

NOTICE OF FILING

Details of Filing

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File Title:	JACQUELINE ELLEN HENDERSON & ANOR v COMMONWEALTH BROADCASTING CORPORATION PTY LTD (ACN 000 019 796) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

AMENDED DEFENCE



A handwritten signature in blue ink that reads "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.



Defence to Amended Statement of Claim

No. NSD507 of 2026

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Jacqueline Ellen Henderson and another named in the Schedule

Applicants

Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) and another named in the Schedule

Respondents

A. ALLEGATIONS UNDER THE HEADING 'THE PARTIES'

1. In answer to paragraph 1 of the Amended Statement of Claim (**Statement of Claim**), the Respondents:

(a) say that:

(i) Double T Radio Pty Ltd (ABN 61 003 181 244) is the licensee for the commercial radio station titled KIIS 101.1 Melbourne on the frequency 101.1mhz in Melbourne; and

(ii) from around 29 April 2024, Ms Henderson was a co-presenter of a live broadcast breakfast radio show on Double T Radio Pty Ltd's commercial radio station in Melbourne; and

(b) otherwise admit the paragraph.

2. In answer to paragraph 2 of the Statement of Claim, the Respondents:

(a) admit sub-paragraph (a);

(b) admit that at all material times:

Filed on behalf of (name & role of party)

Commonwealth Broadcasting Corporation Pty Ltd, First Respondent
ARN Media Ltd, Second Respondent

Prepared by (name of person/lawyer)

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(include state and postcode)

- (i) Ms Henderson was the sole shareholder and the sole director, of Henderson Media; and
- (ii) part of Henderson Media's business included, amongst other things, providing certain services to the First Respondent through Ms Henderson;
- (c) say further that Henderson Media's business was not limited to providing certain services to the First Respondent through Ms Henderson and included, amongst other things, granting the First Respondent a licence or right to use certain program formats and other materials owned by Henderson Media, certain websites, social media and networking tools, and brand names, image rights and other intellectual property; and
- (d) otherwise deny the paragraph.

3. In answer to paragraph 3 of the Statement of Claim, the Respondents:

- (a) admit sub-paragraph (a);
- (b) admit that:
 - (i) the First Respondent is the licensee of the radio station in Sydney with the respective callsign 2WFM, and which operates under the name "KIIS FM";
 - (ii) Double T Radio Pty Ltd (ABN 61 003 181 244) is the licensee for the commercial radio station in Melbourne with the respective callsign 3TTT and which operates under the name "KIIS FM";
 - (iii) at all material times, Ms Henderson was a co-presenter of a live broadcast breakfast radio show on the First Respondent's commercial radio station in Sydney; and
 - (iv) from 29 April 2024, Double T Radio Pty Ltd was the live broadcaster of a breakfast radio show in Melbourne co-presented by Ms Henderson; and
- (c) otherwise deny the paragraph.

4. The Respondents admit paragraph 4 of the Statement of Claim.

B. ALLEGATIONS UNDER THE HEADING 'THE AGREEMENT'

5. In answer to paragraph 5 of the Statement of Claim, the Respondents:

(a) admit that:

- (i) on 30 October 2023, Ms Henderson, Henderson Media, and CBC entered into a contract (which is referred to herein as the **Henderson BSA** to distinguish it from the **Quasar BSA** referred to below); and
- (ii) pursuant to the Henderson BSA, Henderson Media and Ms Henderson were, amongst other things, obliged to provide certain services to CBC;

(b) say further that:

- (i) it was a term of the Henderson BSA that Henderson Media would provide CBC with the Program Services (as defined) through Ms Henderson;
- (ii) 'Program Services' was defined in the Henderson BSA to mean:

the provision by [Henderson Media] of [Ms Henderson] to present the Program, as well as the provision of any or all of the following services:

- (a) *live or recorded broadcast, broadcast material and broadcast expertise in connection with the Radio Station or the Program;*
- (b) *all work necessary for [Ms Henderson] in order to plan and prepare broadcast material related to the Program;*
- (c) *further material or services as reasonably required by [CBC] in relation to the Program and publicity for the Radio Station or the Program including:*
 - (i) *presentation of broadcasts (whether live or recorded) of agreed additional material at such times and on such days as agreed by the parties;*
 - (ii) *the recording by [Ms Henderson] of any voice track or material to be aired by the Radio Station;*
 - (iii) *performance of original segments created by [Ms Henderson] during any live broadcast or recorded by [Ms Henderson] and aired at a future date to either*

promote the Program or to be aired as part of a "Best Of" package;

(iv) *Live Reads by [Ms Henderson] as agreed by the parties;*

(v) *public appearances by [Ms Henderson] in relation to the Program and its promotion as agreed by the parties;*

(vi) *Creation of online and social media materials and campaigns (including minor lines or links to be included in the replay of the Program as a podcast) for the purpose of promoting the Radio Station or the Program;*

(iii) 'Program' was defined in the Henderson BSA to mean:

the live broadcast on the Radio Station set out in Item 4 of Schedule 1 and/or any other broadcast (whether live or pre-recorded) on any radio station that [Henderson Media] through [Ms Henderson] agrees to perform in addition to or in substitution for that live broadcast;

(iv) Item 4 of Schedule 1 to the Henderson BSA provided:

Breakfast program for the Radio Station to be presented by [Ms Henderson] and [Mr Sandilands] or other agreed co-host; and

(v) the Henderson BSA was not a contract for services for the purposes of s 342(1) of the *Fair Work Act 2009* (Cth) (the **Act**); and

(c) otherwise deny the paragraph.

6. In answer to paragraph 6 of the Statement of Claim, the Respondents:

(a) admit that it was a term of the Henderson BSA that Henderson Media would provide CBC with the Program Services (as defined) through Ms Henderson;

(b) repeat paragraph 5(b) above; and

(c) otherwise deny the paragraph.

