

TURNER v PRICE

NTD17/2024

APPLICANT'S CLOSING SUBMISSIONS

1. These submissions are to be read with the Applicant's Opening Submissions (**AOS**) and Respondent's Opening Submissions (**ROS**) and adopt abbreviations used in AOS.

A. CREDIT OF WITNESSES

2. What is important in assessing the credit of witnesses is not the mere fact that a witness has been untruthful about a particular issue, but the relevance of that untruthfulness to issues actually in dispute: *Kazal v Thunder Studios Inc (California)* [2023] FCAFC 174 at [272]; *Hutchinson v Van Den Berg* [2024] SASCA 117 at [43].
3. In a normal case, a lie or even a number of lies on peripheral or inconsequential issues does not have such an impact on a witness's evidence as to require that evidence to be treated with added caution: *Amalgamated Television Services Pty Ltd v Marsden* [2002] NSWCA 419 at [795]; *Roberts-Smith v Fairfax Media Publications Pty Ltd (Appeal)* (2025) 310 FCR 170 at [758].

B. IDENTIFICATION AND DEFAMATORY MEANING

4. Mr Turner relies on AOS [6]-[12] in relation to these issues.
5. In cross-examination, Senator Nampijinpa Price acknowledged that everyone in Alice Springs knows everyone else. She conceded that Mr Turner was readily identifiable to people in Alice Springs, people within the Indigenous community in the Northern Territory generally, people working in Aboriginal affairs in Canberra, and journalists, by the reference in line 1 of the Media Release to the CEO of the CLC.¹

¹ T 555.15-36.

C. DEFENCE PURSUANT TO s 27 OF THE *DEFAMATION ACT 2006* (NT)

Interest or apparent interest – s 27(1)(a)-(b)

6. The subjects of interest or apparent interest to readers of the Media Release, on which Senator Nampijinpa Price relies for the purpose of ss 27(1)(a)-(b) of the Act, are set out at FAD [11]; see FAD [14]. It is for the Senator to prove that the Media Release concerned these issues, and that they were of interest or apparent interest to readers.

Reasonableness – s 27(1)(c)

7. Mr Turner relies on AOS [16]-[21] in relation to the legal principles relevant to whether Senator Nampijinpa Price’s conduct in publishing the Media Release was reasonableness in all the circumstances.

Senator Nampijinpa Price’s background knowledge about the CLC and Mr Turner

8. In chief, Senator Nampijinpa Price claimed to have background knowledge about the CLC and Mr Turner from the following sources:
- (a) awareness of the CLC from having grown up in Alice Springs, and because her mother Bess Price worked at the CLC when she was in primary school;²
 - (b) a meeting with Mr Turner in April 2021 in relation to her mother’s removal from the Traditional Owner list;³
 - (c) communications in 2021-2022 and 2022-2023 with two sets of sisters who claimed to be Traditional Owners in Eastern Arrernte country and to have been removed from the list of Traditional Owners, without having been able to get any assistance from Mr Turner to rectify the situation;⁴
 - (d) reading the Australian National Audit Office’s (ANAO) report *Governance of the Central Land Council* in June 2023, which she considered “damning” of Mr Turner’s management of the CLC and his professionalism, insofar as it concerned the issue of fraud;⁵

² Affidavit of Jacinta Nampijinpa Price sworn 28 February 2025 (**Price**) at [18]-[19].

³ Price at [50]-[54].

⁴ Price at [33], [35].

⁵ Price at [41]-[42].

- (e) observations, throughout her life, of how conditions have generally gotten worse for people living in remote communities in the CLC region;⁶
 - (f) reading in February 2024 the *Closing the Gap* report for 2023, which reported that most outcomes were not on track, which she took to be indicative of cumulative failures by government bodies and organisations responsible for Indigenous affairs, including the CLC under Mr Turner’s leadership;⁷
 - (g) hearing “various complaints” to the effect that Mr Turner did not visit more remote communities, was not working arm-in-arm with Mr Palmer, and did not take notice of or act in the best interests of constituents;⁸
 - (h) general discussions with Indigenous people in Alice Springs in 2022-2024 who had the impression that Mr Turner was either living in Canberra or spending too much time there.⁹
9. Mr Turner had no record of meeting Senator Nampijinpa Price and her mother in April 2021,¹⁰ and it should be observed that the version of events put to him by the Senator’s senior counsel in cross-examination differed from that in her affidavit.¹¹ Given the general problems with her credit, the Court would not be satisfied that this meeting in fact occurred. Nor does the contemporaneous documentary evidence substantiate the suggestion that there was any lack of due process in the process for determining Bess Price’s claim to Traditional Owner status.¹² In any case, the Senator accepted in chief, that she did not expect in April 2021 that Mr Turner would be able to do anything to restore her mother’s Traditional Owner status. The dealings in relation to Bess Price’s claim therefore do not provide any reasonable basis for the opinions which the Senator claimed to have held in relation to Mr Turner and the CLC in June 2024.

⁶ Price at [37].

⁷ Price at [68]-[69].

⁸ Price at [72].

⁹ Price at [73].

¹⁰ Affidavit of Lesley Turner affirmed 24 March 2025 (**Turner 2**) at [18]-[20].

