

CITATION: *Mental Illness Fellowship of Australia (NT) Inc v Sandrey* [2025] NTSC 57

PARTIES: MENTAL ILLNESS FELLOWSHIP OF AUSTRALIA (NT) INC
(ABN 19 010 762 321)

v

SANDREY, Hayden

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory jurisdiction

FILE NO: 2024-02126-SC

DELIVERED: 12 August 2025

HEARING DATE: 30 June 2025 and 1 July 2025

JUDGMENT OF: Kelly J

CATCHWORDS:

Breach of contract of employment – whether defendant breached restraint of trade clause by soliciting former clients within six months of termination of his employment – held no breach of restraint of trade clause

Whether defendant breached s 183 of the *Corporations Act* or his equitable duty to employer by misusing confidential information to benefit himself or another to the detriment of the former employer – held no breach of s 183 or equitable duty

Corporations Act 2001 (Cth) s 183, s 183(1)

Evidence (National Uniform Legislation) Act 2011 (NT), s 67, s 69, s 69(2), s 69(3), s 97

REPRESENTATION:

Counsel:

Plaintiff:	C Ford SC
Defendant:	Self represented

Solicitors:

Plaintiff:	De Silva Hebron
Defendant:	Self represented

Judgment category classification:	B
Judgment ID Number:	Kel2511
Number of pages:	44

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Mental Illness Fellowship of Australia (NT) Inc v Sandrey [2025] NTSC 57
No. 2024-02126-SC

BETWEEN:

**MENTAL ILLNESS FELLOWSHIP OF
AUSTRALIA (NT) INC**
(ABN 19 010 762 321)
Plaintiff

AND:

HAYDEN SANDREY
Defendant

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 12 August 2025)

- [1] The defendant, Hayden Sandrey (“Mr Sandrey”) was employed by the plaintiff, Mental Illness Fellowship of Australia (NT) Inc (“MIFANT”) as an NDIS Support Co-ordinator and Recovery Coach pursuant to a contract of employment entered into on 25 November 2021. He started work on 13 December 2021.
- [2] On 3 February 2022, Mr Sandrey was given a letter of Variation of his contract of employment adding a clause headed **Restraints of Trade** in the following terms.

For a period of 6 months after your employment terminates, howsoever occurring, you must not directly or indirectly:

- (a) canvass, solicit or induce any person or company who is or was a client of ours within the 12 months immediately before the employment ended, and with whom you had direct dealings during the employment, to have services that are the same as or similar to ours provided by anyone other than us; and
- (b) canvass, solicit or induce any employee of ours with whom you have work with (sic) to work for anyone other than us or to cease employment with us; and
- (c) Your obligations under this paragraph survive termination or expiry of your employment. (*Punctuation in original.*)

[3] The letter was signed by Lorraine Davies, Executive Officer of MIFANT.

Mr Sandrey was asked to sign the letter and did so under a statement that read: I, HAYDEN SANDREY have read and agree to the Restraints of Trade clause as stated above.

[4] Mr Sandrey was presented with, and signed, three other letters varying the terms of his employment contract during 2022, none of which are relevant to these proceedings.

[5] MIFANT is a not-for-profit charitable organisation that provides “recovery based” support to people living with a mental health condition. It also provides a range of NDIS services for people with a psychosocial disability including that of Recovery Coach, Support Co-ordination, Social and Community Participation and Community Access.

[6] Mr Sandrey’s role as Support Co-ordinator was to access service providers to provide support for people with NDIS funding for those supports, for example support workers, psychologists or social workers. The role of a

Recovery Coach is broadly similar but also entails providing personalised support to clients “fostering their recovery and well-being”.¹

[7] While Mr Sandrey was working for MIFANT, he was also studying for a nursing degree. As part of those studies, he was required to do a number of placements as part of his practical training. He took paid leave to do one such placement and unpaid leave to do another. In 2024 he asked for further leave without pay to do his final placement. This was refused and, as Mr Sandrey had to do the placement in order to complete his nursing degree, he felt he had no option other than to resign. He did so by email dated 12 April 2024 and finished work with MIFANT on 26 April 2024. On that date, Mr Sandrey was asked to sign, and did sign, a statutory declaration stating (inter alia), “I do not have in my possession any hard or digital copy of Mental Illness Fellowship of Australia (NT) confidential or proprietary information”.

[8] On 27 May 2024, Mr Sandrey started work at TK Community Care Services Pty Ltd (“TK”) as an NDIS Support Co-ordinator and Recovery Coach.

[9] On 28 May 2024, Ms Elizabeth Lycett, the mother of Camellia Salam (known as Noni), a client of MIFANT for whom Mr Sandrey had provided services as Support Co-ordinator, sent an email to MIFANT saying:²

1 Affidavit of Lorraine Davies dated 9 August 2024 para [18]

2 AB p 70

Good afternoon Emma,

As of today Tuesday 4th June. I am terminating services with MiFant for Camellia Salam.

Could you please forward all necessary information and documents over to Hayden Sandrey at TK Community Care.

Please email to supportcoordinator1@tkcommunitycare.com.au

Thank you very much for the years, now is the time to have a change.

- [10] On Friday 14 June 2024, Danielle Domjam from “i.help.u” , Keith Godfrey’s social worker, sent an email to MIFANT saying:³

Dear MIFANT,

I have been requested to pass on a letter to cease all service with Keith Godfrey.

Please refer to the details within the letter attached and advise of receipt and action that you will undertake as per request from Keith.

We hope this can be actioned in a timely manner and thanks for your support to date for our mutual participant.

- [11] The attached letter signed by Keith Godfrey was on TK letterhead and addressed to MIFANT. It was dated 28 May 2024 and read:⁴

Subject: Cease of NDIS Services

Dear MIFANT,

I am writing to inform you of my decision to terminate my NDIS services with your organisation. This decision is effective immediately as of 17/06/2024. Please provide a hand over of all documents relating to myself prior to this date. Please direct all communications to TK Community Care Services. As per my request please cease all communication with the client effectively immediately.

The reasons for this cessation of services are as follows:

Choice and control.

3 AB p 72

4 AB p 73

I would appreciate if you could confirm in writing the receipt of this notice and ensure that all ongoing services are concluded appropriately before the effective date. Please provide any necessary details regarding the transition process and next steps.

Thank you for your understanding and cooperation in this matter. Should you require any additional information or clarification, please do not hesitate to contact TK Community Care Services.

Sincerely,
Keith Godfrey

[12] Keith Godfrey had been a client of MIFANT receiving services from Mr Sandrey as his Support Co-ordinator. In his affidavit of 16 October 2024 he said he is dyslexic and that he asked TK to contact MIFANT for him.⁵

[13] On 31 May 2024, MIFANT received three further letters on TK letterhead. One letter was signed by Jason Green stating:⁶

Subject: Cease of NDIS Services

Dear NDIS Manager,

I am writing to inform you of the decision to terminate the provision of Support Coordination services with MIFANT. This decision is effective as of 17/06/24.

I would appreciate if you could confirm in writing the receipt of this notice and ensure that all ongoing services are concluded appropriately before the effective date. Please provide all necessary details and reports to TK Community by COB 17/06/2024.

Thank you for your understanding and cooperation in this matter.