7. In answer to paragraph 7 of the Statement of Claim, the Respondents:

- (a) repeat paragraph 5(a) above;
- (b) admit that:
 - (i) Ms Henderson was a person employed by Henderson Media; and
 - (ii) Henderson Media was an independent contractor;
- (c) otherwise deny the paragraph; and
- (d) say further that:
 - (i) CBC was not a person who had entered into a contract for services, or a principal, for the purposes of s 342(1) of the Act;
 - (ii) Henderson Media was not an independent contractor for the purposes of s 342 of the Act; and
 - (iii) that Ms Henderson was a person employed by Henderson Media was not a consequence of the Henderson BSA.

8. In answer to paragraph 8 of the Statement of Claim, the Respondents:

- (a) admit that:
 - (i) the Henderson BSA contained the express term particularised (that is, clause 5.1(a)); and
 - (ii) that term provided that Henderson Media would provide CBC with the Program Services through Ms Henderson as required under the Henderson BSA, and that Ms Henderson agreed to perform the Program Services;
- (b) will respond to paragraphs 9 to 11(A) of the Statement of Claim sequentially below; and
- (c) otherwise deny the paragraph.

9. In answer to paragraph 9 of the Statement of Claim, the Respondents

- (a) repeat paragraphs 5(b) and 8(a) above;

- (b) otherwise deny the paragraph; and
- (c) say further that the services required to be provided under the Henderson BSA were not limited to the 'Program Services'.

10. In answer to paragraph 10 of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 5(b) and 8(a) above;
- (b) say that "Program Services" is defined at clause 1.1 of the Henderson BSA;
- (c) otherwise deny the paragraph; and
- (d) say further that:
 - (i) from 2004 to the date of the Quasar BSA and the date of the Henderson BSA, Ms Henderson and Mr Kyle Sandilands co-hosted a radio program branded as 'The Kyle and Jackie O Show';
 - (ii) from 2005 to the date of the Quasar BSA and the date of the Henderson BSA, Ms Henderson and Mr Sandilands co-hosted a radio program branded as 'The Kyle and Jackie O Show' in the breakfast timeslot;
 - (iii) in the period in which Ms Henderson and Mr Sandilands co-hosted a radio program branded as 'The Kyle and Jackie O Show' in the breakfast timeslot prior to that program being broadcast on KIIS FM, that program had been a highly successful program;
 - (iv) in around January 2014, pursuant to separate agreements between (on the one hand) CBC, Henderson Media Pty Ltd (**Henderson Media**) and Ms Henderson and (on the other hand) CBC and a company controlled by Mr Sandilands (**Quasar**), CBC commenced broadcasting 'The Kyle and Jackie O Show', at which time the station with callsign 2WFM rebranded to 'KIIS FM' to capitalise upon the fact that the show had moved to that station and had become its flagship offering;
 - (v) in the period in which Ms Henderson and Mr Sandilands co-hosted a radio program branded as 'The Kyle and Jackie O Show' in the breakfast timeslot while that program was being broadcast on KIIS FM, that program had been a highly successful program;

- (vi) in the commercial radio market, the breakfast timeslot (or 'daypart') commands the highest cumulative listenership of any slot, driven by the captive commute and in-car audience listening at that time;
- (vii) in the commercial radio market, the breakfast timeslot has a significant impact on the performance of the radio station throughout the day because it establishes a core audience of listeners who continue, or return later in the day, to listen to the same station and who, over time, develop loyalty to the station beyond the breakfast timeslot;
- (viii) in the commercial radio market, breakfast advertisers pay a significant premium because no other slot delivers a comparable combination of reach, audience engagement, and commercially attractive demographics, with the effect that the breakfast show is by far the most important component of a station's advertising offerings, revenue generation, and overall financial performance;
- (ix) in the commercial radio market, the remuneration payable to a breakfast radio presenter reflects the fact that the breakfast program has the characteristics pleaded in paragraphs 10(d)(vi) to 10(d)(viii) above;
- (x) at the dates of the Quasar BSA and the Henderson BSA, 'The Kyle and Jackie O Show' generated the most advertising revenue of any radio show on a radio station operated by ARN;
- (xi) the success of 'The Kyle and Jackie O Show' was dependent upon the participation of both Ms Henderson and Mr Sandilands; and
- (xii) on the proper construction of the definition of 'Program', that defined term only extended to broadcasts other than the broadcast set out in Item 4 of Schedule 1 where that was agreed between (on the one hand) CBC and (on the other hand) Henderson Media through Ms Henderson.

Particulars

1. Paragraphs 5(b), 8(a), and 10(d)(i) to 10(d)(xi) above.

11. In answer to paragraph 11 of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 6(a), 8(a), and 10(d) above;
- (b) otherwise deny the paragraph; and

(c) say further that:

- (i) the commercial purpose or object that the parties (objectively construed) mutually intended to be secured by (amongst other terms) clause 5.1 of the Henderson BSA was to obtain Ms Henderson's presentation of a radio program that, in the absence of mutual agreement to the contrary, was both:
 - 1. a breakfast program; and
 - 2. presented by Ms Henderson and Mr Sandilands;
- (ii) on the proper construction of the definition of 'Program' in the Henderson BSA, that defined term only extended to a breakfast program hosted by anyone other than Ms Henderson and Mr Sandilands where the identity of a different co-host was agreed between (on the one hand) CBC and (on the other hand) Henderson Media and/or Ms Henderson; and
- (iii) on the proper construction of the definition of 'Program' in the Henderson BSA, that defined term only extended to broadcasts other than the broadcast set out in Item 4 of Schedule 1 where that was agreed between (on the one hand) CBC and (on the other hand) Henderson Media through Ms Henderson.

12. In answer to paragraph 12 of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 6(a), 10(d), and 11(c) above; and
- (b) otherwise deny the paragraph.

12A. The Respondents admit paragraph 12A of the Statement of Claim.

