alleged in Henderson SoC [50] and [62] in relation to alleged loss or damage regarding lost fees and lost opportunity, it is my opinion that it is likely, and I expect, that:
 - i. the Henderson Applicants would seek to adduce evidence of what they say is the value of the lost opportunity particularised, including presumably expert evidence dealing with forecasts of future revenue and fees, the probability of those revenue and fees being obtained, the value of contra air time, and the probability of that contra air time being obtained;
 - ii. the Respondents would seek to adduce evidence (including expert evidence as to those matters) and as to the likelihood of Ms Henderson obtaining alternative engagement, and deductions for vicissitudes and the present value of money not otherwise presently due and payable. I am of the view that such evidence would likely need to come from experts with accounting qualifications and industry experience, respectively.

This is likely to consist of business records, affidavit evidence of people involved in the Respondents' business, and expert evidence about the industry.



- e. In respect of the matters alleged in Henderson SoC [50] and [74] in relation to alleged damage to reputation, career and personal standing, it is my opinion that it is likely, and I expect, that:
- i. the Henderson Applicants would adduce evidence as to the nature of that damage and the quantification of it, likely consisting of an industry expert and an accountant;
 - ii. the Respondents would adduce evidence of the same nature.
- f. In respect of the matters alleged in Henderson SoC [50] as to Ms Henderson's alleged pain, suffering, humiliation, hurt and distress, it is my opinion that it is likely, and I expect, that:
- i. the Henderson Applicants would seek to adduce evidence as to those matters from Ms Henderson herself and perhaps from a medical expert;
 - ii. the Respondents would seek to adduce evidence as to the alleged psychological illness that Ms Henderson claims to have suffered prior to any alleged unlawful conduct of the Respondents that is relied upon in the Henderson SoC.

26. Focussing on the evidence relevant to matters raised specifically by the defence to the Henderson Proceedings filed by the Respondents on 21 April 2026 (**Henderson Defence**), in my opinion, the following evidence is likely to be sought to be adduced in the Sandilands Proceedings:

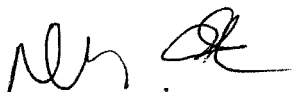
- a. In respect of the allegations made by the Respondents about the surrounding circumstances of the Henderson BSA in Henderson Defence [10(d)], it is my opinion that it is likely, and I expect, that they will adduce evidence about the circumstances in which those contracts were entered into, including:
 - i. evidence about the history of 'The Kyle and Jackie O Show';
 - ii. evidence about the mutually known pre-contractual communications between the parties; and
 - iii. expert evidence about the nature of the Sydney commercial radio market.
- b. In respect of the allegations made by the Respondents in Henderson Defence [28(b)] and [29(b)] about the steps taken by ARN in response to the events of 20 February 2026, it is my opinion that it is likely, and I expect, that they will adduce evidence about those matters.

27. In respect of the cross-claim that the Respondents have filed against the Henderson Applicants on 21 April 2026, it is my opinion that it is likely, and I expect, that the



Respondents will need to adduce evidence as to the loss that their business has and will sustain as a result of Ms Henderson not presenting the Program. Such evidence would need to be provided from multiple experts including experts with relevant industry experience and accounting / financial expertise.

28. The pleadings have not closed in respect of the litigation referred to above. The Henderson SoC was filed 22 days ago. The Henderson Defence was filed today (before it was due), as was the cross-claim in the Henderson Proceedings. No evidence has yet been served by any party.
29. In those circumstances, the Respondents have not yet prepared their evidence. The evidence that they will ultimately serve will depend upon a number of matters yet to be determined, including whether there is any narrowing of issues in dispute as a result of any Reply, and the contents of the defence to the cross-claim file in the Henderson Proceedings. Above, I have done my best to identify the evidence that I expect my client will instruct me and HSF Kramer to prepare, and if appropriate, serve.
30. On that basis, doing the best I can, I estimate that the hearing of the Henderson Proceedings (including the cross-claim) would involve:
- a. Ms Henderson and Ms Henderson's manager being called to give evidence;
 - b. potentially up to 8 lay witnesses whom I have so far identified as being involved in the matters alleged by the Henderson Applicants in the Henderson SoC;
 - c. 1 or perhaps 2 additional lay witnesses who can give evidence about the commercial issues referred to above (although it may be possible for those witnesses to be drawn from the lay witnesses already referred to above); and
 - d. 3 expert witnesses, being an expert in accounting, an expert in the commercial radio market and potentially a medical expert.
31. Doing the best I can, I estimate that it would take the Respondents 2 months to prepare that evidence from the time that the Henderson Applicants' evidence is received. In my opinion, this case is somewhat less fact intensive than the Sandilands Proceeding and should be able to be prepared more quickly than that case.
32. In relation to document production processes, it is my opinion that the Respondents would seek to issue notices to produce to Ms Henderson and her manager in relation to broadly any documents or recordings they possess in relation to:
- a. the bullying that Ms Henderson claims Mr Sandilands has engaged in;
 - b. her complaints about Mr Sandilands' conduct; and



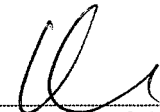
c. documents going to damages, such as documents regarding the likelihood of alternative engagement and documents regarding her claims of hurt and distress.

