

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

UNDERTAKING PURSUANT TO SECTION 205W OF THE BROADCASTING SERVICES ACT 1992

This Undertaking is given to the Australian Communications and Media Authority (the ACMA) by General Television Corporation Pty Limited (ACN 004 330 036) pursuant to section 205W of the *Broadcasting Services Act 1992*.

BACKGROUND

- A. On 27 March 2009, the ACMA found that General Television Corporation Pty Limited, the licensee of the commercial television service which operates with the call sign GTV, had breached clause 1.8.6 of the *Commercial Television Industry Code of Practice 2004* in that it had broadcast a program which was likely, in all the circumstances to have provoked severe ridicule against a person on the grounds of gender and was not said or done reasonably and in good faith. The breach had occurred during the 'Sam's Mailbag' segment of the *AFL Footy Show* broadcast on 3 April 2008.
- B. On 3 June 2010, the ACMA found that General Television Corporation Pty Limited, the licensee of the commercial television service which operates with the call sign GTV, had breached clause 1.8.6 of the *Commercial Television Industry Code of Practice 2004* in that it had broadcast a program which was likely, in all the circumstances, to have provoked severe ridicule against a person on the grounds of colour and race and was not said or done reasonably and in good faith. The breach occurred during the 'Sam's Mailbag' segment of the *AFL Footy Show* broadcast on 17 September 2009.
- C. General Television Corporation Pty Limited (**GTV**) holds the commercial television broadcasting licence for the commercial television broadcasting service operated as GTV.
- D. In light of these breaches GTV has offered to give the ACMA an enforceable undertaking under section 205W of the Act, in the terms set out below.

1. DEFINITIONS AND INTERPRETATION

1.1. Defined terms

In this Undertaking, unless the context otherwise requires:

the **ACMA** means the Australian Communications and Media Authority;

Act means the *Broadcasting Services Act 1992*;

the **Code of Practice** means the 2010 Commercial Television Industry Code of Practice;

Effective Date has the meaning set out in clause 4.1;

GTV means General Television Corporation Pty Limited (ACN 004 330 036)

in production means the period, occurring each year during the Term of the Undertaking, from the commencement of the AFL home and away season until the completion of the Grand Final Footy Show in the week preceding the AFL Grand Final;

Investigation means an investigation conducted by the ACMA in accordance with sections 149 or 170 of the Act;

legal qualifications means a Bachelor of Laws degree issued by an Australian university or equivalent;

Nine means Nine Network Australia Holdings Pty Ltd (ACN 124 816 093);

production team means the GTV Head of Entertainment, the Executive Producer of the Program and any other person having editorial control over the content of the Program;

Program means the television program broadcast on Nine's commercial television stations named the "AFL Footy Show";

Registered charity means a charity that has been endorsed as an income tax exempt charitable entity under Subdivision 50-B of the *Income Tax Assessment Act 1997*; and

Sam's Mail Bag segment refers to a segment of the Program given the title "Sam's Mail Bag" and conducted by Sam Newman and to any replacement or like segment (by whatever name called) conducted by Sam Newman;

senior Nine executive means, at the election of GTV, the Managing Director of GTV or another senior executive of GTV or Nine nominated by the Managing Director of GTV; and

Term has the meaning set out in clause 4.2(a).

1.2. Interpretation

In this Undertaking, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to a statute, regulation or provision of a statute or regulation includes a reference to that statute, regulation or provision as amended or re-enacted from time to time;
- (c) headings are for ease of reference and do not affect the construction of this Undertaking;
- (d) words and expressions defined in the Act or the Code of Practice have the same meaning in this Undertaking.

2. ACKNOWLEDGEMENT OF PAST CONDUCT

GTV acknowledges the seriousness of this matter and that the past conduct referred to in paragraphs A and B of the Background section above has been unacceptable. Within 2 business days after the Effective Date GTV will make this acknowledgement public by an announcement on the website for the Program maintained by or on behalf of Nine in the form set out in Annexure A.

3. UNDERTAKINGS

3.1. Broadcast of Material (*Refraining from engaging in specified conduct*)

GTV will not permit the Program or a promotion for the Program to include material involving Sam Newman which is likely in all the circumstances to provoke or perpetuate intense dislike, serious contempt or severe ridicule against a person or group of persons on the grounds of age, colour, gender, national or ethnic origin, disability, race, religion or sexual preference unless the broadcast of such material is not in breach of the Code of Practice.

3.2. Pre-approval of Program Material (*implementation of specific practices or procedures to reduce the risk of future contraventions*)

Whilst the Program is in production and Sam Newman remains a host of or appears on the Program, prior to broadcast of the Program each week:

- (a) a report will be prepared by the Executive Producer detailing, in respect of the Sam's Mail Bag segment of the Program and other parts of the program involving Sam Newman:
 - (i) a detailed rundown of each such part of the Program;
 - (ii) all props to be used in each such part;
 - (iii) the script of any letters to be used or referred to by Sam Newman; and

(iv) copies of any photographs to be displayed.

(b) A senior Nine executive, with legal qualifications, external from the Program staff will review the report prior to broadcast.

(c) The senior Nine executive mentioned in paragraph (b) will advise the Executive Producer of the Program in writing whether the material included in the report is likely to comply with clause 3.1. GTV will not broadcast in the Program any material identified by the senior Nine executive as likely to infringe the undertaking set out in clause 3.1.

3.3. Training Programs (*the development and implementation of training programs to reduce the risk of future contraventions*)

(a) During the Term of the Undertaking, whilst the Program is in production and Sam Newman remains a host of or appears on the Program, GTV will provide a series of three monthly anti-discrimination training sessions for Program hosts including Sam Newman and the production team. This training will be conducted by an anti-discrimination professional with suitable qualifications approved in writing by the ACMA. The first training session must occur within 1 month after the Effective Date.

