

CITATION: *Slade v Energy Resources of Australia Ltd* [2026] NTSC 72

PARTIES: SLADE, Lance James

v

ENERGY RESOURCES OF
AUSTRALIA LTD
(ACN 008 550 865)

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2026-00098-SC

DELIVERED: 2 September 2026

HEARING DATE: 18 August 2026

JUDGMENT OF: Smyth A/AsJ

CATCHWORDS:

PRACTICE AND PROCEDURE – Pleadings – Application for strike out – Pleadings disclose no reasonable cause of action – Pleadings are scandalous, irrelevant and lack particularity – Pleadings may prejudice, embarrass or delay fair trial of the proceeding – Pleadings largely struck out with leave to replead refused

PRACTICE AND PROCEDURE – Pleadings – Evidence – Distinction between material facts and evidence – Inappropriate use of pleadings – Pleadings used to advance allegations of fraud, perjury, concealment, falsification of records, misleading regulators and misconduct – Pleading not futile or incapable of cure – Leave to replead confined to these reasons

Slade v CGH Group Pty Ltd [2026] NTSC 53; *Slade v CGH Group Pty Ltd* [2026] NTSC 53; *Wickham Point Development Pty Ltd v Commonwealth of Australia* [2018] NTSC 7; *LKAJ Two Pty Ltd v Squire Patton Boggs (AU) & Anor* [2020] NTSC 45; *Aldebaran Contracting Pty Ltd v Tiwi Islands Regional Council* [2021] NTSC 89; *Northern Territory of Australia v Bellamack Pty Ltd* [2025] NTSC 44; *Manolakis v Carter* [2008] FCAFC 183; *Mohareb v Health Care Complaints Commission (NSW)* [2026] NSWSC 594; *Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor* [2006] WASC 281; *Nesfall Pty Ltd as Trustee for Palmerston Property Trust & Anor v BB Fry Gateway SC Yarrawonga Pty Ltd & Anor* [2022] NTSC 49; *Pigozzo v Mineral Resources Ltd* [2022] FCA 1166; *DM Drainage & Constructions Pty Ltd v Karara Mining Ltd* [2014] WASC 170; *JMT Builders Pty Ltd v Ryan & Ors* [2016] NTSC 6; *Webb v Commonwealth of Australia* [2021] FCA 1215; *Dickens (a pseudonym) v State of New South Wales* [2018] NSWCA 222, referred to.

Supreme Court Rules 1987 (NT), rr 13.03(3)(a), 23.02, 23.02(c), 23.02(d)
Personal Injuries (Liabilities and Damages) Act 2003 (NT), s 19

REPRESENTATION:

Counsel:

Plaintiff:	Self-Represented
Defendant:	K Bower

Solicitors:

Defendant:	Herbert Smith Freehills Kramer
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Slade v Energy Resources of Australia Ltd [2026] NTSC 72
No. 2026-00098-SC

BETWEEN:

LANCE JAMES SLADE
Plaintiff

AND:

**ENERGY RESOURCES OF
AUSTRALIA LTD
(ACN 008 550 865)**
Defendant

CORAM: SMYTH A/AsJ

REASONS FOR DECISION

(Delivered 2 September 2026)

- [1] By summons filed 8 May 2026, the Defendant applies pursuant to r 23.02 of the *Supreme Court Rules 1987* (NT) ('the Rules') to strike out parts of the Plaintiff's amended statement of claim filed on 8 April 2026 ('ASOC').
- [2] The application does not seek dismissal of the proceeding in its entirety. Rather, the Defendant seeks to strike out various paragraphs and portions of paragraphs which it contends are scandalous, irrelevant, embarrassing, vexatious, disclose no reasonable cause of action or otherwise constitute an abuse of the Court's process.

- [3] Broadly stated, the challenged portions of the ASOC fall into two categories. The first category concerns allegations relating to the Plaintiff's previous Work Health Court proceedings against his former employer CGH Group Pty Ltd,¹ including allegations concerning the abandonment of a physical injury claim and the conduct of the Plaintiff's former legal representatives. The second category concerns allegations of fraud, perjury, falsification of documents, concealment of evidence, misleading regulators, environmental wrongdoing and related misconduct said to have been committed by the Defendant and others. The Defendant contends that those matters are either irrelevant to the issues presently before the Court or are not pleaded in a manner consistent with the requirements of the Rules.