33. Doing the best I can, in my opinion, the hearing of this matter will take at least 7 hearing days. In making that estimate, I have assumed conservatively that most of the lay witnesses other than Ms Henderson will not be cross-examined for any extensive period of time. If that assumption is wrong, then it seems to me that more than 7 hearing days will be required. Given the issues at stake in the case, in my opinion that is not a disproportionate hearing time.

34. The estimates for hearing dates given above have been given on the basis of an assumption that the Henderson Proceedings and the Sandilands Proceedings would be heard separately. In light of the overlap between those two proceedings, which is to some extent evident from the above but will be addressed in submissions, in my opinion there will be considerable efficiencies if the Proceedings are heard together. There will be at least some overlap between the lay witnesses to be called in the two proceedings and there is likely also to be overlap in the expert witnesses called by the Respondents because the Respondents would propose to engage the same industry and accounting experts in each case. It is difficult for me to assess the degree of time and cost savings at this stage, however, in my opinion if both matters were to be heard together, then due to the overlap of the cases (in terms of facts, evidence and witnesses), the number of hearing days involved would be significantly less than if each matter was heard individually.

Affirmed by the deponent
at Sydney
in New South Wales
on 21 April 2026
Before me:

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)
)
)
)


Signature of deponent



Signature of witness

Gracie Acton
Solicitor

Schedule

No. NSD442 of 2026

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant: Quasar Media Services Pty Ltd (ACN 672 323 830) as trustee for Quasar Media Services Trust

Third Applicant: Quasar Intellectual Property Pty Ltd (ACN 672 558 502)



No. NSD442 of 2026

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

Kyle Dalton Sandilands and others named in the Schedule
Applicants

Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796)
First Respondent

Australian Radio Network Pty Ltd (ACN 065 986 987)
Second Respondent

Affidavit of: Nerida Jessup
Address: 161 Castlereagh Street, Sydney NSW 2000
Occupation: Solicitor

Certificate identifying Annexure

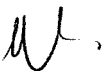
This is the Certificate identifying the Annexure marked "Annexure NJ-1" annexed to the affidavit of Nerida Jessup dated 21 April 2026.



Signature of witness

Gracie Acton

Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)





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TRANSCRIPT OF PROCEEDINGS

O/N H-2106188

FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

STEWART J

No. NSD 442 of 2026

KYLE DALTON SANDILANDS and OTHERS

and

**COMMONWEALTH BROADCASTING CORPORATION PTY LTD and
ANOTHER**

SYDNEY

9.01 AM, FRIDAY, 27 MARCH 2026

**MR ROBERTSON appears with MR P. BONCARDO for the applicants
MR BLACKBURN appears with MR P. GAFFNEY for the respondents**

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MR ROBERTSON: Please the court. I appear with my learned friend MR BONCARDO for the applicants.

HIS HONOUR: Thank you, Mr Robertson.

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MR BLACKBURN: May it please the court. I appear with my learned friend MR GAFFNEY for the respondents.

HIS HONOUR: Thank you, Mr Blackburn.

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MR ROBERTSON: Your Honour has been furnished, I think, with two competing short minutes of order. They may be summarised this way: I seek for this matter to be put on the fast track. We say the proceedings can be put together and ready for hearing within quite short order. Our learned friends, I think, seem to put it on the slow track. And they propose, in effect, that nothing happens other than a satellite dispute as to whether or not your Honour makes a formal order for expedition.

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As I think your Honour has read from the concise statement, my case is fairly confined. It concerns 20 minutes of conduct on one day, at least principally concerns that, and the question of whether or not that amounts to serious misconduct for the purposes of a document called a Broadcasting Services Agreement. We say, in short, as your Honour read, that under an agreement under which Mr Sandilands was procured to engage in robust conduct that was identified as something that the first respondent desired, quote, desired, it can't possibly be misconduct of the kind that has been alleged in the relevant notices.

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And your Honour has seen that we rely on the immunity in clause 5.5 which essentially says as a general rule if it is put to air, and if our friends' client decides not to press the dump button, that my client has a relevant immunity in relation to that conduct. So in relation to the core issue of conduct, it's a very narrow dispute. Our learned friends, I think, are proceeding under a misapprehension as to the scope of the unconscionable conduct claim that we advance before this court.

30

They've said in correspondence that your Honour might have and might not have – that the case is likely to be fact rich. Our unconscionable conduct plea is a very narrow one which focuses on the fact that our friend's client on the one hand issued a notice to remedy that says, "We want you to remedy the fact that Ms Henderson doesn't want to work with Mr Sandilands." But then, on the other hand, terminated and sacked Ms Henderson. So we say that is the conduct that amounts to unconscionable conduct.