Sincerely,
Jason Green

[14] One letter was signed by Sherena Quall stating:⁷

5 Affidavit of Keith Godfrey dated 16 October 2024 [2] and [14]

6 AB 62

7 AB 63

Subject: Cease of NDIS Services

Dear NDIS Manager,

I am writing to inform you of the decision to terminate the provision of NDIS services with MIFANT. This decision is effective as of 13/06/24.

I would appreciate if you could confirm in writing the receipt of this notice and ensure that all ongoing services are concluded appropriately before the effective date. Please provide all necessary details and reports to TK Community by COB 13/06/2024.

Thank you for your understanding and cooperation in this matter.

Sincerely,

Sherena Quall

[15] One letter was signed by David Grant and stated:⁸

Subject: Cease of NDIS Services

Dear NDIS Manager,

I am writing to inform you of the decision to terminate the provision of NDIS services with MIFANT. This decision is effective as of 14/06/24.

I would appreciate if you could confirm in writing the receipt of this notice and ensure that all ongoing services are concluded appropriately before the effective date. Please provide all necessary details and reports to Hayden Sandrey from TK Community by COB 14/06/2024.

Thank you for your understanding and cooperation in this matter.

Sincerely,

David Grant

[16] Jason Green, Sherena Quall and David Grant were all former clients of MIFANT who had been receiving Support Co-ordination services from Mr Sandrey.

[17] On 16 July 2024, MIFANT received an email from “Zoe” at NDIS advising that Jay Knight had “requested to cease services with Mental Illness

Fellowship of Australia (NT)”⁹ and another email from “Gina” at NDIS advising that “NDIS participant; Paul de Babol, has requested a change of Support Coordination”.¹⁰ Both of these people were former clients of MIFANT who had been receiving support co-ordination services from Mr Sandrey.

[18] On 4 June 2024 Emma Steel from MIFANT telephoned David Grant and asked him to come to a meeting at MIFANT the next day. The next day, 5 June 2024, David Grant went to MIFANT with his support worker and had a meeting with Emma Steel. There are conflicting accounts of what occurred at that meeting from Emma Steel and David Grant. This is dealt with at [24] and [25] below.

[19] On 14 June 2024, Emma Steel telephoned Jason Green. Dr Ford SC for MIFANT sought leave to adduce hearsay evidence of what Jason Green said in that telephone conversation. This is dealt with at [28] to [35] below.

[20] MIFANT alleges that Mr Sandrey breached the restraint of trade clause in his contract of employment by canvassing, soliciting or inducing clients of MIFANT with whom he had had direct dealings during his employment, to have services provided by TK that were the same as or similar to the ones provided by MIFANT, within six months after the termination of his employment. The clients he is said to have so canvassed, solicited or

9 Affidavit of Lorraine Theresa Davies dated 27 June 2025 annexure “LTD-30”

10 Affidavit of Lorraine Theresa Davies dated 27 June 2025 annexure “LTD-31”

induced to leave MIFANT and engage TK are those seven people referred to above: Camellia Salam (known as Noni), Keith Godfrey, Jason Green, Sherena Quall, David Grant, Jay Knight and Paul de Babol.

[21] There is no dispute that those seven people were all clients of MIFANT in the 12 months before the termination of Mr Sandrey's employment and that he had direct dealings with each of them having provided support co-ordination services to each of the seven. The issue is whether MIFANT has proved, on the balance of probabilities, that Mr Sandrey canvassed, solicited or induced them (or any of them) to leave MIFANT and engage TK to perform support co-ordination services for them.

[22] MIFANT relies on the following evidence and contends that an inference can be drawn that Mr Sandrey did solicit or induce those people to leave MIFANT and engage TK.

(a) Dr Ford for MIFANT pointed to evidence of "the John Valer connection". There is evidence that John Valer and Mr Sandrey had a long-standing professional connection: Mr Sandrey conceded that in cross-examination. John Valer was a referee for Mr Sandrey when he applied for the position at MIFANT. John Valer was the advocate or nominee for Paul de Babol, David Grant, Jay Knight and Sherena Quall and referred those clients to MIFANT at various times in 2022 or

2023.¹¹ Dr Ford also pointed to evidence that all of these clients other than Keith Godfrey received services from an organisation called Carelink and John Valer is a consultant to Carelink. It was suggested to Mr Sandrey in cross-examination that he felt some kind of “ownership” of these clients because of the John Valer connection. He denied it.

- (b) MIFANT relies on evidence from Mr Sandrey in cross-examination that he was frustrated when Ms Lorraine Davies, the Executive Officer of MIFANT, refused him unpaid leave to do his final nursing placement to complete his degree; that he was annoyed with her and that he believed her to be “dictatorial, bullying and authoritarian”. Those words were taken from a strongly worded email sent to MIFANT by Ms Elizabeth Lycett, the mother of Camellia Salam (generally known as Noni).

Dr Ford put to both Ms Lycett and Mr Sandrey in cross-examination that Ms Lycett had got the information on which she based the opinions in her letter from Mr Sandrey, the unstated implication being that this would have occurred after the termination of his employment. Neither of them agreed that this was the case. Mr Sandrey explained that he had no input into the email sent by Ms Lycett and only became aware of its existence during these court proceedings. He said that he and Emma Steel had gone to a meeting with Ms Lycett and Noni to tell them that Mr Sandrey was resigning. During that conversation Mr Sandrey said,

11 A nominee has unrestricted access to a client’s information, including their NDIS plan and an advocate may have access if granted by the client.

“I’ve got some bad news,” and Ms Lycett said, “Let me guess, you’re not getting approved for your final placement.” Ms Lycett gave essentially the same account about having a meeting at which she was told Mr Sandrey had not been given leave to do his final placement and was resigning. She said that the information about Lorraine Davies being a bully was something that was told to her in confidence by previous staff that she had spoken to and she acknowledged that not everyone would agree with her assessment.

- (c) Dr Ford pointed to the evidence that in his letter of resignation, Mr Sandrey wrote:

Dear Lorraine,

I am writing to formally resign my position as Support Coordinator/Psychosocial Recovery Coach at MiFant (Mental Illness Fellowship of Australia NT), effective 26/04/2024.

I have thoroughly enjoyed my time at Mifant and am grateful for the opportunities for growth and development that have been provided to me during my tenure. However, after careful consideration, I have decided to further my education.

I want to express my gratitude for the support and guidance I have received from you and my colleagues during my time here. I have learned a great deal and will always value the experiences and relationships I have gained.

I am committed to ensuring a smooth transition during my remaining time with the company. Please let me know how I can assist in the handover process.

Thank you again for the opportunity to be a part of the Mifant team. I wish the company continued success in the future.

Warm regards

Hayden Sandrey

Recovery Coach/Support Coordinator

Dr Ford contended that this letter did not reflect Mr Sandrey's true feelings at the time given his answers in cross-examination, and, he contended, Mr Sandrey hid his true feelings in order to leave MIFANT "on a good note". Mr Sandrey agreed in cross-examination that he did wish to leave MIFANT on good terms and said that he always likes to keep on good terms with people.