The pleaded claim

- [4] Although the ASOC is not drafted in conventional form, its substance can be identified. The Plaintiff alleges that in October 2021, he was working at Ranger Mine as a machine operator engaged through labour hire. He alleges that employees or representatives of the Defendant directed him to undertake cleaning work on water carts that had previously operated within a contaminated area of the mine. He further alleges that he was required to remove contaminated tailings material from those vehicles without adequate personal protective equipment and without adequate safety systems. The

¹ *Slade v CGH Group Pty Ltd* [2025] NTWHC 3. See also: *Slade v CGH Group Pty Ltd* [2026] NTSC 53.

Plaintiff alleges that as a consequence, he suffered physical injury, sequela psychiatric injury and economic loss.

- [5] The Defendant does not presently seek to strike out that negligence claim. The issue on the present application is whether particular allegations should remain as part of that claim.

The prior proceedings

- [6] The ASOC makes extensive reference to earlier proceedings brought by the Plaintiff in the Work Health Court. Those proceedings were brought against CGH Group Pty Ltd. An appeal from those proceedings was recently delivered by Grant CJ in *Slade v CGH Group Pty Ltd* and was referred to in the context of this application.² The Defendant correctly acknowledges that findings made in those proceedings do not operate as an estoppel against the Plaintiff in the present proceeding, nor do they establish the truth of facts found in those proceedings merely by reason of their inclusion in the judgment.
- [7] However, the existence of the judgment and the issues addressed therein form part of the procedural background against which the present pleading must be assessed. In particular, the judgment demonstrates that many of the allegations now appearing in the ASOC concerning perjury, falsification of records, concealment of documents and the abandonment of the physical injury claim were previously advanced and considered in other litigation.

² [2026] NTSC 53.

That circumstance does not determine the present application but is relevant in assessing the nature and utility of the impugned paragraphs.

- [8] Another aspect of the procedural background is relevant to the question of leave to replead. At a directions hearing on 3 March 2026, the Court made case management orders requiring the Plaintiff to file and serve an amended statement of claim and relieving the Defendant from filing a defence pending consideration of the adequacy of the pleading. Those orders were made after the Defendant identified a number of alleged deficiencies in the original statement of claim and the Plaintiff was afforded an opportunity to address those matters by amendment. The ASOC filed pursuant to that order is the subject of the Defendant's application. That procedural history is relevant to the question of leave to replead and the extent to which the Plaintiff has already had an opportunity to articulate the claims he seeks to advance.

Applicable Principles

- [9] Rule 23.02 of the Rules empowers the Court to strike out the whole or part of a pleading where it:
- (a) discloses no reasonable cause of action or defence;
 - (b) is scandalous, frivolous or vexatious;
 - (c) may prejudice, embarrass or delay the fair trial of the proceeding; or
 - (d) is otherwise an abuse of the process of the Court.

- [10] The principles governing the exercise of the power under r 23.02 have been considered on a number of occasions by this Court, including in *Wickham Point Development Pty Ltd v Commonwealth of Australia*,³ *LKAJ Two Pty Ltd v Squire Patton Boggs (AU) & Anor*,⁴ *Aldebaran Contracting Pty Ltd v Tiwi Islands Regional Council*⁵ and *Northern Territory of Australia v Bellamack Pty Ltd*.⁶ Those authorities emphasise that the power is discretionary, that it should be exercised cautiously and that a strike-out application is directed to the sufficiency of the pleading rather than the ultimate merits of the case.⁷
- [11] In *LKAJ Two*, Barr J observed that a strike-out application ordinarily proceeds on the assumption that an arguable claim or defence may exist and is concerned with whether the pleading properly expresses that claim or defence. The function of pleadings remains to identify the material facts relied upon, define the matters genuinely in issue and to permit the opposing party to understand the case it is required to meet.⁸ As the Full Court of the Federal Court observed in *Manolakis v Carter*, justice requires fairness to all parties and a respondent is entitled, at the least, to know the case brought

3 [2018] NTSC 7 (*‘Wickham Point’*).

4 [2020] NTSC 45 (*‘LKAJ Two’*).

5 [2021] NTSC 89.

6 [2025] NTSC 44 (*‘Bellamack’*).