(b) During the Term of the Undertaking, whilst the Program is in production and Sam Newman remains a host of or appears on the Program, GTV will provide a program of six monthly Code of Practice training sessions for Program hosts including Sam Newman and the production team. The program will be run by the Nine Network Regulatory Affairs Manager or other suitably qualified person approved in writing by the ACMA. The first training session must occur within 1 month after the Effective Date.

3.4. Reporting (*the development of documented compliance procedures and systems to reduce the risk of future contraventions*)

(a) During the Term of the Undertaking, whilst the Program is in production and Sam Newman remains a host of or appears on the Program, GTV will provide to the ACMA a weekly report of all complaints received under the Code of Practice that relate to Sam Newman's conduct on the Program. The report must list all complaints received and the action taken in respect of each complaint. GTV will provide the first report within 14 days of the Effective Date and every seven days after that.

(b) During the Term of the Undertaking, whilst the Program is in production and Sam Newman remains a host of or appears on the Program, GTV will provide to the ACMA a report at the end of each calendar month stating whether it has complied with undertaking 3.1, and containing copies of the reports and written approvals referred to in undertaking 3.2. GTV will provide the first report under this undertaking within 30 days of the Effective Date and at the end of every calendar month after that.

(c) GTV will provide a report to the ACMA, providing written confirmation that the first and subsequent (three monthly) anti-discrimination training sessions (see undertaking 3.3(a) above) took place, a list of all attendees at those sessions and copies of the material covered during the sessions, within 5 business days after the conclusion of each of those sessions.

(d) GTV will provide a report to the ACMA, providing written confirmation that the first and subsequent (6 monthly) code of practice training sessions (see undertaking 3.3(b) above) took place, within 5 business days after the conclusion of each of those sessions.

3.5. Agreed payment to Charities to deter future contraventions of the Code of Practice (*undertaking to take specified action to reduce the risk of future contraventions*)

(a) If, following an Investigation, the ACMA determines that GTV broadcast an episode of the Program, or a promotion for the Program, during the Term of this Undertaking, which

breached provisions of clause 1.9 of the Code of Practice, GTV will pay the sum of \$200,000 (the **payment**) in accordance with paragraph (b).

- (b) The payment will be divided evenly between two or three registered charities, chosen by written agreement between the Chair of the ACMA and the CEO of Nine, which serve or represent some or all of the interests that are sought to be protected by clause 1.9 of the Code of Practice.
- (c) In the event that the Chair of the ACMA and the CEO of Nine cannot reach agreement on the charities which will receive the payment within 14 days after the date that the ACMA informs GTV of its breach finding, the matter will be referred to an independent third party, to be agreed upon in writing between the Chair of the ACMA and the CEO of Nine, to identify the charities which will receive the payments.
- (d) The payments must be made to the charities within 14 days after the day that the charities which are to receive the payment are identified in accordance with paragraph (b) or (c).
- (e) 3.5 (e) - The payment of the amounts referred to in this clause 3.5 will not prevent the ACMA from taking any other action which is within its power and which may be appropriate with respect of the conduct which gave rise to the breach.

4. TERM

4.1. Commencement

This undertaking commences when:

- (a) it has been executed by GTV; and
- (b) so executed, it has been accepted by ACMA and written notification of that acceptance has been provided to GTV (**Effective Date**).

4.2. Termination

- (a) This undertaking will terminate on 30 September 2012, unless ACMA gives written notice to GTV cancelling this undertaking in accordance with sub-section 205W(4) of the Act, in which event this undertaking terminates on that day (the **Term**).
- (b) The expiration of the term of this Undertaking does not affect the obligation of GTV to comply with the undertaking given at paragraph 3.1 in respect of every episode of the Program, or a promotion for the Program, which is broadcast during the Term of this Undertaking.

5. ACKNOWLEDGMENTS BY GTV

5.1. GTV acknowledges that the ACMA:

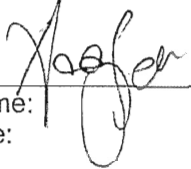
- (a) may issue a media release on execution of this Undertaking referring to its terms and to the concerns of the ACMA which led to its execution;
- (b) may from time to time publicly refer to this Undertaking; and
- (c) will make this Undertaking available for public inspection

5.2. GTV acknowledges that the acceptance of this Undertaking does not derogate from any rights and remedies available to any other Person arising from the conduct described in this Undertaking.

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6. EXECUTION

Executed by General Television Corporation Pty Limited by its authorised representative:



Name:
Title:

Accepted by the Australian Communications and Media Authority pursuant to section 205W of the Act on 6th September 2010.

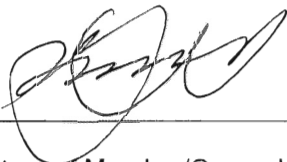
The common seal of the Australian Communications and Media Authority was affixed to this Undertaking in the presence of:



Signature of member

CHRIS CHAPMAN

Name of member



Signature of ~~Member~~/General Manager

GILES TANNER

Name of Member/General Manager



Annexure A - Form of Acknowledgement by GTV

GTV 9 acknowledges the importance of complying with the Commercial Television Code of Practice and that in some instances involving the Footy Show, GTV 9 has not complied with this Code.

GTV 9 takes its obligations to comply with the Code very seriously and it is unacceptable to GTV 9 that breaches have occurred in the past.

GTV 9 has willingly entered into a set of strict, enforceable undertakings with the ACMA to reinforce its commitment to full compliance and to ensure that material forming part of the Footy Show, in all respects, complies with the Code.