- (d) MIFANT relies on the "coincidence" of Ms Lycett terminating MIFANT's services for Noni on 28 May 2024, one day after Mr Sandrey commenced working at TK¹² and Jason Green, Sherena Quall and David Grant terminating MIFANT's services three days later on 31 May 2024. It is clear from the wording of the letters from Jason Green, Sherena Quall and David Grant and the fact that they were written on TK letterhead that although these clients signed the letters, the letters were prepared by TK.
- (e) MIFANT also relies on records from Telstra of texts and phone calls between Mr Sandrey's phone and the phone numbers of Ms Lycett and Keith Godfrey. By agreement these were helpfully summarised in a document which showed the following activity:
- (i) between Mr Sandrey and Ms Lycett:
- one voice call on 4 April 2024 before Mr Sandrey resigned;

¹² The email from Ms Lycett is dated 28 May, but the body of the email reads, "As of today, Tuesday 4th June I am terminating services with MIFANT for Camellia Salam."

- 78 SMS messages between 12 April when Mr Sandrey resigned and 26 April 2024 when Mr Sandrey left MIFANT; and
- 76 SMS messages between 26 April 2024 and 28 May 2024, when Ms Lycett sent the email terminating MIFANT's services for Noni effective on 4 June 2024. (The first of these was on 9 May. They did not exchange messages every day. On the days they did the volume ranged between 8 messages and 34 messages.)

(i) between Mr Sandrey and Keith Godfrey:

- 8 voice calls and 5 SMS messages between 4 April and 12 April when Mr Sandrey resigned;
- 14 voice calls and 4 SMS messages between 12 April when Mr Sandrey resigned and 26 April when Mr Sandrey left MIFANT;
- 11 voice calls and 5 SMS messages between 26 April and 28 May when Keith Godfrey terminated his services with MIFANT (effective from 17 June 2024); and
- 5 voice calls thereafter (on 4 June and 6 June 2024).

There was no evidence adduced by MIFANT about which of these calls and SMS's (if any) were initiated from Mr Sandrey's phone. There is no evidence of any calls or messages from Mr Sandrey's phone to any of the other five clients in issue.

(f) Both Ms Lycett and Keith Godfrey gave evidence and were cross-examined about these calls and messages.

(i) Ms Lycett said, "One texts a lot. Look, I'm sorry, the amount of numbers that I text daily is - I don't keep record of how many. So that's not just to Hayden, to anybody. So, yeah."

- It was put to her that in those 154 texts it would be natural for her to ask Mr Sandrey where he was going after MIFANT. She said, "I approached him and asked if he had secured a job and where it was," and agreed that he told her.
- Ms Lycett was adamant that Mr Sandrey had not solicited her to leave MIFANT and go to TK. She said, "I wanted to go to him. My daughter wanted him as the recovery coach. ... Both my daughter and myself wanted him as the recovery coach. ... My daughter has quite a complex condition and the relationship she had built with him was never going to be replaced by any of the staff in MIFANT. So it was - made sense to me to continue with the support that she already had."

(ii) Mr Godfrey's evidence suggested that he was the one calling Mr Sandrey, not the other way round. He said he had Mr Sandrey's number because Mr Sandrey's mum gave it to him.¹³ And he also had another number for Hayden [presumably his work number]. It would have just said Hayden on his phone. He would have called either one to get hold of him.

- Asked about the phone calls after Mr Sandrey resigned he said, "I would have contacted him but I don't know whether he was on his private or the one that was my phone number.
- Asked if Mr Sandrey ever told him to phone on his office number, not his private number, Mr Godfrey said, "He's probably told me that. Yeah, don't call me on my private but for me I don't actually, my phone's a bit of a mess because I'm dyslexic. I'll just phone. That's the way I probably called him on that."
- Asked about the calls after Mr Sandrey left MIFANT, Mr Godfrey said he was probably trying to work something out and he was probably asking for help possibly because he was going through something at university. Mr Sandrey did

¹³ Mr Godfrey said that when he was looking for support co-ordination services, he had the number in my phone of people who used to work at Darwin Legal Community, who helped him in the past. One was Hayden's mother. He called her. She said, "Well, why don't you get my son." ... "He works at MIFANT." And he went, "Oh, I think - that's around the corner from me. Okay." As simple as that. And then he went to MIFANT and that's how he got Hayden.

go there with him once to help him, because the University missed his enrolment and it wasn't his fault.

- (g) Mr Sandrey was also cross-examined about the communications between himself and Ms Lycett in particular. He said he didn't recall all of the text messages but he thought she may have contacted him to see how he was going. He agreed that it seemed like a lot of text messages to say, "How are you going?" but said that she would send multiple text messages in one go. He also said:

So I do believe that Liz did ask where I had gone. That was just in passing conversation. I never suggested or coerced Liz to come or to bring Noni over to TK Community. If anything, she was the one that reached out to me and asked if TK Community has availability for service for me to provide those services to Noni.

- (h) MIFANT relies on evidence from Ms Lorraine Davies, Executive Officer of MIFANT that when he was first employed by MIFANT, Mr Sandrey offered to bring to MIFANT clients from his former employer, Better Connections and showed Ms Davies texts from his boss at Better Connections that showed a "cease and desist letter". These allegations were not put to Mr Sandrey in cross-examination but in his brief final submission Mr Sandrey denied ever having received a "cease and desist" letter from his former employer.

(i) MIFANT also adduced evidence from Ms Davies¹⁴ that on 28 November 2023, Mr Sandrey sent confidential information (an email from NDIS to Sherena Quall) from his personal email to his work email. An examination of the email shows that the reason for this is that the document was originally sent to Mr Sandrey on his personal email by John Valer who was Sherena Quall's nominee.¹⁵ This evidence seems to go to the submission based on "the Valer connection". In her affidavit of 9 August 2024, Ms Davies deposes:¹⁶

In summary, over the past five years, only two of MIFANT's participants have voluntarily wished to terminate its support co-ordination services and move to another service provider, but over the past month we have now had seven participants wish to change services all of whom were supported by Sandrey and with six of them having Valer as nominee, advocate or case manager. One of those seven participants, David Grant, withdrew his termination as set out in my first affidavit.

[23] The phrase "voluntarily wished to terminate its support coordination services" is used by Ms Davies in a highly qualified sense as, earlier in the same affidavit, Ms Davies deposes:

MIFANT's participants usually remain with MIFANT indefinitely. Since late 2018, 60 participants have received support coordination/recovery coach services from MIFANT. Over that time, 17 clients have ceased receiving MIFANT's services (not including the terminators).¹⁷ Five clients left MIFANT in around 2022 to follow a departing employee. This was the reason for asking Sandrey to sign the non-solicitation clause variation on 3 February 2022. Three clients died,

14 Affidavit of Lorraine Davies dated 9 August 2024 para [41] Annexure "LTD-22"

15 Affidavit of Lorraine Davies dated 9 August 2024 para [42]

16 Affidavit of Lorraine Davies dated 9 August 2024 para [45]

17 This is the term used to describe the seven people said to have been solicited by Mr Sandrey.

three moved interstate, three could not be contacted after MIFANT's services started, one was incarcerated and two chose to leave and transfer to another support coordinator.

[24] In relation to the assertion that David Grant withdrew his termination of MIFANT's services, in the affidavit of Emma Steel dated 9 August 2024¹⁸

Ms Steel deposes:

On or about 5 June, 2024, I requested David Grant's support worker to bring David Grant into our office for a meeting so that we could discuss his funding for future supports as he had just received his new NDIS plan. Whilst at this meeting, the subject of his termination of MIFANT's services as set out in the affidavits of Lorraine Davies ... was discussed.