7 *LKAJ Two*; *Wickham Point*.

8 *Bellamack* at [9].

against it and the rudimentary facts upon which that case is based.⁹

Additionally, the Court in *Manolakis* observed:¹⁰

Courts do not exist to allow self-represented litigants to make scatter-gun claims against all and sundry and to indulge themselves by using proceedings they have instituted as vehicles for what might be seen to be private “Royal Commissions”.

Nor do courts exist to allow the frustrations of self-represented litigants to be relieved by the making of abusive or contemptuous tirades directed at those whom they perceive to have wronged them, judicial officers who may have decided not to find for them, or judges whose duty it is to hear them, when such litigants sense that the expressions of their grievances are not being favourably received by the court.

[12] The Full Court in *Manolakis* further observed that, notwithstanding the difficulties facing self-represented litigants, an aggrieved litigant must identify the relief sought and the facts said to establish an entitlement to that relief.¹¹ That observation is particularly relevant in the present matter where much of the controversy concerns whether allegations of fraud, concealment, perjury and related misconduct have been connected to any properly pleaded cause of action.

[13] In *Bellamack*, the Court reiterated that r 23.02 supports the underlying purpose of pleadings and that its jurisdiction is to be exercised having regard to the efficient and fair conduct of litigation. The Court may properly consider not only the interests of the parties before it, but also

9 [2008] FCAFC 183 (*‘Manolakis’*) at [9].

10 *Manolakis* at [10].

11 *Manolakis* at [12]. See also: *Mohareb v Health Care Complaints Commission (NSW)* [2026] NSWSC 594 (*‘Mohareb’*) at [79], [88], [91]-[92]: self-representation does not excuse non-compliance with pleading requirements.

broad considerations of case management and the efficient use of judicial resources.¹²

[14] As Luppino AsJ observed in *Wickham Point*, adopting the well-known observation of Martin CJ in *Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor*,¹³ the Court should ordinarily entertain disputes about pleading only where the alleged deficiencies have a meaningful impact upon the proper preparation of the case and its presentation at trial. Pleading disputes should not become an end in themselves; rather, the question is whether the defects matter materially to the just and efficient determination of the proceeding.¹⁴

[15] Notwithstanding that caution, particular care is required where allegations of fraud, dishonesty, criminality, illegality, professional misconduct or comparable impropriety are advanced. It has long been recognised that such allegations must be properly pleaded and, where necessary, properly particularised. Rule 13.03(3)(a) expressly requires particulars of fraud. In *Nesfall Pty Ltd as Trustee for Palmerston Property Trust & Anor v BB Fry Gateway SC Yarrawonga Pty Ltd & Anor*, Kelly J emphasised the importance of compliance with those requirements.¹⁵

12 *Bellamack* at [9].

13 [2006] WASC 281.

14 *Wickham Point* at [19]-[20].

15 [2022] NTSC 49.

[16] In *Pigozzo v Mineral Resources Ltd*,¹⁶ the Court observed that allegations of impropriety, fraud or serious misconduct which is unsupported by complete material facts may properly be characterised as scandalous. The authorities also establish that allegations of serious wrongdoing pleaded at a high level of generality, ambiguity or suspicion are vulnerable to strike out. Mere assertion is not a substitute for pleading material facts.¹⁷ Similarly, allegations of fraudulent and criminal conduct which are unsupported by sufficient factual foundation are liable to being struck out.¹⁸

[17] A distinction must also be maintained between material facts and evidence.¹⁹ Pleadings are required to identify the material facts relied upon in support of a cause of action or defence. They are not intended to function as repositories of evidence, submissions, argument, commentary or speculation, nor is it permissible to advance serious allegations in the hope that subsequent interlocutory processes might reveal material capable of supporting them.

[18] The expression '[m]ay prejudice, embarrass or delay the fair trial of the proceeding' in r 23.02(c) of the Rules is concerned with the ability of the pleading to identify and define the issues requiring determination. A pleading may be embarrassing where it obscures, rather than clarifies, the issues in dispute, introduces irrelevant matters, pleads evidence rather than

¹⁶ [2022] FCA 1166 at [24].

¹⁷ *Mohareb* at [54]-[55], [103]-[105].

¹⁸ *Manolakis* at [28].

