

Our Ref: GM13811  
Your Ref: PTG/AUSK108-739073 (PTG)



**ABC**  
Australian  
Broadcasting  
Corporation

22 May 2014

Mr Patrick George  
Senior Partner  
Kennedys Lawyers

Legal & Business Affairs

ABC Ultimo Centre  
700 Harris Street  
Ultimo NSW 2007

GPO Box 9994  
Sydney NSW 2001

By email: [REDACTED]

Dear Mr George

**Your Client: Mr Chris Kenny – *The Hamster Decides*, 11 September 2013  
Supreme Court of New South Wales Case No. 2013/356381, Supreme Court of New South Wales  
Court of Appeal Case No. 2014/100766 (collectively, the Proceedings)**

We refer to the Proceedings.

#### **Appeal proceedings**

The first defendant is confident that your client will be unsuccessful in his appeal. We understand this view is shared by the other defendants.

Should your client withdraw the appeal proceedings prior to close of business next Monday, 26 May 2014, the first defendant confirms that it will not pursue any costs incurred in relation to the appeal to date. That attitude is also shared by the other defendants.

#### **Settlement proposal**

We understand from various media coverage of the Proceedings that your client has stated that an apology from the ABC would have avoided litigation. Further, we note that your client stated in an interview given to Channel 9 on 5 March 2014 that he did not believe that taxpayers should be paying for the ABC to defend this matter.

These kinds of comments were also echoed in an article published in *The Australian* on 7 March 2014.

As you are aware, Mr Scott issued an apology to your client on 14 April 2014, which has been widely published and which remains available at <http://about.abc.net.au/press-releases/apology-to-mr-chris-kenny/>. Following that, we note that your client has indicated publicly that he was pleased to have received the apology and that he had instructed you to try and settle the matter 'as soon as possible'.

Assuming then that the out-of-pocket expenses involved with the Proceedings remains a concern for your client, we are instructed that the first defendant is prepared to resolve this matter on the basis that:

1. Your client release and discharge the defendants (and their employees and agents) from all claims (including costs) arising out of or which are incidental to the Proceedings;

2. The first defendant will pay to your client all reasonable costs and disbursements incurred by him:
  - a. up to and including the date of this letter; and
  - b. in considering this offer;
3. The defendants' counsel will read an apology (being an adaptation of Mr Scott's apology already issued) to the Court in the terms set out in **Annexure A (enclosed)**; and
4. Your client file a notice of discontinuance of the Proceedings as against all defendants within seven days of the payment referred to in paragraph 2 being made by the first defendant.

This offer will remain open for 7 days from the date of this letter. Could you please seek your client's instructions.

This is an open letter.

Yours sincerely



**Grant McAvaney**  
Senior Lawyer  
ABC Legal & Business Affairs

cc: Andrew Stewart  
Baker & McKenzie

[REDACTED]

## **Annexure A**

### **Apology to Mr Chris Kenny to be read in Court**

The ABC wishes to apologise to Mr Chris Kenny for the controversial 'The Hamster Decides' skit run by ABC-TV in September last year and which forms the basis for these proceedings. This is further to the apology issued by the ABC's Managing Director, Mark Scott, on 14 April 2014.

At the time of broadcast, Mr Scott described the skit as tasteless and undergraduate, and noted that it raised questions about the nature of satire and the boundaries of free speech afforded to satirists, comedians and cartoonists.

The audience of The Chaser expect fierce, robust and irreverent satire. Final decision-making on what goes to air, however, rests with the ABC.

Having reviewed the issue, Mr Scott, as the Editor in Chief of the ABC, has come to the view with the ABC's Director of Television that the ABC should not have put the skit to air.

Mr Scott concluded that the skit falls short of the quality demanded by the ABC's audience and normally delivered by its programming.

The ABC apologises to Mr Kenny for having put the skit to air, his depiction in the skit and because it was triggered by his criticism of the ABC. The ABC is sorry for the distress this incident has caused Mr Kenny and his family.