During our conversation, he became quite agitated and angry, expressing that he had not been informed that the first defendant Sandrey was no longer working for MIFANT. He remarked that he believed we were all working as a team. He mentioned that John Valer had told him, "the boy's back, we need to sign some documents." David Grant also called the first defendant a poacher and said he would not tolerate that behaviour. He continued, saying, "They think I'm dumb, but I've got a brain and I've been treated like an idiot. I have not been given a thorough explanation of what is going on. I'm staying with MIFANT." I typed a letter regarding the conversation which David Grant agreed with and signed.

The letter is annexed to the affidavit. It says:

05.06.2024

Dear Emma

When you spoke to me yesterday about my letter saying I was moving my services to Hayden, I did not realise that Hayden didn't work for Mifant.

I thought you and Hayden both worked for Carelink. John Valer just told me that Hayden was back, and I had to sign documents.

18 The affidavit of Lorraine Davies dated 19 June 2024 also contains hearsay evidence that Jason Green, Sherena Quall and David Grant told staff members either that they did not want to leave MIFANT or that Mr Sandrey had contacted them. I declined to admit that hearsay evidence.

Nothing was explained to me properly and I was confused with the whole situation.

I would like to stay with Mifant and continue my Support Coordination/ Recovery service.

Thanks,

David Grant

- [25] David Grant swore an affidavit in this proceeding¹⁹ and attended Court to give oral evidence. He denied that events at the meeting of 5 June unfolded in the way deposed to by Emma Steel. Mr Grant deposed:

One day I arrived at MIFANT, and I was taken into a room to wait for Emma. When Emma came in, she asked me a piece of paper that she handed to me. (sic) I told Emma that I did not have my glasses on and could not read the letter. Emma just told me to sign the letter and I did. I felt that I had no choice other than to sign the letter. I do not know the content of the letter and to this day I have not read the letter nor do I want to. I later found out that this letter was used as part of the dilemma against Hayden and it made me feel sick.

- [26] Mr Grant adamantly reiterated this account in oral evidence adding that he now carries his glasses with him. It is not necessary for me to determine what actually occurred at this meeting but I note the following.

- (a) In fact the letter terminating Mr Grant's services with MIFANT did not say he "was moving [his] services to Hayden". It did not mention Hayden Sandrey. It simply advised that he was terminating his services with MIFANT although it did ask that all necessary details and reports be provided to Hayden Sandrey from TK Community by COB 14/06/2024. (The letter is set out in full at [15] above.)

¹⁹ Affidavit of David Ian Grant dated 16 October 2024 at [6]

- (b) Mr Grant did not follow Mr Sandrey. He deposed that he did not receive any services from Mr Sandrey other than at MIFANT.
- (c) Contrary to the assertion in Lorraine Davies' affidavit, Mr Grant deposed that he did not in fact continue to retain MIFANT's services. He deposed that he was receiving services from Carelink NT and that he had been with them since leaving MIFANT.

[27] MIFANT sought to rely on hearsay evidence from Emma Steel and Kelly Hinnen.

- (a) In her affidavit of 9 August 2024, Emma Steel deposed that on or about 14 June 2024 she phoned Jason Green and that Jason Green told her he was happy with MIFANT's services but that Mr Sandrey had contacted him multiple times by text and phone over a two week period and he wished to change services to TK. She annexed a file note of the purported conversation to her affidavit.
- (b) In her affidavit of 9 August 2024, Kelly Hinnen deposed that on or about 31 May 2024, she telephoned Sherena Quall to ask for feedback following receipt of her notice of termination and that when she enquired how she got in touch with Mr Sandrey, she said that Mr Sandrey had called her. Ms Hinnen also attached a file note of that telephone call.

[28] MIFANT gave notice of intention to adduce hearsay evidence under s 67 of the *Evidence (National Uniform Legislation) Act 2011* (NT) (“ENULA”).

The reasons given in the notice for wanting to adduce hearsay evidence of the representations of Jason Green and Sherena Quall were that both were not available to give evidence “due to their not being competent to give the evidence” or their being “mentally unable to give the evidence and it is not reasonably practicable to overcome that inability”. Alternatively, it is said that Jason Green and Sherena Quall were available, but it would not be reasonably practicable to call them to give evidence due to their mental condition. The alternative basis for the application is that the evidence is contained in a business record within the meaning of ENULA s 69.

[29] I decline to admit this evidence. First, MIFANT has adduced no admissible evidence that either Jason Green or Sherena Quall are unavailable within the meaning of ENULA s 67. The dictionary in the Schedule to ENULA states:

- (1) For the purposes of this Act, a person is taken not to be available to give evidence about a fact if:
 - (a) the person is dead; or
 - (b) the person is, for any reason other than the application of section 16 (Competence and compellability – judges and jurors), not competent to give the evidence; or
 - (c) the person is mentally or physically unable to give the evidence and it is not reasonably practicable to overcome that inability; or
 - (d) it would be unlawful for the person to give the evidence; or
 - (e) a provision of this Act prohibits the evidence being given; or
 - (f) all reasonable steps have been taken, by the party seeking to prove the person is not available, to find the person or secure his or her attendance, but without success; or

- (g) all reasonable steps have been taken, by the party seeking to prove the person is not available, to compel the person to give the evidence, but without success.
- (2) In all other cases the person is taken to be available to give evidence about the fact.

[30] MIFANT relies on an assertion that these witnesses are mentally unable to give the evidence but has adduced no admissible evidence to support that contention. The only evidence to support it comes from Ms Lorraine Davies, the Executive Officer of MIFANT and Emma Steel, a support co-ordinator with MIFANT both of whom expressed “concerns” about the advisability of either Jason Green or Sherena Quall giving evidence because of their mental health. Ms Davies’ only formal qualification is a Cert IV in mental health. Asked to explain what that entailed, Ms Davies said it was “a certificate before a diploma in mental health. So it covered – my goodness it was such a long time ago that I did it – I covered supporting people with a mental illness and it talked about the recovery approach as well.” Ms Steel has no formal qualifications but said she had “lived experience through my family, over many years” citing mental illnesses suffered by her brother and mother. Neither of these witnesses is qualified to give expert evidence about whether Jason Green and Sherena Quall are mentally unable to give evidence.

[31] Further, the assertion that Jason Green is mentally unable to give evidence is demonstrably wrong: he swore an affidavit in this proceeding, attended to give evidence and was cross-examined. His evidence was that Mr Sandrey

did not approach him and ask him to leave MIFANT and follow him and he was really annoyed at the suggestion that this had occurred. He said, “Hayden never asked me to leave MIFANT and he didn’t encourage me to leave MIFANT.” He gave reasons for wanting to leave MIFANT and continue to receive services from Mr Sandrey. These included that he did not have a good relationship with Emma Steel who, he said, would forget to let him know if there was no one available to pick him up to go to MIFANT for supports and sometimes he would just be left waiting. His reasons for leaving also included that he had a good relationship with Mr Sandrey who never forgot to contact him and who he believed cared about him.