¹⁹ *Bellamack* at [9].

material facts or otherwise makes it difficult for the opposing party to know the case it must meet.²⁰ As Barr J observed in *LKAJ Two*, that expression is to be understood as a single composite concept directed to the fairness and efficiency of the trial process.²¹

[19] Rule 23.02(d) of the Rules reflects the Court's inherent jurisdiction to prevent abuse of its process. In *JMT Builders Pty Ltd v Ryan & Ors*, Southwood J observed that the categories of abuse of process are not closed.²² This jurisdiction extends to cases in which the Court's procedures are employed for a purpose foreign to the determination of a genuine controversy, where the continuation of the proceeding would be unjustifiably oppressive or where the administration of justice would otherwise be brought into disrepute. There is often overlap between abuse of process and the other grounds identified in r 23.02.

[20] Finally, where a pleading or part of a pleading is struck out, the ordinary course is to consider whether leave to replead should be granted. Leave will ordinarily be granted where the defect is one of form and is capable of cure by way of amendment.²³ However, leave need not be granted where the defect is substantive, where the allegations are irrelevant to the controversy between the parties, where amendment would be futile or where the pleading demonstrates that no useful purpose would be served by permitting further

²⁰ *DM Drainage & Constructions Pty Ltd v Karara Mining Ltd* [2014] WASC 170 at [34].

²¹ *LKAJ Two* at [11].

²² [2016] NTSC 6.

²³ *Webb v Commonwealth of Australia* [2021] FCA 1215 at [40].

attempts at reformulation. In determining whether leave should be granted, regard may also be had to whether the party, liable to having its claim struck out, has already had a fair opportunity to articulate the claim sought to be advanced and whether there is any realistic prospect that a further pleading would remedy the identified deficiencies.²⁴

- [21] It is against those principles that the impugned portions of the ASOC fall to be considered.

The Plaintiff's response to the Defendant's application

- [22] Before considering the individual paragraphs challenged by the Defendant, it is necessary to make one observation concerning the Plaintiff's response to the application.
- [23] As noted above, the Defendant's application is not directed to the viability of the Plaintiff's underlying negligence claim. The Defendant does not presently seek to strike out the Plaintiff's claim arising out of the October 2021 incident; rather, the application is directed to particular parts of the ASOC said to be irrelevant to that claim, insufficiently pleaded, scandalous, evidentiary in nature or otherwise inappropriate for pleading.
- [24] The Plaintiff's written submissions, rejoinder submissions and oral submissions largely focused upon evidence which he contends supports allegations of workplace contamination, physical injury, concealment of

²⁴ *Dickens (a pseudonym) v State of New South Wales* [2018] NSWCA 222 at [11]-[13].

documents, manipulation of records, fraud, perjury, misconduct by former legal representatives and wrongdoing by the Defendant more generally. He repeatedly submitted that the impugned allegations should remain because they are true, because supporting evidence exists or has now been located, or because various investigations are said to be on foot.

[25] Those matters, however, do not answer the Defendant's principal complaint: the present application is not concerned with whether the Plaintiff genuinely believes those allegations to be true, nor whether evidence may ultimately be led concerning them. Instead, the issue is whether the challenged allegations form part of a properly pleaded cause of action against the Defendant and whether they are pleaded in a manner consistent with the Rules.

[26] The Plaintiff appears to regard the workplace incident, the subsequent Work Health Court proceedings, the conduct of his former legal representatives, alleged deficiencies in subpoena compliance, alleged concealment of documents, alleged fraud on regulators, alleged perjury, and various environmental and public safety allegations as components of a single overarching grievance arising from the same sequence of events.²⁵ The difficulty is that many of those matters, even if capable of proof, do not form part of the legal elements of the negligence claim presently pleaded against the Defendant. Some pleadings concern separate controversies

²⁵ This distinction reflects the observation of the Full Court in *Manolakis* that court proceedings are not vehicles for the ventilation of every grievance which a litigant may hold arising out of a wider factual dispute.

involving other parties or allegations of misconduct which are not advanced as independent causes of action. Other pleadings constitute evidentiary or background matters rather than material facts necessary to establish duty, breach, causation or damage.