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This isn't an occasion for a Royal Commission into Mr Sandilands and his previous radio career, and we say that this is a matter that can be brought on for hearing within quite a quite short order, particularly in circumstances where as your Honour has seen, the battle lines have really been drawn. The solicitors have effectively argued the case as between themselves by way of the correspondence. And so the orders that we seek are ones requiring our friend's side to put on a response to the concise

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statement within short order. We think a week is sufficient in circumstances where the case has essentially already been argued by way of the correspondence.

5 We think we can get our evidence on in chief within two weeks, and we've otherwise identified a timetable to have the case ready within short order. The alternative course that may be attractive to your Honour is to at least do the first couple of steps of that process so that your Honour can see in a formal court document what position our friends are going to take. We apprehend that they will also file a cross-claim, but the cross-claim is likely to follow the event of the main claim.

10 They've foreshadowed a claim that says, "Well, Mr Sandilands has effectively been overpaid, and the contract is now being terminated. So therefore, he should pay some money back." But we don't see that as adding significantly to the scope of the issues to be decided. So one option that's available to your Honour is to order that
15 that occurs in short order, come back for a case management hearing, and then, your Honour will have the benefit of that in deciding how fast or slow the matter can go. But we certainly oppose the suggestion that we should have some satellite dispute about a formal order for expedition - - -

20 HIS HONOUR: Mr Robertson, you can take it for now, I'm with you on that. Because as I said, I don't see any purpose being served in having a satellite dispute about that. And there's no particular effect in having an order for expedition that has no particular meaning. We're going to be back here debating really relative urgency versus the parties' ability to properly prepare the case. So - - -

25 MR ROBERTSON: Precisely.

HIS HONOUR: We're here now.

30 MR ROBERTSON: We're in the Federal Court, we have a docketed judge. Your Honour will apprehend we will bring the matter on as quickly as reasonable.

HIS HONOUR: Mr Robertson, your case is that nevertheless, the matter should be given some expedition and, in effect, preference over other cases.

35 MR ROBERTSON: Yes.

HIS HONOUR: Do you read the affidavit of Mr Lynch in order to make that case good?

40 MR ROBERTSON: Yes, I do. And I tender the two exhibits to that affidavit.

HIS HONOUR: So the one exhibit is marked confidential.

45 MR ROBERTSON: It is.

HIS HONOUR: Why?

MR ROBERTSON: That's because of the Broadcasting Services Agreement that has a confidentiality clause in it. And for abundant caution, we marked it as confidential. But I think it's really in our friends' hands to make any application that they wish to make. So we did that for abundant caution in light of the confidentiality agreement. But in circumstances where in part by reason of these proceedings, at least the core terms are now a matter of public knowledge, I'm not in a position to make an application for a suppression or non-publication order. But we did, for abundant caution, noting the confidentiality clause, in order to protect the respondent side, describe it as confidential.

But I'm tendering it. I'm not making an application for a suppression or non-publication order. But it may well be that Mr Blackburn wants to. Just before we deal with that, though, the key issue in the affidavit, as I expect your Honour has appreciated, is one of the forms of relief that we seek is, in effect, reinstatement, described as an order for specific performance. The practicality and utility of that order will be decreasing day by day.

And so that's the critical reason as to why we say this case is deserving of a fairly high degree of expedition because no doubt our friends will say whenever the matter is on for hearing, "Well, the world has moved on. We now have new breakfast hosts," etcetera, etcetera, "And as a practical matter and the exercise of the court's discretion, the court should no longer order – or the court should not order an order for specific performance."

But my client's principal objective is to get back on air and get back with his audience as soon as possible. He's happy to turn up. I think his slot has come to an end, or it will in about 45 minutes. But he's happy to turn up on Monday morning and continue to do his show. But our case is that the termination was invalid, and he's entitled to continue the show, and he's entitled to the payments under the Broadcasting Services Agreement and under the Intellectual Property Agreement.

HIS HONOUR: Last question for now. There was some indication of some restrictions on counsel's time availability this morning. I just want to know to what extent we're under the clock. I mean, I've got a long list starting at 9.30, but that's - - -

MR ROBERTSON: I think there may have just been my learned junior. I'm not sure. But on my side, I'm at your Honour's disposal today.

HIS HONOUR: All right. That's helpful.

MR ROBERTSON: But we're grateful for your Honour sitting at 9 rather than 9.30.

HIS HONOUR: Thank you, Mr Robertson.

MR ROBERTSON: Court pleases.

HIS HONOUR: Mr Blackburn.

MR BLACKBURN: Yes. Thank you, your Honour. Your Honour - - -

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HIS HONOUR: Just before you start, Mr Blackburn. Yes.