¹¹ T 318.35-43.

¹² Letter

10. The discussions the Senator claimed to have had with the Watkins and Martin sisters, and other unidentified individuals, are not evidenced by anything other than her recollection. None of the people she claimed to have spoken to gave evidence, no contemporaneous notes evidencing the discussions were produced, and Mr Turner for his part had no record of having met either the Watkins or the Martin sisters.¹³ Again, given the problems with the Senator's credit, the Court would not be satisfied that these conversations occurred in the way described in her evidence-in-chief.
11. The ANAO findings, either generally or in relation to fraud specifically, do not sustain the Senator's description of them as "damning" of Mr Turner's management of the CLC and professionalism.¹⁴ The ANAO found the CLC's governance arrangements were "largely effective", and its arrangements for the exercise of its statutory functions and promoting proper use and management of resources were "largely appropriate", except for the identification and management of fraud risks and conflicts of interest.¹⁵ The findings in relation to fraud should be seen in their proper context. The ANAO found that the CLC had not complied with the Commonwealth Fraud Rule insofar as it had not conducted a fraud risk assessment since at least 2018.¹⁶ The significance of this fact, the Court might think, depended on whether there had been any change in the CLC's risk profile since 2018. In the absence of any reason to suppose there had been a material change in the CLC's operations since 2018, such as to give rise to new fraud risks not captured by the existing fraud control plan, there is no reason to think that the lack of risk assessments meant that the existing fraud control plan was not effective. Otherwise, the ANAO found that the CLC was fully compliant in terms of having appropriate mechanisms for preventing, detecting, investigating, recording and reporting fraud.¹⁷ The adverse findings were limited and did not bespeak a general problem with fraud at the CLC under Mr Turner's management.
12. Further, the knowledge and beliefs Senator Nampijinpa Price held as a result of the ANAO report must be considered in light of the additional advice she received about

¹³ Turner 2 at [13]-[16].

¹⁴ Price at [42].

¹⁵ CB 353 at [7], [9], [10].

¹⁶ CB 427, Table A.5 at (a)-(b).

¹⁷ CB 427-428, Table A.5 at (c)-(f).

the content of the report from the Parliamentary Library on 14 July 2023.¹⁸ In cross-examination, the Senator claimed that she could not recall whether she read the Parliamentary Library’s advice at the time. She also suggested, however, that the advice was sought in response to a question she had been asked in the Senate.¹⁹ If this was the case, it seems unlikely that the Senator would not have read the advice at the time, or at least been briefed on its contents. Moreover, the Senator acknowledged in chief that she had received briefings from her staff about the ANAO report.²⁰ The Court would find that she was aware of the contents of the advice at the time.

13. The Parliamentary Library’s advice suggested that some of the “partially effective” findings in the ANAO report were due to legislative and regulatory complexity rather than lack of due diligence, and that the mix of “largely effective”, “partially effective” and “ineffective/inappropriate” findings was comparable to the ANAO’s findings about other institutions, including the Attorney-General’s Department.²¹ In light of this advice, the Senator could not reasonably have held the view that the ANAO report gave rise to any particular concerns about the management of the CLC.
14. It is unclear why Senator Nampijinpa Price saw fit to repeat the claim that Mr Turner was living in Canberra rather than Alice Springs in her affidavit. In cross-examination, she acknowledged that she knew he lived in Alice Springs, and that it was merely the perception of some Traditional Owners that he lived in Canberra.²² She conceded that she did not know why the Traditional Owners had this perception, and she was not able to explain how it was that this incorrect perception could have any bearing on Mr Turner’s professionalism.²³
15. Nobody would dispute that as of June 2024, it was reasonable for the Senator to hold the view that Aboriginal communities, including within the CLC region, suffered from persisting and unacceptable levels of disadvantage. She, however, sought to attribute responsibility for that situation to Land Councils generally, including the CLC under

¹⁸ CB 772.

¹⁹ T xxx

²⁰ Price at [41].

²¹ CB 774, 775-776.

²² T 493.36.

²³ T 493.40-495.3.

Mr Turner's leadership.²⁴ In particular, she identified the ANAO findings about fraud risk assessments as a "possible explanation" for the "fact" that the CLC "had not improved or advanced the lives of its constituents despite the millions of dollars it managed".²⁵ She maintained this assertion in cross-examination.²⁶

16. Senator Nampijinpa Price understood that land rights determinations were governed by legislation.²⁷ She knew that applications were determined by the elected delegates of the CLC, not the CEO.²⁸ Although she insisted that the CEO is influential and has a responsibility to work with the Chair, she accepted this has nothing to do with the fairness of land rights determinations.²⁹ When asked how Mr Turner could be blamed if there were problems with the process, given it was mandated by legislation, her initial answer was simply, "I certainly have conversations with the Minister above him and I don't get anything from there, so why would I expect any different otherwise", but went on to insist that Mr Turner "has a responsibility as much as anybody else involved", despite his lack of control over the legislation.³⁰
17. The Senator asserted that she had a basis to say that Mr Turner was blameworthy for conditions in Indigenous communities, but refused to accept that she bore any blame herself, given the political positions she has occupied. She was then asked directly to identify which part of Mr Turner's actual responsibilities as CEO of the CLC he had failed to perform which would have alleviated poverty and disadvantage in Indigenous communities, to which she replied with a long account of conditions in a place called Soapy Bore.³¹ This was irrelevant not only to the question she was asked, but also to Mr Turner's performance as CEO, given the Senator could not suggest that conditions in communities like Soapy Bore were a recent development.³² Asked again what part

²⁴ See Price at [69], [71(a)].