[27] During the hearing, I sought to explain to the Plaintiff that the proceeding presently before the Court is pleaded as a negligence claim. Properly understood, the Plaintiff's case is that the Defendant owed him a duty to take reasonable care for his safety while working with his former employer, that the Defendant breached that duty by failing to provide a safe system of work and appropriate protective measures, and that those breaches caused personal injury for which damages are sought. Despite that explanation, the Plaintiff's submissions continued largely to focus on evidence said to support allegations of concealment, fraud, perjury and other misconduct, rather than whether those allegations formed part of a properly pleaded cause of action against the Defendant.

[28] In taking that course, I had regard to the fact that the Plaintiff appeared without legal representation and asserted that he suffers from various physical and psychiatric illnesses. Those matters were borne in mind throughout the hearing and in considering both his written and oral submissions. Consistent with the approach ordinarily adopted in dealing with self-represented litigants, I endeavoured to explain the nature of the application, the distinction between evidence and material facts, and the issues requiring determination. However, whilst self-represented litigants

are entitled to procedural fairness and appropriate assistance in understanding court processes, they remain subject to the same substantive pleading requirements as represented parties. The Court must ultimately determine the application by reference to the applicable pleading principles and the contents of the pleading itself.

- [29] The function of a pleading is to identify the material facts relied upon and define the controversy between the parties, not to advance every grievance arising from a broader factual dispute. If the Plaintiff wished to advance a separate cause of action founded upon fraud, deceit, fraudulent misrepresentation, conspiracy, unconscionable conduct or some other intentional wrongdoing, it would ordinarily be necessary to identify that cause of action and plead the material facts relied upon to establish its constituent elements. As discussed below, the ASOC does not do so. Consistent with the observations of the Full Court in *Manolakis*, a litigant must identify not merely grievances or allegations of wrongdoing, but the facts said to establish an entitlement to recognised legal relief.

The allegations of abandoned instruction

Paragraphs 21-23

- [30] Paragraphs 21 to 23 of the ASOC concern matters arising from the Plaintiff's previous Work Health Court litigation. They include allegations that the Plaintiff was coerced into abandoning his physical injury claim, that his former legal representatives advised him not to pursue certain aspects of the

claim, and that he was subjected to pressure or duress by the same. They also contain allegations concerning Law Society matters, the conduct of the previous litigation and the Plaintiff's treatment following those events.

[31] The conclusion that these allegations concern a separate controversy is reinforced by the procedural history of the Work Health Court proceedings. On appeal, Grant CJ recorded that the decision to abandon the physical injury claim was made at a time when the Plaintiff had the benefit of legal representation and that there was 'nothing to suggest that the decision was made on anything other than a rational legal basis and an objective appraisal of the evidence to hand, and in accordance with the worker's instructions'.²⁶ His Honour further observed that no satisfactory explanation had been provided as to why that earlier decision had been wrongly made. Those findings do not create an estoppel in the present proceeding. However, they reinforce the conclusion that the allegations concerning the abandonment of the physical injury claim are directed to matters arising from the prior litigation and not to the negligence claim presently advanced against the Defendant. Those findings do not establish the truth of the matters found for the purposes of the present proceeding. They are relevant only insofar as they demonstrate that the allegations concern issues arising from the previous litigation rather than the controversy presently before the Court.

26 [2026] NTSC 53 at [104].

- [32] These allegations do not concern any duty owed by the Defendant, any breach of such duty, causation or damage. Rather, they concern the Plaintiff's relationship with his former legal representatives and matters arising from the conduct of separate litigation. Irrespective of whether the Plaintiff considers those matters relevant to explaining the course of the earlier proceedings, they do not form part of the negligence cause of action pleaded against the Defendant.
- [33] The same may be said of the Plaintiff's allegations concerning the conduct of his former legal representatives. In the appeal proceeding, Grant CJ described the Plaintiff's allegation of collusion between his solicitors and the solicitors acting for his former employer as 'a disgraceful suggestion which is entirely unsupported by any evidence'.²⁷ Again, that finding is not binding in the present proceeding but it does go to reinforcing the conclusion met in respect to the allegations in paragraphs 21 to 23.
- [34] Even if properly pleaded, those matters do not form part of the controversy presently before the Court. Their inclusion would tend to expand the proceeding into an inquiry concerning the conduct of former lawyers and the management of unrelated proceedings. I am satisfied that paragraphs 21 to 23 may prejudice, embarrass or delay the fair trial of the proceeding within the meaning of r 23.02(c) of the Rules. Those paragraphs should be struck out as the defects are substantive rather than merely formal. I am not

²⁷ *Slade v CGH Group Pty Ltd* [2026] NTSC 53 at [112].

persuaded that any useful purpose would be served by granting leave to replead those allegations. Leave to replead is refused.