MR BLACKBURN: Yes. Thank you, your Honour. Your Honour, can I correct what seems to be a misapprehension in what has been put to your Honour. We're in essentially furious agreement that the docket system provides all the utility that your Honour needs to move this case along. The only reason that we – we don't say there should be a formal application for expedition. We've never said that. The only reason, your Honour, that we have put forward those short minutes is that last Friday, we were asked in correspondence by the applicants to propose a timetable for expedition. We gave it to them and said, "Can we have yours?" And instead, we got the short minutes that your Honour has. And we've never been quite sure whether they wanted to pursue an application for expedition or not.

We're perfectly happy that there not be an application for expedition. And we've never insisted on it. To characterise us as sort of wanting some sort of formal process is not correct, with respect. So I just wanted to clear that up.

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HIS HONOUR: I understand.

MR BLACKBURN: Your Honour, just on the question of reading the affidavit, we haven't been informed that it was going to be read today. We didn't think it would be read today. We thought it was in support of some sort of formal application for expedition. The difficulty we've got with it, your Honour, is that we don't accept the central premise. That is to say that Mr Sandiland's goodwill and notoriety is dramatically wasting away for every day that he's not on air. And we would want to put on evidence about that.

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But, your Honour, there's a more pertinent point, pressing point. And it's this: on the authorities, the possibility of Mr Sandilands gaining the relief that he seeks in terms of an order to put him back on air for the next nine years is vanishingly small on the authorities. The application proceeds on what we say is the transparently wrong premise that the court might give specific performance for a contract for services. And, your Honour, the law is quite clear that parties are not forced to be in a services relationship to provide or receive personal services. And there's a mutuality in that too. We couldn't force – we couldn't get an order from the court forcing Mr Sandilands to present his breakfast show. Neither can he force us to put him on air.

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So, your Honour, the point about it is this: that the premise for the kind of informal expedition is that his goodwill is wasting away, and he needs to go back on air. As we say, the prospect of gaining that relief is effectively nil. So really, this is, in substance, the claim for a debt. He wants his \$10 million a year for the next eight

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and a half or nine years. And he's basing that on, at best, the nominal prospect, and we say the illusory prospect of getting an order for specific performance. And he's basing it on that illusory prospect in order to jump the queue ahead of other members of the public. It's just a claim for debt at base.

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So, I mean, that, in broad terms, is our attitude to the apparently informal application that is now made that this be expedited. But we do need – if that application is to be made, even informally, we do need the opportunity to respond to that affidavit. We don't accept what's in it. We don't accept the central premise. I mean, we have no objection to your Honour reading that affidavit if – on any application, we would probably have some objections to it. But at this stage, just for the purpose of case management.

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HIS HONOUR: Well, all right. I've read it for the purpose of case management.

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MR BLACKBURN: Yes.

HIS HONOUR: So the question is what's the point of you responding to it in circumstances where we've all agreed the case should just get on?

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MR BLACKBURN: Yes, the case should get on.

HIS HONOUR: The question is, I suppose, with how much expedition. And that may depend in part how long we think may be required for a hearing. And then, how much time is needed to adequately prepare for a hearing. So Mr Robertson sought to explain their side of the case's view of the parameters of the dispute. Perhaps I can hear from you on that.

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MR BLACKBURN: Certainly.

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HIS HONOUR: I didn't get from him, although I saw in the affidavit, I think it said anticipated a three-day hearing. Perhaps you can give me your view on that.

MR BLACKBURN: Certainly, your Honour. As we understand it, your Honour, the basis for it is that the issues are said to be in very narrow compass. The facts are highly confined and largely not in dispute. If, your Honour, the case was restricted to the construction of the contract, then, that might be a plausible submission. But there are in fact five matters which demonstrate that this really isn't a case that can be heard in three days. And indeed, two was the initial suggestion when the concise statement arrived.

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The first point is this, your Honour, and I will do it as briefly as I can: there is this application for specific performance, and that is going to involve evidence of such things as the defiance of past directions, circumstances where the first respondent's broadcast licence has been affected. ACMA, for example, have recently handed down some licence conditions which deal with Mr Sandilands's free use of sexual innuendo and so on. Evidence, your Honour, in short, of all the pinch points in the

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relationship which will need supervision on an application in order for specific performance. Pinch points not only in the contract, but also in the general relationship where ongoing cooperation will be required.

5 The second thing, your Honour, is the unconscionable conduct claim. And although my friend says it's confined to our conduct in, as it were, dismissing Ms Henderson after her, we say, repudiation, but relevant to that question, your Honour, is going to be the good faith of what we did in accepting her repudiation. And that is going to involve, obviously, prior conduct of Mr Sandilands towards Ms Henderson.