[32] I note that the summary of the subpoenaed Telstra records of calls to and from Mr Sandrey’s phone during the relevant period prepared by MIFANT does not include any calls between Mr Sandrey’s phone and either Sherena Quall or Jason Green.

[33] Turning to the application to adduce the file notes as business records, the onus is on the party seeking to adduce evidence to establish its admissibility. There is evidence from both Emma Steel and Kelly Hinnen that it was usual practice to make file notes of telephone conversations and to place those on the client’s file. That would seem to qualify the file notes as business records under ENULA s 69, as “documents that form part of the records kept by an organisation in the course of a business that contain previous representations recorded in the documents in the course of, or for the purposes of, the business”.

[34] The file notes would also seem to come within s 69(2) under which, subject to later subsections, the hearsay rule does not apply to such a document (so far as it contains the representation) if the representation was made (inter alia) by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact. That would apply to Jason Green and Sherena Quall. (There is no requirement in s 69 that the representation be made by an employee or agent of the organisation conducting the business.)

[35] However, s 69(3) provides that subsection (2) does not apply if the representation was prepared or obtained for the purpose of conducting, or for or in contemplation of, or in connection with, an Australian or overseas proceeding. MIFANT has not established that the phone calls made by Emma Steel and Kelly Hinnen which elicited the conversations said to be recorded in the file notes were not made for the purpose of (or at least in contemplation of) litigation in this proceeding. Mr Sandrey commenced employment with TK on 27 May 2024; on 28 May 2024 MIFANT received an email from Ms Lycett terminating MIFANT's services with respect to her daughter Noni; on 31 May MIFANT received three emails from TK terminating MIFANT's services with respect to Jason Green, Sherena Quall and David Grant. On that same date, Kelly Hinnen phoned Sherena Quall. A week later, on 6 June 2024, MIFANT's solicitors wrote to Mr Sandrey accusing him of breaching the restraint of trade clause in his employment contract, asking him to give an undertaking to cease all such activities and

threatening to institute proceedings. It would have taken at least some time to give instructions, obtain preliminary advice and prepare the letter. Further, MIFANT had had recent experience with an employee leaving MIFANT and taking clients with him at a cost to MIFANT approaching \$200,000 and that is why the restraint of trade clause was added to employees' contracts in February 2024.²⁰ I infer that by 31 May 2024, the date of the file note regarding the representation by Sherena Quall, litigation was at least in contemplation and it seems probable that one reason for the telephone call to Sherena Quall was to seek evidence in support of any proceeding that might be commenced against Mr Sandrey. The situation is even more clear cut in relation to the file note of the telephone call to Jason Green on 14 June 2024, a little over a week after the solicitor's letter threatening proceedings was sent to Mr Sandrey. Further, on the same date, 14 June, Ms Hinnen, who is the Administration and NDIS Manager of MIFANT, wrote a letter to Mr Godfrey's social worker accusing Mr Sandrey (among other things) of soliciting clients in breach of his contract of employment. MIFANT has not shown that the exclusion in s 69(3) does not apply so that the file notes are admissible under s 69(2).

- [36] In written submissions, counsel for MIFANT contended that Mr Sandrey was annoyed and frustrated at not being allowed to take unpaid leave and allowed or encouraged clients and Ms Lycett to believe he had been sacked or forced to resign, building up resentment in them towards MIFANT.

20 Affidavit of Lorraine Davies dated 9 August 2024 para [54]

Mr Sandrey also believed that clients who had been referred by John Valer were “his” clients and he was entitled to take them with him. Also, the more clients he had, the more attractive he would be to TK. Mr Sandrey had many texts and calls with Ms Lycett and Mr Godfrey and it “goes against human experience” to suggest that neither Mr Sandrey, Ms Lycett nor Mr Godfrey ever mentioned Mr Sandrey’s departure from MIFANT and his new job. The most likely explanation for these communications is that he was soliciting his former clients. Similarly, Mr Sandrey’s solicitation of his former clients is a far more believable explanation for the triple termination of Jason Green, Sherena Quall and David Grant on the same day - 31 May 2024 – than coincidence. MIFANT contends that Mr Sandrey deceived Mr Godfrey and Ms Lycett into believing he would be at TK indefinitely thus inducing them to leave MIFANT for TK to ensure continuity of care. Finally there appears to be an implied suggestion that Mr Sandrey had a tendency to “poach” clients from former employers as he had offered to do so for MIFANT when first employed by them, though such a submission was not made explicit. (No tendency notice pursuant to ENULA s 97 was served.)

[37] These contentions are based to a large extent on speculation.

- (a) There is no evidence that Mr Sandrey gave a false impression to clients that he had been sacked or forced to resign in order to build up resentment towards MIFANT. The evidence of Ms Lycett and Mr Godfrey is that they gained the impression that Mr Sandrey had

been forced to resign at a meeting at MIFANT before the termination of Mr Sandrey's employment at which both Mr Sandrey and Ms Emma Steel were present and (as outlined below) this impression was not inaccurate.

- (b) There is no evidence that Mr Sandrey believed clients introduced by John Valer were "his" clients and he was entitled to take them with him; when that was put to Mr Sandrey he denied it and there is no other evidence to support it.
- (c) There is no evidence that Mr Sandrey deceived Mr Godfrey and Ms Lycett into believing he would be at TK indefinitely thus inducing them to leave MIFANT for TK to ensure continuity of care. As outlined below, the evidence is to the contrary; they knew he would only be available as their support co-ordinator for another six months whether he was at MIFANT or TK.
- (d) I decline to make any finding that Mr Sandrey offered to bring clients from his former employer to MIFANT as deposed by Ms Davies. This allegation was not put to Mr Sandrey in cross-examination. He independently denied the second part of her allegation (ie that he had shown her a "cease and desist letter" from his former employer or ever received such a letter), and as a self-represented litigant he may not have thought it necessary to deny the other part of the allegation. In

any case, I would not be prepared to use this evidence as tendency evidence and such a submission was not made by counsel for MIFANT.

[38] In oral submissions, Dr Ford for MIFANT conceded that an exchange of SMS's on a social basis between a former client (or mother of a former client) and a former support co-ordinator who have become reasonably close to each other enquiring about their health or wellbeing, which included an enquiry from the former client about where the former support co-ordinator was working and in what role, answered by the former support co-ordinator, would not necessarily, by itself, amount to a breach of the restraint of trade clause even if followed by a decision by the former client to switch service providers. However, he contended that, in this case, combined with other evidence, such communications do support the existence of such a breach. MIFANT relies on the sheer volume of the text messages as being akin to grooming, cultivating a sense of intimacy and reliance in order to induce the former client to follow Mr Sandrey. The additional evidence relied upon is the hearsay evidence which has been disallowed; the evidence that Mr Godfrey and Ms Lycett believed (falsely) that Mr Sandrey had been forced to leave MIFANT and that he did not correct that belief; and the evidence that Ms Lycett and Mr Godfrey made their decisions to leave MIFANT and follow Mr Sandrey because continuity of care was important to them. MIFANT contends that this indicates that Mr Sandrey either lied to them or did not correct their misapprehension in order to induce them to leave MIFANT on a false premise.

[39] There are a number of problems with the additional evidence relied on and the “grooming” theory.