²⁵ Price at [42].

²⁶ T 421.25-46.

²⁷ T 433.40-45.

²⁸ T 435.5-15.

²⁹ T 435.15-42.

³⁰ T 436.44-437.12.

³¹ T 439.9-440.41.

³² T 440.43-441.3.

of Mr Turner's actual job description she thought made him blameworthy for poverty in Indigenous communities, the Senator admitted that she could not recall whether she knew Mr Turner's job description in July 2024.³³

18. In circumstances where Senator Nampijinpa Price appears to have had no real knowledge or understanding of what Mr Turner's responsibilities entailed, the Court would find that the information available to her in June 2024 provided no reasonable basis for her to conclude that Mr Turner was not adequately fulfilling his role as CEO, and no reasonable basis for her to attribute responsibility for disadvantage in Aboriginal communities to the CLC under his leadership.

Initial approach from Gavin Morris

19. The publication of the Media Release ultimately had its genesis in an exchange of text messages between Senator Nampijinpa Price and Gavin Morris on 7 June 2024.³⁴
20. In chief, the Senator said that she had had extensive professional dealings with Dr Morris during the 2022 Federal election. She said that she understood him to have had a high reputation in Alice Springs in June-July 2024, including as to his passion for helping vulnerable children and Indigenous communities.³⁵
21. In fact, Dr Morris was not a trustworthy or reputable person. In 2023, he assaulted four Aboriginal children at the Yipirinya School, of which he was the principal. He was convicted of these offences shortly before this trial commenced.³⁶ The Senator at first claimed not to have been aware of this in June-July 2024. The Court would be sceptical of this evidence, given that her mother Bess Price was a vice-principal at the School and given that, as the Senator volunteered at an earlier point in her evidence, everyone knows everyone in Alice Springs.³⁷ Later in her evidence, she conceded she could not recall if she had heard anything about it at that time.³⁸

³³ T 441.13-33.

³⁴ Price at [74].

³⁵ Price at [59]-[60].

³⁶ T xxx

³⁷ T xxx

³⁸ T xxx

22. Given that the Senator's mother was a vice-principal at the School, given the Senator's own association with Dr Morris involvement with the School dating back to 2022, and given her comment that everyone knows everyone in Alice Springs, the Court would find that the Senator probably did know of the allegations about Dr Morris's conduct at the School in June-July 2024. The fact that she insisted in her affidavit, sworn after he was charged, that Dr Morris was a reputable and trustworthy person, including in relation to "vulnerable children in the Alice Springs and Indigenous communities", without any acknowledgment of the charges, is a concerning matter which would give the Court cause to question her credit.
23. In any event, Dr Morris was a school principal. To the Senator's knowledge, he was not a delegate of the CLC, or otherwise involved in the organisation, and he had no experience with land councils.³⁹ Whatever else she knew at the relevant time about his conduct at the School, the Senator could not reasonably have regarded him as a person who could be relied upon as a source of information in relation to the CLC.
24. Dr Morris told Senator Nampijinpa Price that Mr Palmer and his team were planning a "coup" to get rid of the CEO and executive of the CLC, with the support of all 90 delegates. The Senator responded that this was "fantastic". Dr Morris replied that what he had said was "totally off the record".⁴⁰
25. These messages gave rise to some obvious questions. The Senator knew in July 2024 that the CLC was made up of 90 delegates.⁴¹ Dr Morris's claim that there was literally 100% support for the proposal might be thought improbable. The Senator also knew the executive was elected from among the delegates.⁴² The effect of Dr Morris's claim that all 90 delegates supported the proposal was that those delegates who comprised the existing executive were voting for their own removal. This too might be thought improbable. Moreover, if literally 100% of the elected delegates of the CLC were in support of this proposal, it is unclear why Dr Morris would characterise it as a "coup", with everything that implies, or why it needed to be "totally off the record".

³⁹ T 495.41, 500.39.

⁴⁰ CB 493.

⁴¹ T 434.17-21.

⁴² T 434.31.

26. In cross-examination, the Senator could not give any sensible answer to these kinds of questions. The Court would conclude that she gave no reasonable consideration, in June 2024 or since, to what she was being told by Dr Morris in these messages.
27. Another aspect of the 7 June 2024 messages requires comment. On 5 June 2024, Mr Turner had written to Mr Palmer requesting an explanation from Mr Palmer about his conduct in certifying a person as the Traditional Owner of a piece of land called Middleton Ponds, in apparent breach of legislation and governance requirements.⁴³ It is difficult to believe that it is a coincidence that Dr Morris approached the Senator on Mr Palmer's behalf about a "coup", only 2 days after this letter was sent to Mr Palmer.