12B. In answer to paragraph 12B of the Statement of Claim, the Respondents:

- (a) deny the paragraph;
- (b) say further that the full text of Item 9A(a) of Schedule 1 to the Agreement provided that "the terms of the limited recourse loan will only require repayment should the Contractor terminate this Agreement before the Expiry Date, or this Agreement is terminated under clause 17.1"; and
- (c) say further that on the proper construction of the Henderson BSA, the limited recourse loan required repayment if the Henderson BSA was terminated by CBC

in circumstances where it was entitled to do so pursuant to cl 17.1 of the Henderson BSA.

BA. ALLEGATIONS UNDER THE HEADING 'THE LOAN SHARE AGREEMENT'

12C. In answer to paragraph 12C of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say that on 31 October 2023, ARN and Henderson Media entered into a contract for acquisition of ARN ordinary shares (**Share Agreement**) to be funded by a limited recourse loan provided for in the Henderson BSA.

12D. In answer to paragraph 12D of the Statement of Claim, the Respondents:

- (a) admit that the Share Agreement included terms to the effect of that pleaded; and
- (b) otherwise deny the paragraph.

12E. In answer to paragraph 12E of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say further that:
 - (i) paragraph 8 of Part A of the Share Agreement stated that:

"Your Loan will generally be waived in full on the Loan Repayment Date.

In certain 'Bad Leaver' circumstances, the Loan may not be waived, and may become repayable by you, at an earlier date (see section below on Terminating the BSA for more details).";

- (ii) paragraph 15 of Part A of the Loan Share Agreement stated that:

"The Board has the ability to determine that you should forfeit your Commencement Shares in the following circumstances where you are deemed a Bad Leaver:

a) material breach by you of this Loan Share Offer; or

b) you terminate the BSA for any reason other than under clause 17.2(c) or the Company validly terminates the BSA in accordance with clauses 17.1(a)-(i) of the BSA.

If your Commencement Shares are forfeited, the Commencement Shares will be disposed of on your behalf in satisfaction of the outstanding Loan.”; and

- (iii) on the proper construction of the Share Agreement, the limited recourse loan required repayment if the Henderson BSA was terminated by CBC in circumstances where it was entitled to do so pursuant to cl 17.1 of the Henderson BSA.

12F. In answer to paragraph 12F of the Statement of Claim, the Respondents:

- (a) admit that the Share Agreement included a term to the effect of that pleaded; and
- (b) otherwise deny the paragraph.

12G. In answer to paragraph 12G of the Statement of Claim, the Respondents:

- (a) admit that the Share Agreement included a term to the effect of that pleaded; and
- (b) otherwise deny the paragraph.

12H. In answer to paragraph 12H of the Statement of Claim, the Respondents:

- (a) repeat paragraph 12E above;
- (b) admit that the Share Agreement included a term to the effect of that pleaded; and
- (c) otherwise deny the paragraph.

C. ALLEGATIONS UNDER THE HEADING ‘PRIOR COMPLAINTS’

13. The Respondents admit paragraph 13 of the Statement of Claim.

14. The Respondents admit paragraph 14 of the Statement of Claim.

15. In answer to paragraph 15 of the Statement of Claim, the Respondents:

- (a) do not know and therefore cannot admit the paragraph; and

- (b) say further that Mr Bargwanna and Ms Penfold do not have a recollection of the conversation alleged therein.
16. The Respondents admit paragraph 16 of the Statement of Claim.
 17. In answer to paragraph 17 of the Statement of Claim, the Respondents:
 - (a) admit that Ms Henderson and Mr Sandilands had an argument on air; and
 - (b) otherwise deny the paragraph.
 18. In answer to paragraph 18 of the Statement of Claim, the Respondents:
 - (a) admit the paragraph; and
 - (b) say further that immediately after the altercation referred to in paragraph 17 of the Statement of Claim, Ms Henderson and Mr Sandilands had a heated argument off-air.
 19. The Respondents admit paragraph 19 of the Statement of Claim.
 20. The Respondents admit paragraph 20 of the Statement of Claim.
 21. The Respondents admit paragraph 21 of the Statement of Claim.
 22. In answer to paragraph 22 of the Statement of Claim, the Respondents:
 - (a) admit the paragraph; and
 - (b) says further that:
 - (i) on 16 September 2025, Lauren Joyce sent an email to Gemma O'Neill, Ms Henderson's manager, which said "*this is a serious matter, and Jackie's wellbeing is our priority*" and "*We are absolutely committed to upholding [ARN's obligations under the Fair Work Act 2009 (Cth)] and to making sure Jackie feels safe, supported and respected*", and invited Ms Henderson to "*provide full details of the incident and her concerns*";

Particulars

1. Email from Ms Joyce to Ms O'Neill on 16 September 2025 at 3:45 pm.

- (ii) on 16 September 2025, Ms O'Neill sent an email to Ms Joyce which said that "*Jackie has already spoken and messaged with DB about this particular incident*"; and

Particulars

1. Email from Ms O'Neill to Ms Joyce on 16 September 2025 at 5:18 pm.

- (iii) on or about 8 December 2025, Ms Henderson said to Mr Bargwanna words to the effect that no further action was required from ARN in relation to her complaint made through Ms O'Neill on 15 September 2025.