10 The third thing, your Honour, is whether Mr Sandilands's conduct amounted to serious misconduct within the meaning of the contract. Your Honour, at common law, whether there has been serious misconduct is a very fact-rich question. Used to be called a pure jury question. And it depends, your Honour, not on the specific
15 conduct in question, but all the surrounding circumstances that give colour and illustrate the conduct. I mean, the classic example is a case where a person is dismissed for drunkenness. It's not just that episode of drunkenness, it's was it an ongoing thing, what was the reason for it, what has the person's conduct been like in the past, and so on.

20 So that is going to involve – the question of whether it was serious misconduct will involve a wider review of just what happened on 20 February. And, your Honour, the interpretation of the key provisions of the contract is hotly contested. And that will require Codelfa-type evidence. And finally, your Honour, there may be a cross-
25 claim, but it may go wider than what my learned friend suggested. It may go to a claim against Mr Sandilands arising out of his conduct towards Ms Henderson.

30 So, your Honour, we've only had the concise statement for a little less than a week, four or five business days. There hasn't been time to make a scientific estimate, an absolutely accurate estimate. But doing the best we can at the moment, we think that this could take up to 10 days. Perhaps less, probably unlikely to be more. But, your Honour, the idea that it's going to take two or three days is just fanciful. On our assessment of the case, it just can't happen in that period.

35 HIS HONOUR: So what do you say should be done today?

MR BLACKBURN: Well, in light of the fact, as we now understand, that there is to be no formal application for expedition, we - - -

40 HIS HONOUR: Well – just to interrupt you there on - - -

MR BLACKBURN: A timetable needs to be set.

45 HIS HONOUR: - - - for a second – I mean, I'm not sure there's a valuable distinction to be drawn between a formal application or some other form of application. In effect, Mr Robertson has sought expedition - - -

MR BLACKBURN: Yes, he has.

5 HIS HONOUR: - - - in the sense of – well, as he explained, and in reliance on Mr Lynch’s affidavit. I need to ensure that justice is done between the parties. And that may mean less expedition than he wishes, because that may – you may require time to prepare, and so on. But I’m just dealing with it on that basis.

MR BLACKBURN: Yes.

10 HIS HONOUR: It doesn’t really matter whether there’s a formal application or not. He has put forward what he has put forward - - -

MR BLACKBURN: Yes.

15 HIS HONOUR: - - - and I’m - - -

MR BLACKBURN: Yes.

20 HIS HONOUR: - - - I’m dealing with it on that basis.

MR BLACKBURN: Yes. Well, your Honour, we would want an opportunity to respond to Mr Lynch’s affidavit, which we didn’t know was going to be read on this application for – this case management application. But apart from that, your Honour, the most sensible thing to do, in our submission, would be to set a timetable to the end of what I will call pleadings – the end of - - -

25 HIS HONOUR: Are you satisfied that - - -

30 MR BLACKBURN: - - - the exchange of - - -

HIS HONOUR: - - - the matter proceed by way of concise statement and response, as opposed to formal pleadings?

35 MR BLACKBURN: Your Honour, it’s very much a matter for the court. This seems to be a case, really – one of those, perhaps, minority of cases – where it really cries out for a pleading. It’s going to be very fact-rich. There are particular issues about the construction of the contract. And, as far as the respondents are concerned, there is probably going to be quite a lot of factual matter that we need to plead – particularly to respond to the ACL claim and the specific performance claim.

40 We would suggest – and there are some deficiencies in the concise statement in its present form. Your Honour probably will have noted that there is nothing in the concise statement about the specific performance claim. Not merely the factual matters that they rely on – but there is nothing in the concise statement about the terms of the contract that they rely on that they say will somehow enable Mr Sandilands to be forced back on air.

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5 The contract itself with Quasar, the management company, talks about making Mr Sandilands available – but there’s nothing clear that we can see that would force us, contractually, to put him back on air. We’re just in the dark about all that. And, you know, that is something in our submission, your Honour, which would be responded to - - -

HIS HONOUR: So I - - -

10 MR BLACKBURN: - - - very well if there was a - - -

HIS HONOUR: I infer from what you’re saying that your submission is – is that the applicants should put on a statement of claim - - -

15 MR BLACKBURN: Yes.

HIS HONOUR: - - - and then you have the opportunity to put on a defence to that - - -

20 MR BLACKBURN: Yes.

HIS HONOUR: - - - and a cross-claim, and so on.

MR BLACKBURN: Yes.
25 HIS HONOUR: Yes.

MR BLACKBURN: It’s very difficult, particularly, to deal with the ACL claim – and, particularly, the specific performance claim – in the current state of the - - -

30 HIS HONOUR: So I had had in mind, on coming on the bench this morning, to give dates for a hearing – and then we work backwards. But, from what you’ve told me, my current – subject to what Mr Robertson has to say – my current sense is that it’s going to be premature to do that. Because he says the dispute is narrow; you say it’s broad. Until I actually see the pleadings and we can - - -

35 MR BLACKBURN: Yes.

HIS HONOUR: - - - really work out - - -

40 MR BLACKBURN: Yes.

HIS HONOUR: - - - who is right or where the balance lies in that – in relation to that, we can’t have a sensible discussion about - - -

45 MR BLACKBURN: No.

HIS HONOUR: - - - how long is required. And I could certainly give – I can find three days in, sort of, eight to 10 weeks' time. But I can't find 10 days in - - -

MR BLACKBURN: No.