Further approach from Dr Morris

28. On 11 July 2024, Senator Nampijinpa Price instructed her chief of staff Rachael Lila to contact Dr Morris to "find out why he's so desperate for my attention".⁴⁴ It should be noted that it was Dr Morris who sought to re-agitate this issue with the Senator's office after the previous contact a month earlier, not Mr Palmer.
29. Ms Lila spoke to Dr Morris, and reported to the Senator that the CLC would be having a full delegates meeting next Thursday to move a no-confidence motion against Mr Turner and replace him with Dr Morris. The Senator thought it was a bad idea for Dr Morris to be the replacement, noting that she had already "told him this crap". Ms Lila observed in reply that Dr Morris "clearly seems desperate to get out of Yipi".⁴⁵
30. The fact that Dr Morris was "desperate" to get out of the Yipirinya School, and that he was seeking to do so by getting himself appointed to replace Mr Turner as CEO of the CLC, ought to have given the Senator serious concern about Dr Morris's motives for involving himself in an issue which did not otherwise concern him. The Senator, however, did not even care to ask why Dr Morris was so "desperate" to change jobs, and in cross-examination she went as far as to say "It didn't matter to me".⁴⁶

⁴³ CB 435-436.

⁴⁴ CB 495.

⁴⁵ CB 495-496.

⁴⁶ T xxx

31. Around 15 or 17 July 2024, Senator Nampijinpa Price instructed her senior adviser Mr Wilks to engage with Dr Morris to assist Mr Palmer.⁴⁷
32. In chief, the Senator also claimed to have had telephone discussions with Mr Palmer and Dr Morris between 11 and 18 July 2024.⁴⁸ In cross-examination, however, she agreed that she did not speak to Dr Morris after 11 July 2024.⁴⁹ She maintained that she did speak to Mr Palmer, but there is no written record of any such communication, so the Court only has the Senator's word that it occurred. It is unlikely that the Senator did speak to Mr Palmer herself during this period, given that she deputised Mr Wilks to liaise with Dr Morris to assist Mr Palmer. The Senator agreed that Dr Morris was acting as a conduit for communications with Mr Palmer.⁵⁰ If she was in direct personal contact with Mr Palmer, it is difficult to see why there would have been any need to maintain contact with Dr Morris, an intermeddler who had no personal involvement in the CLC. Dr Morris's ongoing involvement is most plausibly explained by the lack of personal contact between Mr Palmer and the Senator or her staff.
33. On 17 July 2024, Mr Wilks received from Dr Morris the draft of a press release to be issued by Mr Palmer. Mr Wilks provided some comments on the draft press release for Mr Palmer the next day. At the same time, he started work on the first draft of the Media Release to be issued by Senator Nampijinpa Price.⁵¹

CLC motion to censure Mr Palmer

34. Between 16 and 18 July 2024, the CLC held a Full Council meeting at Watarrka.⁵²
35. On the morning of 17 July 2024, Mr Turner and the CLC's principal legal officer, Kate O'Brien, presented an item described on the meeting's agenda as "Governance Matters". This item related to Mr Palmer's conduct in recognising a certain individual as a Traditional Owner of Middleton Ponds.⁵³ By majority, the delegates resolved

⁴⁷ Price at [81]; Affidavit of Damian Joseph Wilks sworn 28 February 2025 (**Wilks**) at [13].

⁴⁸ Price at [78].

⁴⁹ T xxx

⁵⁰ T xxx

⁵¹ Wilks at [17]-[21]; CB 647, 649.

⁵² Affidavit of Warren Williams affirmed 21 March 2025 (**Williams**) at [5].

⁵³ CB 817, 827.

that Mr Palmer’s behaviour was a serious breach of the CLC’s code of conduct and warned him that he must not repeat the behaviour.⁵⁴

36. In cross-examination, Senator Nampijinpa Price insisted that she was not made aware of this resolution at the time.⁵⁵ She believed that she had become aware of it for the first time in August 2024, although she claimed not to recall.⁵⁶

Receipt of Draft Resolutions and first draft of Media Release

37. At 1.13pm on 18 July 2024, the Senator received a document titled “Draft Resolutions Thursday 18th July 2024”. Importantly, as far as she recalled, she received it from Dr Morris, not Mr Palmer. She distributed it to her staff via WhatsApp message.⁵⁷
38. The Draft Resolutions called for Mr Turner’s dismissal based on insubordination and unprofessional conduct specifically “in relation to Agenda Item: Governance Matter held on Wednesday, 17th July 2024”.⁵⁸ As the Senator agreed in cross-examination, the Draft Resolutions did not suggest that Mr Turner had been insubordinate or behaved unprofessionally in any other way.⁵⁹
39. Plainly, it was very important for the Senator to know what this “Governance Matter” was, in order for her to have any adequate understanding of the exact nature of the allegations about Mr Turner’s conduct. Such an enquiry was all the more obvious and necessary because, by the time she received the Draft Resolutions, the “Governance Matter” had already taken place. Its outcome was therefore ascertainable. A reasonable person in the Senator’s position would have wanted to know the outcome, because if the “Governance Matter” was resolved in Mr Turner’s favour, it is difficult to see how it could be held up as evidence of unprofessional conduct on his part.
40. The Senator did not know what the “Governance Matter” was and asked no questions about it prior to publication of her Media Release.⁶⁰ This amounted to a remarkable

⁵⁴ CB 828.