Paragraph 46(1)

[35] Similar considerations apply to paragraph 46(1) of the ASOC. This seeks declaratory relief setting aside or rendering void an agreement, release or discharge said to have been signed in connection with the Work Health Court proceedings.

[36] The relief sought does not arise from the negligence cause of action pleaded against the Defendant. The pleading does not explain why determination of that issue is necessary to resolve any controversy between the present parties. The pleading does not allege that the Defendant was a party to the agreement, release or discharge sought to be impugned. In substance, paragraph 46(1) introduces a separate controversy. Insofar as paragraph 46(1) seeks relief against the Defendant, it discloses no reasonable cause of action. It is also capable of prejudicing and delaying the fair trial of the negligence proceeding. It should be struck out pursuant to rr 23.02(a) and 23.02(c). Leave to replead is similarly refused.

The allegations of fraud, perjury and misconduct

Paragraphs 25, 28 and 41

[37] Paragraphs 25, 28 and 41 contain allegations of perjury, fraud, deliberate deception, false documentation, concealment, misleading regulatory

authorities and related misconduct. Many of those allegations are of the utmost seriousness, though they are pleaded largely as conclusions.

[38] The pleading does not identify with sufficient precision the material facts said to establish the alleged wrongdoing. In many instances, the relevant actor is not clearly identified. In other instances, the allegation consists merely of an assertion that a document was false or that evidence was perjured.

[39] A pleading alleging fraud or criminal conduct must do considerably more than that. Serious allegations of criminality and dishonesty require substantially greater specificity than appears in the ASOC.²⁸

[40] Further, a number of these allegations concern matters affecting regulators, public bodies, former colleagues or the community more generally rather than damage said to be suffered by the Plaintiff. The relevance of these matters to the Plaintiff's negligence claim is either unclear or absent.

[41] I also take into account, as part of the procedural background to the present proceeding, that allegations of perjury, falsification of documents, alteration of records and concealment of evidence were advanced by the Plaintiff in the appeal proceedings before Grant CJ. His Honour observed that a number of those allegations are 'obviously irrelevant to the substance of his appeal and/or misconceived', and later stated that the Plaintiff's specific complaints appeared to be the product of either mistake or paranoid ideation and did not

28 *Mohareb* at [54]-[55], [88], [105]-[111].

withstand serious scrutiny.²⁹ Those observations do not bind this Court and do not prevent the Plaintiff from advancing relevant allegations supported by properly pleaded material facts, nor do they relieve the Defendant of the obligation to meet any such allegations if properly pleaded. They do, however, reinforce the conclusion that allegations of the same general character should not remain in the ASOC unless they are pleaded as material facts relevant to a recognised cause of action.

[42] I am satisfied that these paragraphs are scandalous within the meaning of r 23.02(b) of the Rules. I am equally satisfied that they may prejudice, embarrass or delay the fair trial of the proceeding within the meaning of r 23.02(c) of the same. Paragraphs 25, 28 and 41 are struck out. In circumstances where the allegations are not merely lacking in particularity but are largely irrelevant to the pleaded cause of action, and where substantially similar allegations have already been examined in previous litigation, leave to replead will be refused. I have also taken into account that the Plaintiff has already been afforded an opportunity to amend his pleading following the directions hearing of 3 March 2026, where alleged deficiencies in his pleadings were first identified by the Defendant. In the circumstances, I am not persuaded that any useful purpose would be served by permitting further attempts to plead those allegations.

29 *Slade v CGH Group Pty Ltd* [2026] NTSC 53 at [113], [119].

Paragraphs 39 and 40

[43] Paragraph 39 concerns alleged withholding of medical evidence, photographs and records. Paragraph 40 concerns alleged deficiencies in regulatory reporting and related matters. Unlike paragraphs 25, 28 and 41, it is possible to discern a potential connection between those allegations and the Plaintiff's claim for damages relating to personal injury. The allegations are not, at least on their face, wholly disconnected from issues of injury, diagnosis, treatment or loss. However, the significance of those allegations is more appropriately considered in the context of the Plaintiff's apparent contention that post-incident conduct of the Defendant caused additional injury or loss. I return to that issue below.