- (a) The evidence of both Mr Sandrey and Ms Lycett is that the volume of texts may be misleading – both seeming to suggest that Ms Lycett texted briefly and repeatedly in a single session.
- (b) The restraint of trade clause only restricts Mr Sandrey’s permissible conduct in the six months after the termination of his employment. The evidence of Mr Godfrey and Ms Lycett is that the close relationship with and trust in Mr Sandrey was formed well before his employment with MIFANT was terminated. They were fulsome in their praise for Mr Sandrey’s caring and consideration during the time he provided services to Noni and Mr Godfrey. Similar evidence was adduced from David Grant and Jason Green.
- (i) Keith Godfrey explained that he liked having Mr Sandrey as his support co-ordinator. He deposed:²¹

As soon as I met Hayden, we hit it off straight away. Hayden understood that I was trying to achieve things and he knew I was at university and taking control of my life.

...

I felt that Hayden did everything he could to help me achieve these goals.

...

I had built up a relationship with Hayden built on trust. This is essential to me. Hayden knew and understood my goals and

21 Affidavit of Keith Daniel Godfrey dated 16 October 2024

I knew that even though he had other clients I never felt like I was just a number, he made me feel valued. I had also spoken in confidence to Hayden about personal issues that I would not disclose to a female.

...

If Hayden moved from TK Community Care, I would follow him again. He has never groomed me²² but has been the best Support Coordinator that I have ever had. Not only does he do what I need him to do, I know that he actually wants to do it for me and is genuinely invested in my welfare. Hayden respects my choices and is helping me achieve my goals.

(ii) David Grant deposed:²³

Hayden Sandrey was my support coordinator at MIFANT and I think he is a great bloke, passionate about his work and he loves his clients and his clients love him.

(iii) Jason Green deposed:²⁴

I was with MIFANT for several years and Hayden was my worker during that time. Hayden is the only worker who has ever really helped me and I believe this is because he listens to me and delivers the service that I want and need.

...

I wanted to stay with Hayden because he gives a shit about me. Hayden is the only person who has ever taken the time to get to know and understand me and to provide the level of service that I am happy with.

...

(iv) Elizabeth Lycett (mother of Noni) deposed:²⁵

22 The reference to “grooming” comes from a letter written by Ms Kelly Hinnen of MIFANT to Mr Godfrey’s social worker, Danielle Domjam. This is discussed at [45] below.

23 Affidavit of David Ian Grant dated 16 October 2024

24 Affidavit of Jason Bannister Green dated 16 October 2024

25 Affidavit of Elizabeth Lycett dated 19 September 2024

Since Hayden took on Noni as a client she has grown and loves doing things again. This is because Hayden understands clients with psychosocial disabilities.

...

From my observations, Hayden Sandrey has previously and continues to provide an exceptional level of support to Noni that she is very happy with.

...

- (c) It is true that both Mr Godfrey and Ms Lycett believed that Mr Sandrey was effectively compelled to leave MIFANT, but this was not a false belief. Mr Sandrey's uncontradicted evidence in cross-examination was that he had to do his final placement at that time or lose something like 60% of the credits from his nursing degree for which he had worked for 4 ½ years. When he was refused leave without pay to do the placement, he felt he effectively had no choice but to resign in order to do the placement. Both Mr Sandrey and Ms Lycett said that in the meeting with Ms Lycett, Mr Sandrey and Emma Steel, to tell Ms Lycett that Mr Sandrey had resigned and would be leaving MIFANT, Ms Lycett made the connection that he was forced to resign so that he could attend his placement in order to complete his degree. This meeting took place before the termination of Mr Sandrey's employment and not in the six months following. Ms Lycett said she wasn't happy with the whole process. However, when it was put to her that her description of Ms Davies in an email as "dictatorial, bullying and authoritarian" came from Mr Sandrey, she denied it saying: "Well, he never brought that up. It wasn't him that brought those conversations up." She said the

description came from her conversations with former employees of MIFANT.

- (d) Mr Godfrey said that in the similar meeting he had with Mr Sandrey and Emma Steele, also before the termination of Mr Sandrey's employment, he intuited that the resignation was forced – like a sacked football coach who is being permitted to “resign”.
- (e) Both Mr Sandrey and Ms Lycett gave evidence that she was well aware that whether he was at MIFANT or TK, Mr Sandrey would be leaving in order to take up nursing approximately six months after he finished his nursing degree. The continuity of care Ms Lycett sought was in relation to immediate difficulties being experienced by her daughter. In answer to the suggestion in cross-examination that, in that case, continuity of care was not a big factor in her decision, Ms Lycett said:²⁶

... At that time Noni was going through a lot of changes, my daughter, Camille. I refer to her as Noni. She was going through a lot of changes with medication, doctors, extreme voices being, I suppose, getting out of control and then the changes with new drugs. So that was happening in 2024. She then went into Cowdy, which then she went onto a new drug. Hayden pretty much was there along the way until he finished his time in TK. We had other - other things that had to be also dealt with as well. So Hayden pretty much has been there along the whole way for her journey. And I am pretty satisfied with what we have achieved and what we have done together as a team. I'm very grateful for what he's done.

- (f) Mr Sandrey gave similar evidence in relation to what was important by way of continuity in the case of Mr Godfrey. He said:²⁷

Well, I guess he was going for a plan review at that time, and because I had worked with Keith for such a long period of time, there's a - so when you do a plan review, you've got to get the OT reports, psych reports, neuro-psych reports, doctors' reports, his other Dr Flavell (?) for his acquired brain injury. He's got his support workers. He's got DCLS and he's got multiple situations occurring. He had a housing issue as well at that time. So I think he was extremely stressed, because I was dealing with that as a whole and then I was no longer there. He felt, or that he wasn't receiving - or that they knew what was happening. So that's why he was, like, "I need you to take care of this." So then he was very aware that I was moving or departing in six months. In that six-month period we got him a new plan review. We got him increased fundings and we got his housing issue. What else did we get - sort. There was an array of concerns that I had managed to sort out for him during that six-month period.

It was put to Mr Sandrey that that would have been because he had got the funding for the support coordination, Mr Sandrey said, "No. When he transitioned through from MIFANT, they had depleted his funds completely. So I was working pro bono for two months." [This was after he had started employment at TK.]²⁸

[40] So far as the other evidence relied on by MIFANT (set out at [22] above) is concerned:

- (a) I see nothing sinister in an employee writing a polite letter of resignation, and do not infer any duplicity on Mr Sandrey's part from

²⁷ Transcript dated 30 June 2025 p 79

²⁸ Emma Steel gave evidence that she was not returning Mr Godfrey's calls or those of his support worker because he had exhausted his funding and she was concerned that his support worker might not get paid.

his doing so. In any case, the sentiments expressed in the letter of resignation are not necessarily inconsistent with his simultaneously feeling frustrated and annoyed at not being given leave without pay to complete his nursing placement or having negative views about Ms Davies' management style which he understandably refrained from expressing in his letter of resignation.

- (b) While it is clear from the wording of the letters from Jason Green, Sherena Quall and David Grant and the fact that they were written on TK letterhead that although these clients signed the letters, the letters were prepared by TK, I do not see any significance in that for the issues in this proceeding. The letter from Mr Godfrey was also written by someone from TK because Mr Godfrey, who is dyslexic, asked them to contact MIFANT on his behalf.²⁹

[41] Elizabeth Lycett, Keith Godfrey, David Grant and Jason Green all gave evidence deposing that Mr Sandrey did not solicit or encourage them to leave MIFANT and explaining their reasons for leaving MIFANT.