⁵⁵ T 509.29-37.

⁵⁶ T 543.20-38.

⁵⁷ Price at [85]; CB 504.

⁵⁸ CB 502.

⁵⁹ T 515.16.

⁶⁰ T 416.11-28, 515.20-24.

failure on her part to take any reasonable steps to find out the facts and to understand, at even a basic level, what Mr Turner was being accused of doing.

41. At 2.34pm on 18 July 2024, Mr Wilks emailed the first draft of the Senator’s Media Release to Ms Hart.⁶¹ On his evidence, this draft was prepared on the basis of the contents of the Draft Resolutions.⁶² However, whereas the Draft Resolutions specified that Mr Turner’s unprofessional conduct was only in relation to the “Governance Matter”, the first draft of the Media Release reported that CLC delegates had agreed to dismiss him “due to unprofessional conduct”, without any other qualification. The omission of any reference to the “Governance Matter” in the Media Release created a false impression of the nature of Mr Palmer’s motion, because it suggested that Mr Turner had behaved in a generally unprofessional way in his role as CEO, rather than specifically and only because of the “Governance Matter”.

Events on 18 July 2024 and subsequent communication with Mr Palmer

42. The Court would accept that the resolution adopted by the CLC executive on 7 August 2024 provides a true account of what happened at the CLC Full Council meeting on 18 July 2024 when Mr Palmer attempted to move his motion to dismiss Mr Turner as CEO.⁶³ That the 7 August 2024 resolution should be regarded as the authoritative record of what happened is supported by the fact that on 17 September 2024, the Full Council unanimously resolved to adopt it as a “consensus statement of the facts”.⁶⁴
43. The fact that the consensus statement was adopted unanimously by the Full Council renders irrelevant the attempt by senior counsel for the Senator to explore in cross-examination of Mr Williams how many of the executive delegates who voted for the 7 August 2024 resolution actually had personal knowledge of the facts.⁶⁵ Even if there is reason to doubt whether some of the executive delegates were in a position to know what had occurred on 18 July 2024, any such doubt is cured by the fact that resolution was subsequently adopted by the Full Council as a “consensus statement of the facts”.

⁶¹ Wilks at [30]; CB 655.

⁶² Wilks at [28].

⁶³ CB 876.

⁶⁴ CB 916-917.

⁶⁵ See T 239.25 ff.

44. Senator Nampijinpa Price and her staff did not speak to Mr Palmer or Dr Morris about the outcome of the supposed motion until a phone call on 19 July 2024, which was recorded and transcribed by the Senator’s staff. What Mr Palmer told the Senator about the motion during that conversation was incoherent and inconsistent.
- (a) Early in the conversation, Mr Palmer said, “two fellas saved Les”, “the rest of the men were behind me” and “There’s only two saved Les”. When the Senator asked “So you didn’t get to pass that motion, did you get to pass it or nothing?”, he replied “Ah no, cos they was a bit too scared”.⁶⁶
 - (b) Later, he said, “They was all behind me, only two men... Two evil men”, and, somewhat cryptically, “All of those old men want, even the women... Except for Barbara”.⁶⁷
 - (c) Later still, Dr Morris said, “it sounds like... those two men made the other mob scared that they were right”. Mr Palmer agreed that the delegates who were supporting Mr Turner said things like “He’ll put you mob in jail”, and that “our mob got really frightened”. He said, “And they reckon... I don’t want to go to jail... That’s why I’m not doing any voting he reckoned”.⁶⁸
45. What Mr Palmer said during this conversation would have raised serious questions in the mind of a reasonable person in Senator Nampijinpa Price’s position.
- (a) First, Mr Palmer made contradictory statements about whether a vote had actually taken place at all. Initially he seemed to imply there had been a vote, inasmuch as he claimed to know that all but two or three delegates supported him, but he later told the Senator that the delegates did not want to “do any voting” because they were scared.
 - (b) Second, Mr Palmer was inconsistent about the number of delegates opposed to his motion. In the early part of the conversation he seemed clear that “two fellas saved Les”, but later on, he added that Barbara was also opposed.

⁶⁶ CB 508.

⁶⁷ CB 509-510.

⁶⁸ CB 511-512.

