

**ENFORCEABLE UNDERTAKING
GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY
BY COMMONWEALTH BROADCASTING CORPORATION (ACN 000 019 796)
UNDER SECTION 205W OF THE BROADCASTING SERVICES ACT 1992 (CTH)**

1. Background

- 1.1. The Licensee is licensed under the Act to provide commercial radio broadcasting services in the Sydney RA1 licence area.
- 1.2. The Licensee broadcast the Paralympics Segment on 1 September 2021 and the Media Coverage Segment on 3 September 2021.
- 1.3. The ACMA investigated whether, in broadcasting the Paralympics Segment and/or Media Coverage Segment, the Licensee had complied with its obligations under the Code.
- 1.4. On 20 December 2022, as a result of Investigation Report no. BI-630, the ACMA found that:
 - 1.4.1. the Segments were both in breach of section 2.2 of the Code;
 - 1.4.2. the Paralympics Segment did not breach section 2.1.4 of the Code; and
 - 1.4.3. the Licensee's handling of a complaint in connection with the Paralympics Segment did not breach section 10.12 of the Code.
- 1.5. The Licensee acknowledges the ACMA's view that its conduct contravened section 2.2 of the Code.
- 1.6. In response to the ACMA's view and concerns regarding the Licensee's future compliance, the Licensee offers this Undertaking.

2. Definitions

In this Undertaking:

ACMA means the Australian Communications and Media Authority.

Act means the *Broadcasting Services Act 1992* (Cth).

ARN means Australian Radio Network Pty Ltd (ACN 065 986 987) of 3 Byfield St, Macquarie Park, NSW 2113.

ARN Legal Department means the members (or a member) of the Legal Department of ARN who are qualified legal practitioners.

Code means the Commercial Radio Code of Practice 2017 (revised 2018).

Commencement Date has the meaning given to it in clause 3.1 of this Undertaking.

Licensee means Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796) of 3 Byfield St, Macquarie Park, NSW 2113.

Media Coverage Segment means the segment of the Program discussing media coverage that had been critical of comments made in the Paralympics Segment that was broadcast on 3 September 2021 and was the subject of the ACMA's Investigation Report no. BI-630.

Paralympics Segment means the segment of the Program discussing the Tokyo 2020 Paralympic Games that was broadcast on 1 September 2021 and was the subject of the ACMA's Investigation Report no. BI-630.

Program means the *Kyle & Jackie O* breakfast program broadcast by the Licensee on its radio station KIIS 106.5.

Program Staff has the meaning given to it in clause 5.2 of this Undertaking.

Segments means both the Paralympics Segment and the Media Coverage Segment together.

Undertaking means this Enforceable Undertaking.

3. Term of the Undertaking

- 3.1. This Undertaking, having been executed by the Licensee, commences on the day it is executed by the ACMA (the **Commencement Date**).
- 3.2. This Undertaking will terminate upon completion of the Licensee's obligations in clause 5 unless the ACMA gives notice to the Licensee cancelling this Undertaking in accordance with s 205W(4) of the Act, in which event this Undertaking terminates on the day that written notice is given.

4. Withdrawal or variation

This Undertaking may only be withdrawn or varied with the written consent of the ACMA in accordance with s 205W(3) of the Act.

5. Undertakings

The Licensee undertakes, either itself or via its parent company, ARN, that:

- 5.1. ARN has employed, and will continue to employ for a period of at least 2 years, a second, back-up censor, to assist the primary censor to monitor compliance with the Code for the Program.
- 5.2. Within 3 months of the Commencement Date, the ARN Legal Department will deliver a dedicated Code compliance training session, including the topic of sensitivity towards others (including those with disabilities) and their differences, to the Program hosts, producers, censor and other staff involved in the creation and presentation of the Program (**Program Staff**). A copy of this training material will be provided to the ACMA in line with clause 5.5 below.
- 5.3. Within 6 months of the Commencement Date, ARN will expand its online Code compliance training to include a section on the topic of sensitivity towards others (including those with disabilities) and their differences. This will be completed periodically by all ARN content staff (not just the Program staff). A copy of this training material will be provided to the ACMA in line with clause 5.5 below.
- 5.4. ARN will conduct an independent assessment of the existing controls to prevent further breaches of the decency Code provision and provide a report within 3 months of the date of this Undertaking to the ACMA that includes:
 - 5.4.1. Submissions on how any previous recommendations to prevent breaches of the decency Code provision have been implemented by the Licensee.
 - 5.4.2. Additional recommendations for further improvements to minimise the risk of future breaches.
- 5.5. Every 6 months, for a period of 2 years commencing on the date of this undertaking, ARN will provide a report to the ACMA detailing:
 - 5.5.1. The content of meetings that have been held involving the 'censor/s' and Program staff, about complaints or other expressions of concern received.
 - 5.5.2. The engagement activities undertaken, and sensitivity training delivered to Program staff (as set out in clause 5.2 and 5.3 above).
 - 5.5.3. The new systems and processes implemented post this investigation finding.

6. Acknowledgements

- 6.1. The Licensee acknowledges that:
 - 6.1.1. The ACMA will make this Undertaking publicly available by publishing it on the ACMA's website.
 - 6.1.2. The ACMA may, from time to time, make public comment about this Undertaking and its terms which includes issuing a media release upon its execution by the ACMA.

- 6.1.3. The ACMA may, from time to time, publicly report on compliance with this Undertaking.
- 6.2. The Licensee also acknowledges that:
 - 6.2.1. the ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct.
 - 6.2.2. this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from the alleged conduct, the subject of this Undertaking.

Execution of the Undertaking

Signed/Executed by Commonwealth Broadcasting Corporation Pty Ltd (ACN 000 019 796):



 Signature



 Name and Title

16 March 2023

 Date



 Signature



 Name and Title

16 March 2023

 Date

Accepted by the Australian Communications and Media Authority under s205W of the *Broadcasting Services Act 1992* (Cth):





 Name, Member

17/3/23

 Date



 Signature



 Name, Member/General Manager

17/3/2023

 Date