Paragraph 40A

[44] Paragraph 40A alleges that breaches of work health and safety legislation were identified as a *prima facie* case in an official report by the regulatory body. That paragraph pleads the conclusion of an alleged investigator rather than the underlying facts. It is not the function of pleadings to recite opinions or findings said to have been made by third parties. The relevant question is what facts are alleged against the Defendant. The fact that a regulator may have expressed a view about the Defendant's conduct is not itself a material fact required to establish liability. Paragraph 40A adds nothing of substance to the material facts required to establish the pleaded negligence claim. It should be struck out. Leave to replead is refused.

The claims for aggravated and exemplary damages

Paragraphs 42, 42A, 46(5) and 46(6)

[45] The Defendant also seeks to strike out certain words appearing in paragraphs 42, 42A, 46(5) and 46(6) of the ASOC. Those paragraphs contain the Plaintiff's claim for aggravated and exemplary damages. The factual foundation apparently relied upon for those claims consists of the allegations pleaded elsewhere in the ASOC concerning fraud, perjury, concealment of documents and records, misleading regulators, the provision of false documentation, lying to regulators and what is described as an intentional perversion of justice.

[46] The Defendant submitted that those allegations are incapable of supporting the claims for aggravated and exemplary damages because they are not properly pleaded, are unsupported by material facts and are largely directed to matters collateral to the negligence claim. The Defendant further submitted that many of the allegations concern dealings with regulators, alleged non-compliance with subpoenas, alleged misconduct in earlier proceedings, or broader allegations of wrongdoing having no sufficient connection to the wrong said to have caused the plaintiff's physical or psychiatric injuries.

[47] I accept that submission. The allegations upon which the Plaintiff appears to rely in support of aggravated and exemplary damages are largely contained in paragraphs 25, 28 and 41, together with aspects of paragraphs

39, 40 and 40A. To the extent that the allegations concern fraud, perjury, misleading regulators, false documents, concealment or perversion of justice, they are either not pleaded with the degree of specificity required for allegations of that gravity or are unsupported by material facts capable of supporting the conclusions asserted. For the reasons already given, paragraphs 25, 28, 40A and 41 should be struck out without leave to replead.

[48] Further, many of the allegations relied upon are directed to matters which are either irrelevant to the negligence claim or insufficiently connected with the wrong said to have caused the Plaintiff's injuries. They therefore do not provide a proper foundation for claims for aggravated or exemplary damages in respect of the workplace injury claim presently advanced.

[49] There is a further difficulty. The proceeding is pleaded as a claim for damages for physical and psychiatric injury arising from the events of October 2021. The damages sought are therefore damages for personal injury. Although the parties did not fully develop submissions concerning s 19 of the *Personal Injuries (Liabilities and Damages) Act 2003* (NT), there is substantial force in the proposition that the section may preclude an award of aggravated or exemplary damages in respect of such a claim. It is unnecessary to determine that issue for present purposes because the allegations relied upon to support those claims are otherwise liable to be struck out for the reasons already given. I am not persuaded that any useful purpose would be served by granting leave to replead the claims for aggravated or exemplary damages. Those claims remain dependent upon

allegations which are scandalous, inadequately pleaded and largely irrelevant to the negligence claim.

The allegations of post-incident conduct said to cause further injury

Paragraphs 39, 40 and 42A

[50] Paragraph 42A of the ASOC appears to allege that the Plaintiff's injuries were exacerbated by the Defendant's alleged concealment of medical and regulatory information, and in that regard relies upon matters pleaded in paragraphs 38, 39, 40 and 41 of the ASOC. For the reasons already given, paragraph 41 and the allegations of fraud, perjury, misleading regulators and related misconduct contained therein, are liable to be struck out without leave to replead. However, unlike those allegations, it is possible to discern from paragraphs 39 to 40 an attempt to plead that certain post-incident conduct by the Defendant caused or contributed to additional injury or loss. To that extent, those allegations require separate consideration.