- (a) Ms Lycett deposed that her daughter Noni was unhappy with the services provided by Emma Steel for a number of reasons and that she was very happy with the service provided by Mr Sandrey.³⁰

29 Affidavit of Keith Daniel Godfrey dated 16 October 2024

30 Affidavit of Elizabeth Lycett dated 19 September 2024

- (b) Keith Godfrey explained that he left MIFANT because he was not satisfied with the service being provided by his new support coordinator, Emma Steel. He deposed:³¹

... After two months it wasn't working out at all, I was asking about funding for my plan and Emma gave me the wrong figures.

...

Because Emma had told me the wrong figures and I didn't have the relationship with her that I had had with Hayden, I knew it was time to find a new Support Coordinator. Because Ranu [*Mr Godfrey's support worker*] was a previous employee at TK Community Care she was aware that Hayden had moved to that company.

I then Googled TK Community Care and they have a web-based program that responds to verbal commands. This is how I got in contact with TK Community Care in the first instance. TK then called me and asked where I had been receiving supports before. I told them I was at MIFANT and I didn't want to be with them anymore and didn't want Emma to be my Support Coordinator anymore. I asked them to contact MIFANT and tell them I wanted to cease services because I didn't want to do it as it would stress me out,

...

TK Community Care provided me with a female Support Coordinator for a few weeks. A short time later they offered to provide Hayden as my Support Coordinator. This made me feel like I was getting back on track.

...

At no time at all did anyone asked me to move from MIFANT to TK Community Care, I made this choice myself as is my right, regardless of my disability. My ability to make choices and independence is very important to me and no one should be allowed to take that away from me.

- (c) Mr Godfrey's support worker, Ranu Karki also deposed to problems with the care Mr Godfrey was receiving from Emma Steel and the fact

31 Affidavit of Keith Daniel Godfrey dated 16 October 2024]

that she would call Emma Steel and Ms Steel would not answer and not return her calls.³² She also deposed that she found out Mr Sandrey had started work at TK through an email she (as a former employee) had received from TK and that she told Mr Godfrey about it.³³

(d) David Grant deposed:³⁴

At no time did Hayden ask me to move across to TK Community Care and I never went to TK Community Services. The last time I saw Hayden was when he said goodbye to me at MIFANT and he never provided services to me again.

Hayden only ever provided services to me at MIFANT and at no other location and I did not leave MIFANT to go to a provider where Hayden was working. My current provider is Care Link NT and I have been with them since I left MIFANT.

(e) Jason Green deposed:³⁵

When Hayden told me that he couldn't be my support worker anymore at MIFANT because he had been sacked, I was really upset and annoyed. I asked him if he was still going to be working as a support worker and if he could still look after me. I wanted to exercise my choice as to who I had as my support worker. I really wanted Hayden to look after me. Hayden told me that he was going to find another job but when he first told me that he was leaving MIFANT he didn't tell me where he was going. Hayden never asked me to leave MIFANT and he didn't encourage me to leave MIFANT.

...

I never considered staying at MIFANT after Hayden left as he is the best worker and the best worker for me.

...

32 Ms Steel did not dispute this. See footnote 28 above.

33 Affidavit of Ranu Karki dated 16 October 2024

34 Affidavit of David Ian Grant dated 16 October 2024

35 Affidavit of Jason Bannister Green dated 16 October 2024

The fact that Hayden was leaving really pissed me off and I was going to stay with him no matter where he went.

...

I understand MIFANT are accusing Hayden of asking me to leave MIFANT and follow him. That never happened and I find that MIFANT saying this is really annoying and I find it insulting to me as a client as it appears they don't think I know what I'm doing. They treat me like I am stupid because of my ABI [*acquired brain injury*] and they have tried to interfere with my choice and control over my life.

...

Noone else has ever asked me to leave MIFANT and I have never been approached by anyone to encourage me to move from MIFANT to another provider. I repeat, this was my choice and I have that right.

[42] In summary, the reasons given by those who gave evidence for their decision to leave MIFANT include dissatisfaction with the service received from Emma Steel (Ms Lycett and Mr Godfrey) and a desire to continue to receive services from Mr Sandrey (Ms Lycett, Mr Godfrey and Mr Green).

[43] Mr Godfrey and Mr Grant also deposed to being annoyed and upset at MIFANT treating them as though they were unable to make decisions, although this appears to post-date their decision to leave MIFANT. NDIS clients have a right to choose which service providers they wish to use and that right to choose cannot be constrained by any contractual arrangement between MIFANT and Mr Sandrey. The restraint of trade clause restricts Mr Sandrey's freedom to solicit former clients. It cannot restrict the former clients' freedom to change service providers whether to follow Mr Sandrey because they were happy with the service he provided or simply to leave

MIFANT to go elsewhere because of dissatisfaction with the services being provided by MIFANT.

- [44] Both Mr Godfrey and Mr Green's assessment of MIFANT's attitude to them (and to their clients in general) is borne out by Ms Davies' affidavit³⁶ in which she says, in implied criticism of TK:

In my experience most, if not all, of the participants with psychosocial disabilities are very susceptible to suggestion and potential manipulation. Accepting participants as clients who are following an employee from another service provider runs the risk of facilitating or benefiting from the influence by that employee. Participants' choice and control in and of their lives is important but it is open to be abused where participants have psychosocial disabilities.

- [45] This attitude to clients is also reflected in the email from Kelly Hinnen to Mr Godfrey's social worker, Danielle Domjan on 14 June 2024. This is worth quoting in full, not only to illustrate the attitude to clients it displays, but also because it shows a readiness to make serious allegations against Mr Sandrey without a basis in evidence, and to tell what would appear to be untruths in the process. Ms Hinnen wrote:³⁷

Dear Danielle,

With reference to your email today 14th June 2024 regarding Keith Godfrey.

Recently, our former Recovery Coach/ Support Coordinator Hayden Sandrey ceased employment with us and has taken up employment at TK Community Care Services. Since his cessation of employment, he has contacted a number of MIFANT clients and induced them to cease supports with us to take up supports with him at TK Community Care Services. He often uses a third party (sometimes unwittingly) such as

36 Affidavit of Lorraine Davies dated 9 August 2024 para [17]

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yourself to make the request as he is still bound by contractual obligations (confidentiality of client contact details) that persist after his MIFANT employment contract ended. Often third parties are contacted by his colleague Brooke Scott or Supervisor Danielle Toop.

We have serious concerns about Mr Sandrey's motives in respect to his actions and feel that clients are being groomed to follow him to another company. We have since contacted a number of clients (some of who pre-dated Mr Sandrey's employment at MIFANT) for whom we have received "cease of service" letters from TK Community Care Services and they have expressed that even though they had signed the letter they had no idea that their services were being moved to another company and nothing had been explained to them. When it was explained to them they would no longer receive services from MIFANT, they chose to stay with us.