- (c) Third, a reasonable person in the Senator's position would have asked how it could be that this motion failed to pass if, as Mr Palmer claimed, all but two or three delegates were in support of it. With that level of support, the motion should have passed easily. The fact that it failed to pass despite allegedly overwhelming support would have made a reasonable person in the Senator's position question (a) whether there had actually been a vote, and (b) whether the level of support for the motion was really as high as Mr Palmer claimed.
46. The peculiarity of Mr Palmer's story about having overwhelming support yet failing to pass the motion was not lost on Mr Wilks. He had a separate conversation with Dr Morris on 19 July 2024, in which Dr Morris told him that the motion had been moved but was unsuccessful, despite majority support. Tellingly, Mr Wilks observes in his affidavit that "I did not know whether this was because a super majority was required to remove Mr Turner, or whether there was some technical issue that prevented his removal, or whether the Motion had been defeated in some way".⁶⁹ Evidently, Mr Wilks recognised that the failure of the motion despite alleged majority support was something which called for explanation.
47. Senator Nampijinpa Price, however, was remarkably incurious about how or why a motion with supposedly majority support managed to fail. In cross-examination, she said it did "Not necessarily" seem strange to her that the motion failed despite majority support, and when asked to explain how this could be so, she shrugged her shoulders, and eventually speculated that something "underhanded", or some sort of "cover-up" had occurred.⁷⁰ Later in the cross-examination, she said that it was "not clear" whether there had been any voting, and she did not demur from the proposition that she did not ask Mr Palmer to clarify this point.⁷¹
48. The telephone conversation with Mr Palmer on 19 July 2024 was the only piece of information available to the Senator about what had happened at the meeting on 18 July 2024. This conversation was *the* crucial event in the research and preparation of the Media Release. The Senator made clear in cross-examination that Mr Palmer was

⁶⁹ Wilks at [40].

⁷⁰ T 424.23-425.31.

⁷¹ T 521.41-46.

her only source of information about what had happened at the meeting.⁷² When she was challenged on why she had not made enquiries prior to publication of the Media Release, her position was repeatedly that she accepted and relied on what she was told by Mr Palmer as Chair of the CLC.⁷³ At T 510.25, she responded to a question about why she did not contact other CLC delegates by saying “My responsibility at that time was to take the word of the chairperson and support the chair of the organisation”.

49. The obvious difficulties with the information provided by Mr Palmer during the 19 July 2024 conversation made the Senator’s reliance on him as a source problematic, and made it unreasonable for her simply to accept what he said without question or further enquiry.

Mr Palmer’s press release and first NT News article

50. At 1.46pm on 20 July 2024, Mr Palmer published his press release by emailing it to four journalists.⁷⁴ Insofar as it announced that Mr Turner had “lost the confidence of CLC delegates” and that “members moved a motion of instant dismissal”, the press release strongly implied that the motion to dismiss Mr Turner had been successful.

51. This was how the *NT News* understood Mr Palmer’s press release. On 21 July 2024 at 1.34pm, it published an article titled “Lindsay Turner dumped as Central Land Council chief executive”.⁷⁵

Final drafting and publication of the Media Release

52. To be inserted

Malice – s 27(4)

53. Malice in s 27(4) of the Act refers to an improper motive or purpose that induces the defendant to use the occasion of qualified privilege to defame the plaintiff: *Roberts v Bass* (2002) 212 CLR 1 at [75] per Gaudron, McHugh and Gummow JJ. Proof that the defendant knew a defamatory statement was untrue is usually conclusive evidence that the publication was actuated by an improper motive: at [76], [77], [83]. Wilful

⁷² T 428.42-429.9.

⁷³ For example, see T 501.30, 505.16-30, 509.15-19, 510.25, 536.36, 541.35, 554.4

⁷⁴ CB 847.

⁷⁵ CB 162.

blindness, as when a person deliberately refrains from making enquiries so as not to find out the truth, is equivalent to knowledge: at [84].

54. Line 5 of the Media Release asserts that a vote of no-confidence in Mr Turner actually took place; see also line 17. In the phone conversation on 19 July 2024, however, Mr Palmer claimed that the delegates supporting Mr Turner had warned the other male delegates that Mr Turner would “put you mob in jail”, which caused them to become “really frightened” and to think “I’m not doing any voting”.⁷⁶ The effect of what he said was that because the delegates were frightened by these threats, they refused to participate in a vote. In cross-examination, the Senator accepted that Mr Palmer was her only source of information about what had happened at the 18 July 2024 meeting.⁷⁷ Given she was told by her only source that there had been no vote, the Court would find that the assertion in the Media Release that a vote of no-confidence in Mr Turner actually took place was false to the Senator’s knowledge.
55. Lines 6-7 of the Media Release refer to “unprofessional conduct” on the part of Mr Turner, without any qualification. The Draft Resolutions, however, proposed the dismissal of Mr Turner due to insubordination and unprofessional conduct specifically “in relation to Agenda Item: Governance Matter held on Wednesday 17th July 2024”.⁷⁸ By removing the references to insubordination and the Governance Matter, the Media Release imputed generally unprofessional conduct to Mr Turner. Although Senator Nampijinpa Price claimed to have had other information about more general concerns held by Mr Palmer and other delegates in relation to Mr Turner,⁷⁹ this did not constitute information about the basis for the motion.⁸⁰ As far as the motion was concerned, the Media Release characterised it in a way which was false to the Senator’s knowledge.
56. In saying that Mr Turner was guilty of “unprofessional conduct”, the Senator had essentially no idea what his job actually entailed; see above at [xx]-[xx]. At line 17,

⁷⁶ CB 511-512.

⁷⁷ T 428.42-429.9.

⁷⁸ CB 565.

⁷⁹ Price at [72]-[73], [78(b)], [83] (CB 482-485).