[51] Although the present pleading does not identify the claim with any precision, the Plaintiff appears to contend that certain post-incident conduct of the Defendant caused or contributed to additional physical injury, psychiatric injury or other compensable loss beyond that allegedly arising from the workplace event. Properly analysed, such a claim is not one for aggravated or exemplary damages. Rather, it would form part of the Plaintiff's claim for compensatory damages if the necessary elements of causation and loss can be established.

- [52] The difficulty is that the present pleading does not clearly identify the conduct relied upon, the additional injury or loss allegedly caused by that conduct, or the causal connection between them. Much of the pleading is expressed in conclusory, argumentative or evidentiary terms. Accordingly, the present form of the pleading remains embarrassing and liable to being struck out.
- [53] Unlike the scandalous allegations previously discussed, I am not persuaded that amendment would necessarily be futile. It is possible that the Plaintiff may be able to plead a claim that the supposed withholding, non-disclosure or delayed disclosure of medical or exposure information caused or contributed to additional physical injury, psychiatric injury or other compensable loss. Although the Defendant submitted that paragraphs 39 and 40 should be struck out without leave to replead, I am not satisfied that the Plaintiff has previously had a fair opportunity to articulate that more limited contention with precision. Limited leave to replead will therefore be granted. However, any repleaded claim must be confined to a contention that any withholding, non-disclosure or delayed disclosure of medical or exposure information caused additional injury or other compensable loss. The Plaintiff must plead the conduct relied upon, the additional injury or loss said to have resulted, and the causal connection alleged between them. The pleading must be confined to material facts. Leave is not granted to replead allegations of fraud, perjury, perversion of justice, misleading regulators, environmental wrongdoing, failures to notify regulators,

contraventions of regulatory requirements, alleged deficiencies in regulatory investigations, the withholding of improvement notices, breaches of safety management systems or traffic management plans, or other matters directed principally to regulatory compliance or broader public controversies. Such matters are either irrelevant to the negligence claim presently before the Court or are apt to prejudice, embarrass or delay the fair trial of the proceeding. In exercising my discretion, I have also had regard to the overarching purpose reflected in O 1A of the Rules, namely the just, prompt, economical and proportionate resolution of the real issues in dispute. The Court will not permit the proceeding to expand into a broader inquiry concerning regulatory, environmental or public-interest issues unrelated to the Plaintiff's alleged injury and loss.

Disposition

- [54] The Defendant's application succeeds substantially. Paragraphs 21, 22, 23, 25, 28, 40A, 41 and paragraph 46(1) are struck out. The challenged words identified in the summons in paragraphs 42, 42A, 46(5) and 46(6) are struck out. Paragraphs 39 and 40 are struck out with leave to replead. That leave is granted to the extent that the Plaintiff seeks to plead material facts showing that alleged concealment, non-disclosure or delayed disclosure of information caused additional injury or other compensable loss within the framework of the negligence claim presently pleaded. Leave to replead is otherwise refused.

[55] I see no reason why the ordinary rule in respect to costs should not apply, namely that costs are in the cause. However, parties will have 14 days from the date these reasons are published to file and serve any written submissions to the contrary. Absent those submissions, costs will otherwise be in the cause.

Orders

[56] I make the following orders:

1. Paragraphs 21, 22, 23, 25, 28, 40A, 41 and 46(1) of the ASOC are struck out entirely without leave to replead.
2. The challenged words, identified in prayer 2 of the Defendant's summons filed 8 May 2026 and contained within paragraphs 42, 42A, 46(5) and 46(6) of the ASOC, are struck out entirely without leave to replead.
3. Paragraphs 39 and 40 of the ASOC are struck out. Leave to replead is granted to the extent that the Plaintiff claims that the withholding, non-disclosure or delayed disclosure of medical or exposure information caused additional injury or other compensable loss, and only in accordance with these reasons.
4. The Plaintiff shall have 21 days from the date of these reasons are published to file and serve any further amended statement of claim,

repleading the claim in accordance with these reasons and striking out the relevant paragraphs noted in orders 1, 2 and 3 herein.

5. Within 21 days of being served any further amended statement of claim, the Defendant shall file and serve its Defence.
6. The parties shall have 14 days from the date of these reasons being published to make any written submission in respect to costs, otherwise costs will be in the cause.
7. The proceeding will be listed for a further directions hearing at a time convenient to the parties and the Court.