D. ALLEGATIONS UNDER THE HEADING 'THE COMPLAINT LETTER'

23. The Respondents admit paragraph 23 of the Statement of Claim.
24. The Respondents admit paragraph 24 of the Statement of Claim.
25. The Respondents admit paragraph 25 of the Statement of Claim.
26. The Respondents admit paragraph 26 of the Statement of Claim.
27. The Respondents admit paragraph 27 of the Statement of Claim.
28. In answer to paragraph 28 of the Statement of Claim, the Respondents:
 - (a) deny the paragraph; and
 - (b) say further that:
 - (i) each of the Henderson BSA, and the agreement entered into between CBC and Quasar in respect of the provision of Mr Sandilands to present 'The Kyle and Jackie O Show' (the **Quasar BSA**), contained a term providing that the parties acknowledged that subject to the terms of each agreement, Henderson Media and Quasar respectively is solely responsible for controlling the manner in which it provides Program Services under each respective agreement;

Particulars

1. Clause 3(c) of the Henderson BSA and the Quasar BSA.

- (ii) consequently, once any broadcast began, CBC had no ability or power to contemporaneously prevent Mr Sandilands from engaging in bullying or other unwanted conduct towards Ms Henderson; and further that, in respect of the facility to 'dump' content, clause 3(c) of the Henderson BSA is repeated, and in any event 'dumping' necessarily would occur after the bullying or other unwanted conduct had occurred, and would not itself have prevented Mr Sandilands from continuing with that conduct or impacted Ms Henderson's experience of it;
- (iii) consistently with that position, there were terms of the Henderson BSA that, in consideration for (amongst other things) CBC agreeing to pay Henderson Media a fee in the amount of \$9.4 million per annum (exclusive of GST):
 1. Henderson Media acknowledged and agreed that Henderson Media is responsible for ensuring the health and safety of Ms Henderson whilst performing the Program Services; and

Particulars

1. Henderson BSA, cl 13.1.
2. Henderson Media agreed that it will provide and Ms Henderson agreed that she will perform the Program Services under the Henderson BSA at their sole risk and CBC will not be liable to Henderson Media or Ms Henderson for any loss, damage or injury sustained by them however caused arising out of or relating to the provision of the Program Services by Henderson Media and the performance of the Program Services by Ms Henderson under the Henderson BSA; and

Particulars

1. Henderson BSA, cl 31(a).
- (iv) each of Henderson Media and Quasar was a person conducting a business or undertaking and for that reason had duties in respect of Ms Henderson under s 19 of the *Work Health and Safety Act 2011* (NSW);
 - (v) in the course of Mr Sandilands' comments, Brooklyn Ross, an ARN employee, attempted to intervene on multiple occasions;

- (vi) immediately after Ms Henderson left the broadcast studio on 20 February 2026, an employee of ARN spoke to Ms Henderson about what had occurred in the studio;
- (vii) three further employees of ARN spoke to Ms Henderson about what had occurred in the studio promptly thereafter;
- (viii) Ms Henderson was given the option of not returning to the studio to complete the program, but she chose to return to complete the remainder of the program;
- (ix) the Chief Content Officer and Chief People Officer of ARN spoke to 'The Kyle and Jackie O Show' team at about 10:15 am and said that Mr Sandilands' conduct was unacceptable workplace behaviour;
- (x) the Chief Content Officer of ARN spoke to Ms Henderson about what had occurred in the studio at about 10:20 am;
- (xi) the Chief Executive Officer of ARN spoke to Ms Henderson about what had occurred in the studio at about 1:00 pm;
- (xii) at about 5:00 pm, the Chief Content Officer spoke to Mr Sandilands and told him to reach out to Ms Henderson to confirm her wellbeing, and Mr Sandilands responded that he would not call Ms Henderson but may consider texting her;
- (xiii) at 5:50 pm, the Chief People Officer of ARN sent an email to Ms O'Neill in which she said Mr Sandilands' conduct was unacceptable, that ARN is committed to addressing the matter, and that ARN is taking steps to ensure that such an incident does not occur again; and

Particulars

1. Email from Ms Ros Reeves to Ms O'Neill, copying Ms Kerri Elstub, on 20 February 2026 at 5:50 pm.
- (xiv) at 7:33 pm, the Chief Executive Officer of ARN sent a text message to Ms Henderson saying "*Hey Jackie, just checking in to make sure that you're OK*".

29. In answer to paragraph 29 of the Statement of Claim, the Respondents:

- (a) admit the paragraph; and
- (b) say further that:
 - (i) between 21 February 2026 and 28 February 2026, the Chief Executive Officer of ARN sent numerous messages to Ms Henderson enquiring as to her wellbeing; and

Particulars

1. Text messages from Michael Stephenson to Ms Henderson on 21 February 2026 at 2.07 pm, 22 February 2026 at 1:09 pm, 23 February 2026 at 6:53 pm and 28 February at 2:48 pm.
 - (ii) on 28 February 2026 at 3.47 pm, Ms Henderson sent a text message to Mr Stephenson which said *"Thank you so much Stepho. Gemma said how amazing you've been and I can't tell you how much I appreciate that [folded hands emoji] I hope you're having a great, well earned, weekend xx"*.
30. The Respondents admit paragraph 30 of the Statement of Claim.
 31. The Respondents admit paragraph 31 of the Statement of Claim.
 32. The Respondents admit paragraph 32 of the Statement of Claim.
 33. In answer to paragraph 33 of the Statement of Claim, the Respondents:
 - (a) admit that:
 - (i) the Complaint Letter asserted that CBC had not acted in compliance with its obligation to provide a safe place of work; and
 - (ii) the purported grounds were in substance Ms Henderson's allegations that she had been the subject of workplace bullying on the part of Mr Sandilands both on 20 February 2026 and prior to that time;
 - (b) otherwise deny the paragraph; and
 - (c) say further that:
 - (i) they will rely upon the whole of the Complaint Letter for the proper interpretation of the Complaint Letter; and

- (ii) CBC did act in compliance with its obligations in respect of workplace safety in respect of the matters asserted in the Complaint Letter, in respect of which paragraph 28(b) above is repeated.

34. In answer to paragraph 34 of the Statement of Claim, the Respondents:

- (a) admit that:
 - (i) the Complaint Letter identified that CBC is obligated under work health and safety legislation to minimise risks to the health and safety of its workers;
 - (ii) the Complaint Letter stated that that obligation arises from statute; and
 - (iii) the Complaint Letter stated that the *Work Health and Safety Act 2011* (NSW) states that risks in the workplace can be psychosocial, and that psychosocial hazards include bullying;
- (b) otherwise deny the paragraph; and
- (c) repeat paragraph 33(c) above.