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HIS HONOUR: - - - within the next eight to 10 weeks – that's for sure. Yes. All right. Anything else for now, Mr Blackburn?

MR BLACKBURN: There is – there may be an application for security for costs – which we would want, perhaps, put into the timetable – against the corporate - - -

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HIS HONOUR: Well - - -

MR BLACKBURN: - - - applicants. We have raised the matter with the applicants - - -

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HIS HONOUR: Yes. Well - - -

MR BLACKBURN: - - - and haven't had a response.

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HIS HONOUR: Yes. Well, you say there may be an application. Until such time as we know more about that, it's probably just best that I leave that to one side. You can - - -

MR BLACKBURN: Yes.

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HIS HONOUR: - - - put on an application, if you're going to make it, and we will timetable that - - -

MR BLACKBURN: Yes.

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HIS HONOUR: - - - if that happens.

MR BLACKBURN: Yes.

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HIS HONOUR: Yes. Mr Robertson.

MR ROBERTSON: Can I deal with two principal matters? First, we submit your Honour should go with your Honour's initial instinct of, at least tentatively, fixing the matter so that we don't lose those dates. Your Honour has heard a contest about the length of the proceedings. And we accept the force in what has fallen from your Honour in the sense that your Honour not in a position to finally determine that question now before at least the concise statements or pleadings have been filed. But we at least ask your Honour to tentatively fix the matter on an estimate of three days, if your Honour can reach it, or five days otherwise.

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But we have a case management hearing within short order after my learned friend has responded to our concise statement. If he wants to put on some more evidence about expedition and the like, he can do that as well. And then, your Honour is in a position to assess whether I'm right or he's right. But in circumstances where I'm
 5 not disadvantaged by the fact that those dates have disappeared by reason of other commitments that your Honour has. So we would ask your Honour to go with your Honour's initial instinct on that.

In relation to the question of pleadings, we don't think pleadings are necessary, and they're apt to delay. As I've said, the parties have already, in effect, exchanged their positions by way of correspondence, and we've put on a detailed concise statement. And we think our learned friends are in a position to respond likewise. The kind of specific performance that we seek to answer what my friend said is what's
 10 sometimes referred to as specific performance in the true sense. That is to say an order from the court requiring each party in species to comply with their obligations under the contract, contrary to the implication of my learned friend's submission.
 15

That's not specific performance in the narrow sense or a mandatory injunction of a particular provision. It's specific performance in the sense of saying, "Our learned friend's side has wrongly repudiated the contract. The purported termination is invalid. My client is ready, willing and able to perform its obligations – its and their obligations, and therefore, the court should make an order of the kind that I've identified." No doubt our friends are going to say that for various discretionary reasons, the court should not make that order. But that's not something for me to
 20 plead, that's something for my learned friend to identify, and they can identify that comfortably in a concise statement.
 25

If your Honour is against us on that, then, we would provide a pleading, and we would provide it within short order. We would provide it within seven days. But we
 30 would ask for the response from our friend's side, be it in the form of a concise statement or in the form of a pleading, to be provided seven days after in circumstances where the battle lines have already been drawn and in circumstances where, on the material before your Honour now that I have read, there are strong grounds for expedition of this case.
 35

So in light of what has fallen from both sides and from the bench, in our submission, the appropriate course is to, in effect, start the series of directions on my short minutes of order.

40 HIS HONOUR: Sorry. Just to interrupt you. If you do a statement of claim, you say within seven days - - -

MR ROBERTSON: That takes us to Good Friday. So we would ask for Easter Tuesday. But we will try and get it filed actually on Good Friday. Mr Boncardo's
 45 not kicking my chin, so I'm able to make that submission comfortably. And we would ask for a response within seven days in circumstances where our friend has our case already in two forms by way of several sets of correspondence, by way of a

concise statement. And we will have it again in the form of a pleading if your Honour is minded to proceed in that fashion.

5 And your Honour would order – if your Honour proceeds in that fashion, your Honour would order defences and any cross claims within seven days. And your Honour would then bring us back for a further case management hearing in the week beginning 20 April on the basis that if Mr Blackburn wishes to say that this case should be on a slower track than what I say, and he wants your Honour to consider any evidence, he would serve that in advance. And if you’ve got any other
10 application to make, you would make that application well in advance of that case management hearing.