⁸⁰ See T 416.1-418.30.

her Media Release also sought to characterise the supposed vote against Mr Turner as an attempt by CLC members to “fix” the issue of the community’s voice being ignored and people in the community being kept in poverty (see lines 8-16). Just as the Senator was ignorant of Mr Turner’s job responsibilities, she was unable to give any sensible explanation for how he bears any responsibility for the disadvantage and deprivation experienced by Traditional Owners living on Country; see above at [xx]-[xx]. Her willingness to publish this serious and deeply offensive allegation without having given any thought to how it could be justified is tantamount to wilful blindness.

D. *LANGE* QUALIFIED PRIVILEGE DEFENCE

57. At AOS [14], Mr Turner submitted that Senator Nampijinpa Price’s reliance on the *Lange* defence adds nothing to her reliance on the statutory defence.
58. The “real question” in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, as characterised at 572, concerned the conditions on which the extended qualified privilege defence should operate. It was held that “a requirement of reasonableness as contained in s 22 of the *Defamation Act*, which goes beyond mere honesty” was reasonably appropriate and adapted to protecting reputation, and not inconsistent with the Constitutional requirement: *Lange* at 572-573.
59. The Court was referring to s 22 of the *Defamation Act 1974* (NSW). When *Lange* was decided, s 22 of the 1974 NSW Act did not contain the list of factors relevant to assessing reasonableness in s 22(2A), which in turn formed the basis for the statutory qualified privilege defence in the 2005 national uniform legislation, including s 27 of the *Defamation Act 2006* (NT). However, in light of the legislative history which Lee J summarised in *Russell v Australian Broadcasting Corporation (No. 3)* (2023) 303 FCR 372 at [300]-[302], the content of the reasonableness requirement in s 27 of the NT Act cannot be regarded as any different in substance from the reasonableness standard adopted by the High Court in *Lange*.
60. The equivalence between the concepts of reasonableness in s 27 and *Lange* is reflected by the fact that Senator Nampijinpa Price relies on the same particulars to establish that her conduct was reasonable for the purposes of both defences.⁸¹

⁸¹ FAD [17].

61. For these reasons, it follows that if the Court is satisfied that Senator Nampijinpa Price did not behave reasonably in publishing the Media Release for the purpose of s 27, it would also conclude that her conduct was not reasonable for the purpose of the *Lange* defence. That is, the outcome of the two defences would be the same.

E. RELIEF

62. Mr Turner seeks general and aggravated damages, interest and costs.

Legal principles

63. At AOS [35], Mr Turner referred to *Deeming v Pesutto (No. 3)* [2024] FCA 1430 at [755]-[767] and *Mond v The Age Company Pty Ltd* [2025] FCA 442 at [489]-[506].

64. *Deeming* and *Mond* were both decided under the 2021 amendments to the *Defamation Act 2005* (Vic), whereas the 2021 amendments do not apply to these proceedings. The two major differences are:

- (a) Following the 2021 amendments, s 35(2) of the Victorian Act stipulates that the maximum general damages amount is to be awarded “only in a most serious case”, whereas this is not stipulated by s 32 of the NT Act; and
- (b) Subsection 35(2B) of the Victorian Act requires that an award of aggravated damages be made separately to the award of general damages, whereas under the version of the NT Act applicable to these proceedings, the Court must award a single sum of damages for non-economic loss, encompassing both general damages and any award of aggravated damages.

65. For recent statements of the principles applicable prior to the 2021 amendments, see *Nationwide News Pty Ltd v Rush* [2020] FCAFC 115 at [469]-[479], and *Duma v Fairfax Media Publications Pty Ltd (No. 3)* [2023] FCA 47 at [433]-[439], [555].

Relevance of publications other than the Media Release

66. In cross-examination of Mr Turner’s witnesses, senior counsel for Senator Nampijinpa Price spent a considerable amount of time exploring the impact of publications, other than the Media Release, which also repeated the sense and substance of Mr Palmer’s 20 July 2024 press release.

67. The other publications may be summarised as follows:

- (a) **First NT News article:** Published online on 21 July 2024 at 1.34pm.⁸² By no later than 2.54pm the article had been taken down,⁸³ after representations by Ms O’Loughlin to the editor.⁸⁴ It was online for less than an hour and a half.
- (b) **Second NT News article:** Published online on 22 July 2024 at 6.08pm.⁸⁵ It repeated the substance not only of Mr Palmer’s press release, but also Senator Nampijinpa Price’s Media Release, as well as the CLC’s statement denying that a motion was moved.
- (c) **ABC television broadcast:** A brief television news item (about 30 seconds long), broadcast on 22 July 2024.⁸⁶ It repeated the CLC’s statement denying that a motion had “been raised”.
- (d) **ABC radio broadcast:** An equally brief news item broadcast on ABC Radio Darwin on 23 July 2024 which also repeated the CLC’s statement denying that a motion had been moved.⁸⁷

68. Dr Boffa believed there had also been an ABC Radio interview with Mr Palmer on 20 July 2024.⁸⁸ No recording or transcript is in evidence, and it is unlikely that any such broadcast did occur, because Mr Palmer did not publish his press release until 1.46pm on 20 July 2024, and when he did, he emailed it to only four journalists, none of whom were ABC journalists.⁸⁹ The Court would therefore not be satisfied that there was any such ABC Radio broadcast on 20 July 2024, although for the reasons which follow, it is ultimately of no consequence whether or not it happened.