35. In answer to paragraph 35 of the Statement of Claim, the Respondents:

- (a) admit that the Complaint Letter asserted that CBC had not implemented any control measures;
- (b) otherwise deny the paragraph; and
- (c) repeat paragraph 33(c) above.

36. In answer to paragraph 36 of the Statement of Claim, the Respondents:

- (a) admit that the Complaint Letter stated that “*our client cannot continue to work with Mr Sandilands*”;
- (b) otherwise deny the paragraph;
- (c) say further that:
 - (i) the reasons given in the Complaint Letter as to why “*our client cannot continue to work with Mr Sandilands*” were:

The simple fact is that our client has been attacked and bullied on live prime time radio. There is evidence that she has endured

persistent and relentless bullying by Mr Sandilands well before the 20 February 2026 incident which despite numerous opportunities, the Group has failed to adequately address both at law and ethically;

- (ii) the Complaint Letter unequivocally conveyed the objective meaning that Ms Henderson would not present a radio program with Mr Sandilands again; and

Particulars

1. The Complaint Letter stated that “*our client cannot continue to work with Mr Sandilands*”.
2. The Complaint Letter stated that “*direct contact with Mr Sandilands is now untenable*”.

- (iii) the Complaint Letter unequivocally conveyed the objective meaning that Ms Henderson would not in future present a breakfast radio program under the Henderson BSA; and

Particulars

1. The Complaint Letter stated that “*our client is willing to continue the Agreement as a Presenter but requires the Group to propose an alternate daypart*”.
2. The Complaint Letter stated that “*This letter has been prepared on an open basis so that it can be relied on by Ms Henderson to prove continued failure by the Group to comply with its numerous obligations if Ms Henderson is prohibited from continuing the Agreement in an alternate daypart*”.
3. The Complaint Letter stated that “*Ms Henderson will not be able to return until a suitable alternate day part is found*”.

- (d) repeat paragraph 33(c) above.

37. In answer to paragraph 37 of the Statement of Claim, the Respondents:

- (a) admit that the Complaint Letter contained the matter identified in paragraph 1 of the particulars to paragraph 36(c)(iii) above;

- (b) otherwise deny the paragraph; and
- (c) say further that:
 - (i) Henderson Media was required by the Henderson BSA to (amongst other things) provide Ms Henderson to present a breakfast radio program unless CBC agreed to a program in substitution;

Particulars

- 1. Paragraphs 5(a), 5(b), 6(a), 8(a), 10(d), and 11(c) above are repeated.
- (ii) accordingly, Henderson Media had no right or entitlement under the Henderson BSA to:
 - 1. refuse to provide Ms Henderson to present a breakfast radio program; or
 - 2. 'require' CBC to 'propose an alternate daypart',

and nor did CBC have any obligation arising under the Henderson BSA to so propose, or to agree to any alternate daypart; and
- (iii) in those circumstances:
 - 1. it was a contradiction in terms for the Complaint Letter to assert to the effect that Ms Henderson was willing to continue the Henderson BSA but to 'require' CBC to 'propose an alternate daypart'; and
 - 2. the objective meaning of the assertion "*our client is willing to continue the Agreement as a Presenter but requires the Group to propose an alternate daypart*" was that Ms Henderson did not intend to 'continue with' the Henderson BSA in the event that CBC did not 'propose an alternate daypart'; and
- (d) repeat paragraphs 33(c) and 36(c) above.

E. ALLEGATIONS UNDER THE HEADING 'EXERCISE OF WORKPLACE RIGHTS'

- 38. In answer to paragraph 38 of the Statement of Claim, the Respondents:
 - (a) admit that the Complaint Letter asserted that:

- (i) *“The Group is obligated under work health and safety legislation to minimise risks to the health and safety of its workers”;*
 - (ii) *“Where a risk is identified, the Group was required to immediately assess and control the risk to Ms Henderson”; and*
 - (iii) *“Should a report be made to SafeWork NSW, it is now highly likely that the Group will be found to have breached its duty of care to Ms Henderson by exposing her to Mr Sandilands’ bullying conduct over a prolonged period. The Group cannot demonstrate that it has taken steps to remove or minimise any risk to her health and safety. Notwithstanding whether Ms Henderson has previously expressed a personal view to not be involved in an investigation, there remained a duty of care obligation on the Group to control any known and ongoing risk to Ms Henderson’s health and safety”;*
- (b) otherwise deny the paragraph; and
 - (c) repeat paragraph 33(c) above.
39. The Respondents admit paragraph 39 of the Statement of Claim.
40. The Respondents admit paragraph 40 of the Statement of Claim.
41. In answer to paragraph 41 of the Statement of Claim, the Respondents:
- (a) deny the paragraph; and
 - (b) say further that:
 - (i) the mere identification of workplace rights (as defined in the Act) does not by itself constitute exercise of those (or any such) workplace rights; and
 - (ii) further and in any event, to the extent that the Complaint Letter included the matters pleaded in paragraph 38 of the Statement of Claim, they were not stated in good faith and for a proper purpose for the purposes of s 340(1)(a)(ii) of the Act.

Particulars

1. The purpose of the Respondents’ reference to Ms Henderson’s purported entitlement was not to rely on any such entitlement or alleged legislation in order to demand or encourage CBC to comply with that legislation in the course of Ms Henderson and Henderson

Media complying with their obligations under the Henderson BSA (to the extent that CBC was not already doing so, which is denied).

2. Rather, it was to use the existence of the purported entitlement to seek to force CBC not to hold Ms Henderson and Henderson Media to the services that they were contractually bound to provide pursuant to the Henderson BSA, and instead to provide Ms Henderson and Henderson Media with an alternative daypart which CBC was not contractually obliged to provide.