And of course, one thing your Honour might be minded to consider at the subsequent case management hearing – and this is another reason why your Honour should
15 either tentatively fix or at least reserve what dates your Honour has in your Honour’s diary – is your Honour might look at the pleadings and say, “Well, Mr Blackburn wants to raise some complicated issue about quantum of damages,” for example, “And I accept that that’s a week-long case. But I will hive off that question. I accept what Mr Robertson says about urgency generally, but we will hive off that question,
20 and we will deal with other issues in the case.”

That’s not something that can be reliably assessed now before my friend has pleaded or responded, but that’s one of the kinds of mechanisms that may be available to the court, depending on the way in which my friend draws the battle lines in his
25 responsive document. So I make no application about that now. I simply raise that as a further reason as to why your Honour would reserve three days if your Honour has them, or five days if your Honour has them, with a view to this case being able to be resolved either in whole or at least substantially sooner rather than later in light of the claim for expedition or urgency demonstrated by the affidavit that I’ve read.

30 And if your Honour is in a position to, we would ask your Honour to at least, either now or through your Honour’s associate, at least identify those dates, even if your Honour is not making a decision on that. So at least it can be in everyone’s diary, so we’re not in a position where I say I would like it on a particular date that your
35 Honour can do. Mr Blackburn has received a brief in the meantime and says, “I don’t want to do it on those dates.”

HIS HONOUR: Mr Blackburn.

40 MR BLACKBURN: Your Honour - - -

HIS HONOUR: Well, let me tell you this: so it seems to me that this matter’s going to proceed much more satisfactorily on pleadings. The nature of the issues are such that they should be pleaded out with precision. And so the parties know where they
45 stand, not only on, for example, as it’s put here in the statement of – at least in the concise statement, identifying significant terms, but actually, to identify not only the terms but what they said to mean, and how they’re said to operate. So I have in mind

ordering a statement of claim, then, a defence and cross-claim, and then a defence to the cross-claim, and we come back. So the first question that arises, Mr Blackburn, is how quickly you can put on a defence to a statement of claim.

5 MR BLACKBURN: Your Honour, normally, going by the rules, we would get four weeks from the date of the statement of claim, as I understand it. We would ask for four weeks from now, your Honour. And that is two reasons. It is such a fact-rich matter. We are going to have to speak to a lot of witnesses. And it's an 80 million, \$85 million claim, your Honour. We don't want to – we want to do this properly. So
10 we just ask for four weeks instead of three, which might be the normal choice, given that the concise statement was served a week ago.

HIS HONOUR: So four weeks from now is the 17th. So that's what you mean. So if you don't get a statement of claim until the 7th - - -

15 MR BLACKBURN: I'm sorry. Four weeks from the receipt of the statement of claim.

HIS HONOUR: Well, what I propose to do is say the statement of claim must be on
20 by the 7th. That's a Tuesday. And the defence and cross-claim by the 21st. So that's two weeks after that. And the matter come back for case management on the 24th. And so I haven't pronounced those orders yet. I'm just saying that's what I'm thinking to give you a last chance to respond. Obviously, Mr Robertson, if you get a cross-claim on the 21st, I'm not going to - - -

25 MR ROBERTSON: We will try to file a defence before the 24th, so your Honour has it.

HIS HONOUR: Or at least be able to stand up and tell me what the issues – what's
30 going to be in dispute.

MR ROBERTSON: I will at least be able to do that. And we will do everything that we can to file or at least prepare a draft of a response to that document. And if it's as narrow as has been identified in writing so far, that will be easy. If it's a little
35 bit broader, and my friend seems to suggest it might be broader, then, I might need some additional time. But I will be in a position to at least indicate our general position by that case management hearing.

HIS HONOUR: So the intention is on the 24th that we have a proper discussion
40 about what evidence is going to be required, how quickly it can be put on, how much time will be needed for a hearing, if there are issues that can be hived off, and to then list it for hearing.

MR ROBERTSON: May it please the court.

45 HIS HONOUR: So that's the intention.

MR ROBERTSON: May it please the court. And then, the only question is whether your Honour is going to put dates in tentatively. And accepting what your Honour said in everyone's diary, in particular, those at the bar table.

5 HIS HONOUR: Well, so the weeks of 15 and 22 June are possibilities. But I don't know that we can get a case ready for hearing as quickly for that. Otherwise, we're in the week of 20 July.

10 MR ROBERTSON: We would ask your Honour to, at least, ask everyone to keep the week being 22 June. We think that's achievable. But we appreciate that that's something that we will have to have out in April. And the week beginning 22 June is fine for me and, I think, for my learned junior.

15 MR BLACKBURN: Yes. Thank you, your Honour. Two things. I hear what your Honour says. We would prefer to have an extra week for the defence. It's going to be a big job, and speaking to all the people is going to be a big job. But I've made that submission – it's a matter for the court now. The week of 22 June, your Honour, I will be without the services of my junior if that's the case. But I know that that may not be a - - -

20 HIS HONOUR: Well, look – I'm not actually listing it at this stage. But what I will do is reserve those dates – the week – just that week – 22 June.