69. In the law of torts, causation can be proved by establishing that the defendant’s tort made a material contribution to indivisible harm: *Bonnington Castings Ltd v Wardlaw*

⁸² CB 162.

⁸³ CB 530.

⁸⁴ O’Loughlin at [4]-[13].

⁸⁵ CB 171.

⁸⁶ CB 1524.

⁸⁷ CB 1526.

⁸⁸ Boffa at [7].

⁸⁹ CB 847.

[1956] AC 613 at 621; *Amaca Pty Ltd v Booth* (2011) 246 CLR 36 at [70]; *Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd* (2013) 247 CLR 613 at [45].

70. While harm to reputation is not the same as bodily injury, this basic principle also has application in the law of defamation: see *Mond* at [383]. The classic statement of this proposition is *Dingle v Associated Newspapers Ltd* [1961] 2 QB 162 at 188-190, where Devlin LJ relevantly said at 189:

If a man reads four newspapers at breakfast and reads substantially the same libel in each, liability does not depend on which paper he opens first. Perhaps one newspaper influences him more than another, but unless he can say he disregarded one altogether, then each is a substantial cause of the damage done to the plaintiff in his eyes.

In *Nine Network Australia Pty Ltd v Wagner* (2020) 6 QR 64 at [56], Jackson J (with whom Morrison and Mullins JJA agreed) described *Dingle* at 188-190 as a “useful statement of correct principle”. See more recently, and to the same effect, *Peros v Nationwide News Pty Ltd (No. 3)* [2024] QSC 192 at [108]-[109]; *Deeming* at [523].

71. Apart from the fact that the second *NT News* article and the two ABC publications included the CLC’s denial that a motion took place, the other publications were each to substantially the same effect as the Media Release, in that they were all based on a republication of the substance of Mr Palmer’s press release. All of the publications, including the Media Release, occurred within the space of only 3 days, between 21 and 23 July 2024. For these reasons, insofar as Mr Turner’s reputation was damaged by the other publications, such damage was indivisible from the damage caused by the publication of the Media Release.
72. It cannot be doubted that the Media Release made a material contribution to the total indivisible harm caused by the various publications of the false statement that a motion to dismiss Mr Turner was moved by CLC delegates. After the first *NT News* article was taken down in less than 2 hours on 21 July 2024, it is unlikely that the second article would have been published unless Senator Nampijinpa Price had intervened by publishing the Media Release. The ABC television and radio broadcasts were each ephemeral publications, lasting for only about 30 seconds each and
73. The consequence of the principles of causation summarised above is that Mr Turner is entitled to recover the whole of his loss from Senator Nampijinpa Price, regardless of the fact that material contributions to that loss were also made by the *NT News* and the ABC. It is beside the point that the *NT News* and ABC are widely read mass media

publications. That is is an issue which could be agitated in contribution proceedings between the Senator and the *NT News* or the ABC, but it is not relevant to Mr Turner's proceedings against her: *Dingle* at 188-189.

Mitigation

74. Matters on which Senator Nampijinpa Price relies in mitigation of the damage caused by the publication of the Media Release are identified at FAD [19(c)-(g)].
75. The matters in [19(c)] and [19(e)] do not mitigate damage for the reasons given above under the subheading "*Relevance of publications other than the Media Release*".
76. The fact that the CLC published a statement on 22 July 2024 attempting to correct the record (FAD [19(d)]) is relevant, but the Court would find that it did not mitigate the damage caused by the Media Release to any great extent.
77. FAD [19(f)] concerns the apology published by the *NT News* on 29 August 2024. In principle, Senator Nampijinpa Price is entitled to rely on relief Mr Turner has obtained from other potential tortfeasors, in relation to the publication of the same or similar defamatory matter, in mitigation of damages: see s 35(1)(e) of the Act. Senior counsel for the Senator, however, cross-examined Mr Turner at some length to establish the proposition that the apology was "pretty meagre", and significantly less robust than what he had sought in his concerns notice.⁹⁰ For his part, Mr Turner accepted that the apology admitted no mistake or error, and did not really demur from senior counsel's proposition that "They weren't retracting one single thing".⁹¹ Accepting this to be so, the apology cannot mitigate Mr Turner's damage to any significant extent.
78. The fact in FAD [19(g)] also does not mitigate damage to any significant extent. There were only 67 unique views of the Media Release on the Senator's website, whereas it was emailed directly to 1951 journalists around Australia.⁹² As the damage caused by the Media Release came overwhelmingly from its publication to journalists, and its republication by journalists (which the Senator admits she intended,⁹³ and for which

⁹⁰ T 372.11-377.21.

⁹¹ T 374.23-375.4.

⁹² FAD [4(a)(iii)], Annexure A.

⁹³ FAD [4(c)].

she is therefore liable), the fact that the Media Release was (belatedly) removed from a place where it had only ever been read by a small number of people can have no real bearing on the extent of the damage caused by it.

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