3. These matters are inferred from the facts that:

a. By 23 February 2026, Ms Henderson had already 'resolved' to perform on another show, at a different time of the day: see paragraph 246 of the affidavit of Ms O'Neill affirmed 8 June 2026.

b. Paragraphs 33(c), 36(c), and 37(c) above are repeated.

c. Paragraphs 55(b) and 60(b) below are repeated.

d. The Complaint Letter, in its terms and tenor, was inconsistent with the proposition that Ms Henderson and Henderson Media would ever provide the services that they were contractually bound to provide pursuant to the Henderson BSA, even if the purported safety issues that they identified in the Complaint Letter were satisfactorily addressed.

e. The Complaint Letter included:

This letter has been prepared on an open basis so that it can be relied on by Ms Henderson to prove continued failure by the Group to comply with its numerous obligations if Ms Henderson is prohibited from continuing the Agreement in an alternate daypart.

42. In answer to The Respondents deny paragraph 42 of the Statement of Claim, the Respondents:

(a) deny the paragraph; and

- (b) say further that the statement in the Complaint Letter that Ms Henderson and Henderson Media reserved their right to make a report to SafeWork NSW was not done in good faith and for a proper purpose for the purposes of s 340(1)(a)(iii) of the Act.

Particulars

1. The purpose of stating that they were reserving that right was not to rely upon in it in the future, preserve any entitlement to do so, or demand or encourage CBC to comply with any applicable legislation.
 2. Rather, the purpose of stating that they were reserving that right was to use the prospect of a future report to SafeWork NSW to seek to force CBC not to hold Ms Henderson and Henderson Media to the services that they were contractually bound to provide pursuant to the Henderson BSA, and instead to provide Ms Henderson and Henderson Media with an alternative daypart which CBC was not contractually obliged to provide.
 3. These matters are inferred from the facts that:
 - a. It was always open to Ms Henderson and Henderson Media to exercise the right they said they were reserving. They have never done so, to the knowledge of the Respondents.
 - b. If they had done so, the alleged bullying may have been addressed through SafeWork NSW, but Henderson Media and Ms Henderson would (or at least, may) have had to continue to provide services on a breakfast show with Mr Sandilands, in circumstances where Ms Henderson had already 'resolved' to perform on another show at a different time of the day: see paragraph 246 of the affidavit of Ms O'Neill affirmed 8 June 2026.
 - c. The particulars to paragraph 41(b)(ii) above are repeated.
43. In answer to The Respondents deny paragraph 43 of the Statement of Claim, the Respondents:
- (a) deny the paragraph; and

- (b) say further that the statement in the Complaint Letter that Ms Henderson had the ability to initiate a claim for relief to address bullying in the workplace under the Act was not done in good faith and for a proper purpose for the purposes of s 340(1)(a)(iii) of the Act.

Particulars

1. The purpose of stating that Ms Henderson had the ability to initiate a claim for relief to address bullying in the workplace under the Act right was not to initiate it in the future, preserve any entitlement to do so, or demand or encourage CBC to comply with any applicable legislation.
2. Rather, the purpose of stating that Ms Henderson had the ability to initiate a claim for relief to address bullying in the workplace under the Act was to seek to force CBC not to hold Ms Henderson and Henderson Media to the services that they were contractually bound to provide pursuant to the Henderson BSA, and instead to provide Ms Henderson and Henderson Media with an alternative daypart which CBC was not contractually obliged to provide.
3. These matters are inferred from the facts that:
 - a. It was always open to Ms Henderson to initiate the process that she identified that she had the ability to initiate. She has never done so, to the knowledge of the Respondents.
 - b. If she had done so, the alleged bullying may have been addressed through that process, but Henderson Media and Ms Henderson would (or at least, may) have had to continue to provide services on a breakfast show with Mr Sandilands, in circumstances where Ms Henderson had already 'resolved' to perform on another show at a different time of the day: see paragraph 246 of the affidavit of Ms O'Neill affirmed 8 June 2026.
 - c. The particulars to paragraph 41(b)(ii) above are repeated.

F. ALLEGATIONS UNDER THE HEADING 'FW ACT CLAIM'

44. The Respondents admit paragraph 44 of the Statement of Claim.

45. The Respondents admit paragraph 45 of the Statement of Claim.
46. The Respondents admit paragraph 46 of the Statement of Claim.
47. In answer to paragraph 47 of the Statement of Claim, the Respondents:
- (a) deny the paragraph; and
 - (b) say further that the Henderson BSA is not a 'contract for services', Henderson Media is not an 'independent contractor', and CBC is not a 'principal', for the purposes of Item 3 in the table in s 342(1) of the Act.
48. In answer to paragraph 48 of the Statement of Claim, the Respondents:
- (a) admit that CBC terminated the Henderson BSA with immediate effect;
 - (b) otherwise deny the paragraph; and
 - (c) say further that:
 - (i) the Henderson BSA is not a 'contract for services', and Henderson Media is not an 'independent contractor', for the purposes of Item 3 in the table in s 342(1) of the Act;
 - (ii) further or alternatively, none of the alleged exercises or proposals to exercise workplace rights alleged in paragraphs 41 to 43 of the Statement of Claim constituted exercises or proposals to exercise workplace rights for the purposes of s 340(1) of the Act; and
 - (iii) further and in any event, CBC did not terminate the Henderson BSA because of (or for reasons that included) any of the alleged matters pleaded in paragraphs 38 to 43 of the Statement of Claim.
49. The Respondents deny paragraph 49 of the Statement of Claim.
50. In answer to paragraph 50 of the Statement of Claim, the Respondents:
- (a) deny the paragraph; and
 - (b) say further that:
 - (i) insofar as the loss and damage claimed concerns pain, suffering, humiliation and distress, Ms Henderson has alleged that, immediately prior to the termination of the Henderson BSA, she suffered from a psychological

illness which extends to physical symptoms stemming from Mr Sandilands' bullying conduct; and

- (ii) if (which is denied) Ms Henderson has suffered pain, suffering, hurt, humiliation or distress, it was not caused by any alleged breaches of the Act by CBC.

