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# Enforceable Undertaking

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This undertaking is given to the Australian Communications and Media Authority (ACMA) under section 205W of the *Broadcasting Services Act 1992* (Cth) (Act) by Channel Seven Sydney Pty Limited ABN 36 000 145 246 (Licensee).

Accepted by the ACMA under Part 14D of the Act on 13 June 2019.

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## 1. Background

- A. The Licensee is licensed under the Act to provide commercial television broadcasting services in the Sydney TV1 licence area.
- B. On 13 March 2018 the Licensee broadcast a 'Hot Topics' segment which formed part of the Segment.
- C. The ACMA investigated whether, in broadcasting the Segment, the Licensee had complied with its obligations under the Code.
- D. On 8 August 2018, as a result of Investigation Report no. BI-363, the ACMA found that the Segment was in breach of clauses 2.6.2 and 3.3.1 of the Code.
- E. The Licensee has offered this enforceable undertaking under section 205W of the Act.

## Operative Parts

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## 2. Defined terms and interpretation

### 2.1 Defined terms

The following definitions apply unless the context requires otherwise.

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

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

**Business Day** means a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney.

**Code** means the Commercial Television Industry Code of Practice 2015.

**Commencement Date** has the meaning given to it in clause 3.1.

**Independent Review** has the meaning given to it in clause 5.2(a).

**Licensee** means Channel Seven Sydney Pty Limited ABN 36 000 145 246.

**Report** has the meaning given to it in clause 5.2(f).

**Segment** means the segment of 'Hot Topics' that was broadcast on Sunrise on 13 March 2018 and was the subject of the ACMA's Investigation Report no. BI-363 dated 8 August 2018.

**Sunrise** means the breakfast television program broadcast by the Licensee on weekdays, or any equivalent replacement program.

**Undertaking** means this enforceable undertaking.

### 2.2 Interpretation

In this Undertaking, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) other grammatical forms of a defined word or expression have a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this Undertaking;
- (d) a reference to a document or agreement (including the Undertaking), includes the document or agreement as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (g) a construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object;
- (h) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 2.3 Headings

Headings are for ease of reference only and do not affect interpretation.

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## 3. Term

### 3.1 Commencement

This Undertaking commences when:

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

### 3.2 Termination

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 subsection 205W(4) of the Act, in which event this Undertaking terminates on the day that written notice is given.

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## 4. Withdrawal or variation

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



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## 5. Undertakings

### 5.1 Training

- (a) Within six months of the Commencement Date the Licensee must cause training to be conducted for all permanent editorial staff of Sunrise as at the Commencement Date (excluding any staff that cease to work on Sunrise during that period) which is to cover at a minimum the following matters:
  - (i) the Licensee's obligations under the Code which are of relevance to the performance of the work duties of those editorial staff, including in particular how to identify and deal with sensitive matters of the kind referred to in clause 2.6 of the Code; and
  - (ii) any relevant advisory notes that are made available on the website of Free TV Australia (<http://www.freetv.com.au/>), including "*The Portrayal of Aboriginal and Torres Strait Islander Peoples*".
- (b) Upon completion of the training referred to in clause 5.1(a) above the Licensee must, within five Business Days, provide the ACMA with written notice confirming that the training has been completed.

### 5.2 Independent review

- (a) The Licensee must conduct an independent review of the production process for current affairs content within the program Sunrise with a focus on the 'Hot Topics' segment or any similar segment that forms part of Sunrise (or any replacement program for Sunrise) (**Independent Review**).
- (b) The Independent Review must focus on how, and the extent to which, the production process ensures compliance with the Code in relation to sensitive and complex matters of the kind referred to in clause 2.6 of the Code.
- (c) Prior to the Independent Review being undertaken, the Licensee must submit to the ACMA, the proposed terms of reference for the Independent Review and the identity of the independent reviewer.
- (d) The ACMA will, within 10 Business Days of receipt of the proposed terms of reference, provide written approval or notify the Licensee of any decision to object on the basis of inconsistency with this Undertaking (in which case the ACMA will provide the Licensee with its written reasons for its objection and the Licensee will submit amended proposed terms of reference within a reasonable period).
- (e) The ACMA acknowledges that approval of the proposed terms and reference and identity of the independent reviewer must not be unreasonably withheld and agrees that the Independent reviewer may be a lawyer or firm that is currently, or has previously been, employed or engaged by the Licensee, who is an expert in media law.
- (f) Within six months of receiving the approval of the ACMA under clause 5.2(d) above, the Licensee must submit a report prepared by the independent reviewer of their findings (**Report**) to the Licensee's Board of Directors and to the Licensee's Audit and Risk Committee.
- (g) The Licensee must, within five Business Days of the relevant matter occurring, provide written notice to the ACMA confirming each of the following matters has occurred:

- (i) the commencement of the Independent Review;
- (ii) the conclusion of the Independent Review;
- (iii) the submission of the Report to the Licensee's Board of Directors; and
- (iv) the submission of the Report to the Licensee's Audit and Risk Committee.

**5.3 Additional Acknowledgements**

The Licensee acknowledges that the ACMA may:

- (a) publish this Undertaking on its internet site, and may from time to time publicly refer to this Undertaking;
- (b) issue a media release in relation to this Undertaking referring to its terms and the concerns of the ACMA which led to its execution.

Signed for and on behalf of **Channel Seven** )  
**Sydney Pty Limited ABN 36 000 145 246** by: )  
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[Redacted signature]

Signature of authorised person

[Redacted signature line]

Office held

[Redacted office held line]

Name of authorised person

Signed for and behalf of the **Australian** )  
**Communications and Media Authority** )  
pursuant to section 205W of the Act by: )

[Redacted signature]

Signature of authorised person

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Office held

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