Mental Illness Fellowship NT is a small charity that has over 30 years of providing support to those who are experiencing mental health issues and consequently still only specialise in providing mental health support including for our NDIS services. We are still very grass roots and continue to have a founding member on the Board who, as a mother of a son with schizophrenia, her sole purpose is to improve the lives of people living with a mental illness. It is therefore very concerning that Mr Sandrey is coercing vulnerable people to leave our organisation for his own benefit to join a for profit company whose main focus is SIL for all disabilities.

Mr Godfrey has "chosen" to cease services and all communication with us immediately without any reason for leaving, however basing it on choice and control. We suggest that he has been coerced by Mr Sandrey not to have any contact with MIFANT as other clients (who Mr Sandrey has induced) have revoked their request to cease services once they realised that they were moving to TK Community Care Services and no longer receiving their services from MIFANT.

We believe that the inducement of vulnerable people to make decisions undermines their autonomy and can lead to serious negative consequences, which is why we are writing to you with regard to Keith Godfrey.

In order to ensure that Mr Godfrey was aware of his choices, we would appreciate understanding why Mr Godfrey wants to cease services and why he does not want any communication with us going forward.

I look forward to hearing from you.

Kind regards

Kelly Hinnen

Administration & NDIS Manager

[46] In this letter Ms Hinnen accuses Mr Sandrey of:

- contacting a number of MIFANT clients and inducing them to cease supports with MIFANT to take up supports with him at TK Community Care Services;
- using third parties to make the request;
- using Brooke Scott or Danielle Toop to contact the third parties;
- grooming clients to follow him to another company;
- coercing vulnerable people to leave MIFANT for his own benefit;
- coercing Mr Godfrey not to have any contact with MIFANT; and
- at the very least being complicit with TK getting clients to sign letters ceasing services with MIFANT without telling them what was in the letters.

Given the nature of this litigation, if MIFANT had any admissible evidence of these things, they would have adduced that evidence in this proceeding. They have not. Rather they rely on inference and an assumption that because clients have left MIFANT and most of them have gone to TK, Mr Sandrey must have groomed them, induced or coerced them to do so.

[47] The letter also contains a representation that other clients (plural) who Mr Sandrey had induced to leave MIFANT had revoked their request to cease services once they realised they were moving to TK and no longer

receiving their services from MIFANT. The only evidence MIFANT has adduced of anything like this is in the affidavit of Emma Steel dated 9 August 2024 in which she deposes to the meeting with Mr Grant referred to at [24] above and which Mr Grant strongly disputes as set out at [25] above. No evidence was adduced of any other client revoking their request to leave MIFANT.

[48] I am not prepared to infer that any of the seven clients who left MIFANT did so as a result of any solicitation by Mr Sandrey. Four of the seven have sworn affidavits and given oral evidence in this proceeding, all of whom deny that Mr Sandrey solicited or enticed them to leave MIFANT and follow him to TK. They gave oral evidence to similar effect which was not challenged in cross-examination. MIFANT has adduced no admissible evidence to suggest that Mr Sandrey solicited the other three and the summary of Mr Sandrey's telephone records relied on by MIFANT does not show any telephone contact, either voice calls or texts, with any of the clients other than Mr Godfrey and Ms Lycett.

[49] MIFANT also seeks a declaration that Mr Sandrey misused confidential information belonging to MIFANT.

[50] MIFANT claims that Mr Sandrey breached s 183(1) of the *Corporations Act 2001* (Cth) by gaining an advantage for himself or someone else (presumably TK) by improperly using information he obtained as an

employee of MIFANT.³⁸ MIFANT also claims that Mr Sandrey breached his equitable duty of confidence not to use MIFANT's confidential information or proprietary information for his or another's benefit or to MIFANT's detriment.³⁹ MIFANT claims that the following information was MIFANT's confidential or proprietary information.⁴⁰

- (a) the name, address and contact details of MIFANT's clients;
- (b) the services MIFANT provided to its clients;
- (c) the fees MIFANT charged its clients;
- (d) MIFANT's goodwill including its client connection with "the terminators" (ie the clients who left MIFANT);
- (e) the service providers to whom MIFANT referred its clients and the services and costs of those service providers;
- (f) the assessment by MIFANT and its clients of MIFANT's performance of its services to its clients;
- (g) MIFANT's internal staffing and cost structure; and
- (h) MIFANT's internal policies and procedures.

38 Amended Statement of Claim para [9]

39 Amended Statement of Claim para [10]

40 Amended Statement of Claim para [11]

[51] Despite the wide pleading of what amounts to “confidential information”, the only breaches particularised are:

- (a) that Mr Sandrey made a statutory declaration on 26 April 2024 in which he declared that he did not have in his possession any hard or digital copy of MIFANT’s confidential information when he knew that to be untrue;⁴¹ and
- (b) that he canvassed, solicited or induced clients to terminate MIFANT’s NDIS services to them and have those services performed by TK.⁴²

[52] I have already found that MIFANT has not proved that Mr Sandrey canvassed, solicited or induced clients to leave MIFANT and go to TK.

[53] As to the alleged breach by signing a false statutory declaration, the wording of that Statutory Declaration was clearly produced by MIFANT. During an exchange between counsel for MIFANT and the bench, counsel conceded that it was possible that Mr Sandrey did not know that telephone numbers he had on his phone were “digital copies of confidential information”. In any event, it has not been explained how signing a statutory declaration that was untrue constituted a misuse of confidential information.

[54] I decline to make a finding that Mr Sandrey breached s 183 of the *Corporations Act* or his equitable duty to MIFANT by misusing confidential information to benefit himself or TK or to the detriment of MIFANT.

41 Amended Statement of Claim para [13]

42 Amended Statement of Claim para [14]

- (a) MIFANT has not established that he solicited any of the clients who left MIFANT.
- (b) Making a statutory declaration, even if it was knowingly false (which has not been established) does not amount to a misuse of confidential information.
- (c) MIFANT has not pleaded that the mere use of the telephone numbers of Ms Lycett and Mr Godfrey amounted to a misuse of confidential information to benefit Mr Sandrey or TK and in any case the evidence is that the telephone communications between Mr Sandrey and these two clients were most likely initiated by Ms Lycett and Mr Godfrey.

[55] The defendant has pleaded that the restraint of trade clause is unenforceable. Given my finding that MIFANT has not proved that Mr Sandrey breached that clause, it is unnecessary for me to make a finding on that issue. If it were necessary for me to make a finding on that issue, I would have found the clause enforceable.

- (a) The restraint imposed on Mr Sandrey was for six months only after the termination of his employment.
- (b) It does not purport to prevent Mr Sandrey from earning a living. He was free to obtain employment from TK or any other employer; the restraint clause only prevented him from soliciting former clients with whom he had had a relationship within the previous 12 months.

- (c) It does not have a defined geographical limitation. Nevertheless, given the nature of the business being conducted by MIFANT, and the limited nature of the restriction, I do not consider the clause goes beyond what is reasonable to protect the good will of MIFANT in the circumstances.

[56] As I have found that MIFANT has not proved that Mr Sandrey breached the restraint of trade clause, or that he has misused MIFANT's confidential information, there will be judgment for the defendant.

[57] ORDERS:

- (1) Judgment for the defendant.
- (2) The plaintiff is to pay the defendant's costs of and incidental to the proceeding to be agreed or taxed.