51. The Respondents deny paragraph 51 of the Statement of Claim.

G. ALLEGATIONS UNDER THE HEADING 'CONTRACT CLAIM'

52. In answer to paragraph 52 of the Statement of Claim, the Respondents:

- (a) admit that it was an express term of the Henderson BSA that CBC could terminate the Henderson BSA by notice in writing if specified events occurred;
- (b) otherwise deny the paragraph; and
- (c) say further that the Henderson BSA did not expressly exclude, and did not on its proper construction exclude, the common law rule that a contract may be terminated for repudiation.

53. In answer to paragraph 53 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) repeat paragraphs 5(a), 5(b), 6(a), 8(a), 10(d), 11(c), 36(c), and 37(c) above.

54. In answer to paragraph 54 of the Statement of Claim, the Respondents:

- (a) deny the paragraph;
- (b) say further that paragraph 54 does not accurately or completely set out the relevant matters asserted in the Complaint Letter; and
- (c) repeat paragraphs 33(c), 36(c), and 37(c) above.

55. In answer to paragraph 55 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say further that:

- (i) neither the Complaint Letter nor the 4 March 2026 letter referred to in paragraph 60 of the Statement of Claim referred to the defined concepts of the 'Program Services' or the 'Program';
- (ii) paragraphs 33(c), 36(c), and 37(c) above are repeated;
- (iii) the intention objectively conveyed by the Complaint Letter that Ms Henderson would not present a radio program with Mr Sandilands again was unequivocal, not limited in time, and not conditional upon any future contingency (and in particular, it was not subject to CBC agreeing to an alternative co-host, or to CBC first addressing any putative health and safety concerns to Ms Henderson's satisfaction); and
- (iv) the intention conveyed by the Complaint Letter that Ms Henderson would not in future present a breakfast radio program under the Henderson BSA was unequivocal, not limited in time, and not conditional upon any future contingency (and in particular, it was not subject to upon CBC agreeing to an alternative daypart, or to CBC first addressing any putative health and safety concerns to Ms Henderson's satisfaction).

56. In answer to paragraph 56 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) repeat paragraphs 5(a), 5(b), 6(a), 8(a), 10(d), 11(c), 33(c), 36(c), 37(c), and 55(b) above.

57. In answer to paragraph 57 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) repeat paragraphs 5(a), 5(b), 6(a), 8(a), 10(d), 11(c), 33(c), 36(c), 37(c), and 55(b) above.

58. In answer to paragraph 58 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say further that:
 - (i) the allegation in paragraph 58 of the Statement of Claim is embarrassing and contravenes rule 16.06 of the *Federal Court Rules 2011* (Cth), because it is inconsistent with the Applicants' express allegation in paragraph 48 of

the Statement of Claim that the CBC terminated the Henderson BSA with immediate effect, which allegation is admitted above;

- (ii) as at the time of the letter pleaded in paragraph 44 of the Statement of Claim (3 March Letter), the services of Ms Henderson were no longer available to Henderson Media within the meaning of cl 17.1(g) of the Henderson BSA; and
- (iii) by reason of that matter, at the time of 3 March Letter, CBC was entitled to terminate the Henderson BSA, immediately by notice in writing, by operation of cl 17.1.

59. In answer to paragraph 59 of the Statement of Claim, the Respondents:

- (a) deny the paragraph;
- (b) repeat paragraphs 5(a), 5(b), 6(a), 8(a), 10(d), 11(c), 33(c), 36(c), 37(c), 48(a), 55(b), and 58(b) above; and
- (c) say further that in the premises:
 - (i) by the Complaint Letter, Henderson Media and Ms Henderson repudiated the Henderson BSA, and CBC validly terminated the Henderson BSA on 3 March 2026; and
 - (iiA) by the time of the 3 March Letter, CBC was entitled to terminate the Henderson BSA, immediately by notice in writing, pursuant to cl 17.1(g) of the Henderson BSA; and
 - (ii) even if (which is denied), CBC did not validly terminate the Henderson BSA on 3 March 2026, CBC's purported termination did not constitute a repudiation thereof.

60. In answer to paragraph 60 of the Statement of Claim, the Respondents:

- (a) deny the paragraph;
- (b) say further that:
 - (i) the letter referred to in that paragraph is not relevant to the issue of whether CBC validly terminated the Henderson BSA on 3 March 2026;

- (ii) the letter referred to in that paragraph did not refer to the defined concepts of the 'Program Services' or the 'Program';
- (iii) instead, that letter advanced a position different to what is set out in paragraphs 53 to 59 of the Statement of Claim, to the effect that the Henderson BSA contained a particular implied term about workplace safety, and contended to the effect that the Complaint Letter had not repudiated the Henderson BSA because of that implied term; and
- (iv) nothing in that letter resiled from the position taken in the Complaint Letter that:
 - 1. Ms Henderson would not present a radio program with Mr Sandilands again; and
 - 2. Ms Henderson would not in future present a breakfast radio program under the Henderson BSA,

even though Henderson Media and Ms Henderson were aware that CBC considered the communication of that position to constitute a repudiation of the Henderson BSA.

61. In answer to paragraph 61 of the Statement of Claim, the Respondents:

- (a) admit the paragraph; and
- (b) say further that the letter referred to in that paragraph noted that:

"nothing in [the Complaint Letter] resiles from the position taken in [the Complaint Letter] that:

- Ms Henderson is not willing to present a breakfast radio program with Mr Sandilands ever again;

- Henderson Media will not provide Ms Henderson to present such a program ever again,

even though [Henderson Media and Ms Henderson] are now aware that [the Respondents] consider the communication of that position to constitute a repudiation of the [Henderson BSA]."