MR BLACKBURN: May it please the court.

25 HIS HONOUR: But I can't reserve them forever because, then, other parties are effectively being prejudiced in a case where I'm not yet in a position to decide whether that's justified.

30 MR BLACKBURN: Yes, your Honour.

MR ROBERTSON: Court pleases.

35 HIS HONOUR: Yes. All right. So I will make the following orders. The applicants file and serve a statement of claim by 7 April. The respondents file and serve a defence and any cross-claim – which is to say a notice of cross-claim and statement of cross-claim – by 21 April. The matter be listed for case management on 24 April.

40 MR ROBERTSON: Court pleases.

MR BLACKBURN: Court pleases.

45 HIS HONOUR: And that the dates 22 to 26 June be provisionally reserved for hearing.

MR ROBERTSON: Please the court.

MR BLACKBURN: May it please the court.

5 HIS HONOUR: We can debate what that means on some future occasion. That's
all, I take it. Sorry – I need to raise one other matter. So, as you will obviously be
aware, there's quite a lot of media interest in this case. And there have already been
several requests for access to the unrestricted documents which, now – the first case
management hearing having occurred – will be made available. There have already
10 been applications for access to Mr Lynch's affidavit and the exhibits to that affidavit.
In the ordinary course, because they have been read, subject to some reasonable
objection, I would release those. So I need to know what the parties' attitudes are to
that.

15 MR ROBERTSON: I have no application to make in relation to the matters that
have just fallen from your Honour.

MR BLACKBURN: Your Honour, I'm just getting some instructions.

20 MR ROBERTSON: Which, I think, means under the rules they count as
unrestricted documents – and, therefore, in the ordinary course, they would be made
available.

HIS HONOUR: The affidavit is not. The affidavit is subject to the discretion of the
25 court. But, having been read, the default is that, as a general proposition - - -

MR ROBERTSON: Yes.

HIS HONOUR: - - - it would be released.

30 MR ROBERTSON: I'm so sorry – I've been imprecise. I accept that they're
technically not regarded as unrestricted documents for the purposes of the practice –
although, having been read, and having been read in open court, that would be the
ordinary, as it were, additional practice. And I have no application to make
inconsistent with that practice.

35 HIS HONOUR: Yes.

40 MR BLACKBURN: Your Honour, my instructions are these. I would like to make
an oral application to keep the contract with Quasar which is exhibited to Mr
Lynch's affidavit confidential.

HIS HONOUR: So is that the - - -

45 MR BLACKBURN: We will - - -

HIS HONOUR: Is that the suite of contracts, or just the BSA – the broadcasting
services agreement?

MR BLACKBURN: I think it's the suite of contracts. Your Honour, we will undertake in two days to either advise the court that that – we don't want to further press that application or make a formal application in respect of it.

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HIS HONOUR: Can you give me a hint as to why I might do that, as opposed to just to give you time to consider it further?

MR BLACKBURN: Well, there are parts of the contract, your Honour, which go to the operation of the licensee and the terms of its engagement with Mr Sandilands or his management company, I should say, which may be commercially sensitive. I can't really say any more than that at this stage.

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HIS HONOUR: Let it be reported that it's a media organisation wishing the court to restrict access to a document which normally, the media have lots to say about.

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MR BLACKBURN: Well, not when it's commercially sensitive, your Honour.

HIS HONOUR: Yes.

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MR BLACKBURN: Your Honour, yes. I've just been referred to section 37AI of the Federal Court Act in relation to interim orders. The court can, under that section, 37AI, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation until the application is determined.

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HIS HONOUR: Yes. That was exactly the provision I was reaching for. Mr Robertson, I take it you have nothing to say about this issue, do you?

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MR ROBERTSON: I can't resist the suggestion that there should be a short interim order to allow my friend to consider his position. But obviously enough, consistent with the authorities, he would need to demonstrate that an order was necessary in the relevant sense.

HIS HONOUR: Yes. So pursuant to section 37AI of the Federal Court of Australia Act 1976, I order the confidential exhibit - - -

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MR ROBERTSON: KSL2, if your Honour pleases.

HIS HONOUR: Thank you. KSL2 not be released by the court to any third party, pending any application made – filed, that is – on or before 31 March 2026.

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MR ROBERTSON: Please the court.

MR BLACKBURN: May it please the court.

45

HIS HONOUR: And then, a related question arises. Perhaps you don't need to give me an answer now, but so far, where media organisations have sought a link that has

been provided, but the question is going to arise at some stage whether hearings in this proceeding should just be live streamed on YouTube. So we will consider that at some point down the track. Bear that in mind.

5 MR ROBERTSON: Court pleases.

MR BLACKBURN: May it please the court.

HIS HONOUR: Yes. Thank you.

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MATTER ADJOURNED at 9.41 am UNTIL FRIDAY, 24 APRIL 2026