62. The Respondents deny paragraph 62 of the Statement of Claim.

GA. ALLEGATIONS UNDER THE HEARING 'THE LOAN SHARE AGREEMENT CLAIM'

62A. The Respondents admit paragraph 62A of the Statement of Claim.

62B. The Respondents admit paragraph 62B of the Statement of Claim.

62C. The Respondents admit paragraph 62C of the Statement of Claim.

62D. The Respondents admit paragraph 62D of the Statement of Claim.

62E. In answer to paragraph 62E of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 53 to 59 above; and
- (b) otherwise deny the paragraph.

62F. In answer to paragraph 62F of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 12B, 12E, 45, 46, 58 and 59 above; and
- (b) otherwise deny the paragraph.

62G. In answer to paragraph 62G of the Statement of Claim, the Respondents:

- (a) repeat paragraphs 62A to 62F above; and
- (b) otherwise deny the paragraph.

H. ALLEGATIONS UNDER THE HEADING 'MISLEADING OR DECEPTIVE CONDUCT CLAIM'

63. The Respondents admit paragraph 63 of the Statement of Claim.

64. The Respondents admit paragraph 64 of the Statement of Claim.

65. The Respondents admit paragraph 65 of the Statement of Claim.

66. The Respondents admit paragraph 66 of the Statement of Claim.

67. In answer to paragraph 67 of the Statement of Claim, the Respondents:

- (a) admit that the Announcement contained the words in quotation marks in paragraph 67 of the Statement of Claim;

- (b) say further that they will rely upon the whole Announcement for its objective meaning; and
- (c) otherwise deny the paragraph.

68. In answer to paragraph 68 of the Statement of Claim, the Respondents:

- (a) deny that the 'Notice Representation' conveyed any of the meanings alleged in sub-paragraphs 68(a) to (c) of the Statement of Claim; and
- (b) say further that:
 - (i) the 'Notice Representation' (being the words contained in quotation marks in paragraph 67 of the Statement of Claim) was immediately followed by a sentence explicitly stating that ARN had terminated the Henderson BSA, as follows:

“ARN... announces that Ms Jacqueline Henderson has given notice that she “cannot continue to work with Mr Kyle Sandilands”. Accordingly, ARN has terminated the services agreement with Henderson Media Pty Ltd, under which Ms Henderson presents the Kyle and Jackie O show”; and

- (ii) neither the 'Notice Representation' (being the words contained in quotation marks in paragraph 67 of the Statement of Claim) nor anything else in the Announcement conveyed the meanings alleged.

69. In answer to paragraph 69 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say further that in the Complaint Letter, Ms Henderson (through solicitors) said:

“To that point, this letter is issued on a confidential basis for the attention of Mr Stephenson and the Group board only (and may be provided to the Group’s legal advisers) and it is expected that those parties will maintain confidence in relation to the matters contained in this letter and that a copy or extract of this letter will not be provided to any other party which includes Mr Sandilands or any agent or representative of Mr Sandilands.”

70. In answer to paragraph 70 of the Statement of Claim, the Respondents:

- (a) admit that the Announcement contained the words in quotation marks in paragraph 70 of the Statement of Claim;
- (b) say further that they will rely upon the whole Announcement for its objective meaning; and
- (c) otherwise deny the paragraph.

71. The Respondents deny paragraph 71 of the Statement of Claim.

72. The Respondents deny paragraph 72 of the Statement of Claim.

73. The Respondents deny paragraph 73 of the Statement of Claim.

74. In answer to paragraph 74 of the Statement of Claim, the Respondents:

- (a) deny the paragraph; and
- (b) say further that even if (which is denied) Ms Henderson suffered any loss or damage as a result of the alleged misleading or deceptive conduct, such loss or damage must in principle be limited to:
 - (i) loss or damage to compensate her for any loss of reputation, career and professional standing as a result of the suggestion that Ms Henderson had indicated that she cannot continue to work with Mr Sandilands as part of a 'formal right to give notice' as opposed to in an informal notice that was nonetheless sent by her solicitors; or
 - (ii) loss or damage to compensate her for any loss of reputation, career and professional standing as a result of the suggestion that she had been made a legal offer capable of acceptance to present an alternative show, as opposed to having been made an offer to present an alternative show that was not yet capable of formal acceptance,

which loss or damage in either case could not plausibly be quantified as other than nil.

I. ALLEGATIONS UNDER THE HEADING 'RELIEF CLAIMED'

75. In answer to paragraph 75 of the Statement of Claim, the Respondents:

- (a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

76. In answer to paragraph 76 of the Statement of Claim, the Respondents:

(a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

76A. In answer to paragraph 76A of the Statement of Claim, the Respondents:

(a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

77. In answer to paragraph 77 of the Statement of Claim, the Respondents:

(a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

78. In answer to paragraph 78 of the Statement of Claim, the Respondents:

(a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

79. In answer to paragraph 79 of the Statement of Claim, the Respondents:

(a) admit that the Applicants seek the relief referred to therein; and

(b) deny that the Applicants are entitled to or should receive that relief.

Date: ~~21 April 2026~~ 10 July 2026



Signed by Nerida Jessup
Lawyer for the Respondents

This pleading was prepared by Beata Szabo, Peter Gaffney and Tom Blackburn SC of counsel.

Certificate of lawyer

I Nerida Jessup certify to the Court that, in relation to the defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

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

Date: ~~21 April 2026~~ 10 July 2026



Signed by Nerida Jessup
Lawyer for the Respondents

Schedule

No. NSD507 of 2026

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

ApplicantsSecond Applicant: **Henderson Media Pty Ltd** (ACN 108 332 725)**Respondents**Second Respondent: **ARN Media Ltd** (ACN 008 637 643)