LESLEY TURNER v JACINTA NAMPIJINPA PRICE

NTD 17/2024

OUTLINE OF RESPONDENT'S CLOSING SUBMISSIONS

*In these <u>revised</u> Closing Submissions for the Respondent (**RCS**), brief responses are made to some of the assertions and contentions advanced in the <u>revised</u> Closing Submissions for the Applicant filed on 31 October 2025 (**ACS**).*

Since the ACS refer in places to the paragraph numbers appearing in the original RCS (provided to the Court on 28 October 2025), these revised RCS have retained that paragraph numbering. Additional material is sepatately denoted (A1, B1, etc).

A. INTRODUCTION

A1. At the outset, in response to the ACS generally: three general observations are made.

A2. **First, as to reasonableness:** the Applicant repeatedly invokes the wrong test – see for example ACS [48], [55], [59], [64], and [75]. The objective criterion in the tort of negligence, as to what a reasonable person in the position of the defendant ought to have done, is not the test under either s. 27 of the NT Act or the extended common law *Lange* defence: see *Leyonhjelm* at [88] per Rares J (in dissent on result).

A3. **Second, as to damages and causation:** at ACS [100]-[104], the Applicant mis-states and/or misconceives the law. A libel claimant is entitled to relief only for the damage caused by the publication sued upon. This is not a case, like *Dingle,* of indivisible harm flowing from multiple publications, to substantially the same effect, to substantially the same audience.

A4. The Price release (which referred to only a fraction of the many serious allegations in the Palmer release, all of which were published in full in the first <u>*NT News*</u> article) was published to a different, and much smaller, audience than those reached by the numerous mass media publications (not only the two <u>*NT News*</u> articles, but also four ABC broadcasts), all of which were based on, and (except for the second <u>*NT News*</u> article) referred only to, the serious allegations by Mr Palmer. In this case the overwhelming proportion of any harm to Mr Turner's reputation after 18 July 2024 was caused by Mr Palmer's allegations (both in his media release and in his radio interview) and their dissemination *via* those mass media publications, which harm (if any) is

divisible from any actual effect of the much more limited publication of the Price release. See further [207]-[220] below.

A5. As this Court explained in *Mond v The Age Company Pty Limited* [2025] FCA 442 at [383], "*it is important to bear in mind that harm to reputation is not like a bodily injury. A person's reputation exists in the minds of others, and it may not be homogeneous. It is the impact of the defamatory matter on those <u>to whom it was published</u> that falls for consideration…*" (emphasis added).

A6. Even more recently, Warby LJ in *Blake v Fox* [2025] EWCA Civ 1321 (17 October 2025) has re-stated the true legal analysis, in terms notably conformable with this Court's exposition in *Mond*: see *Blake* at [28]-[30], [75]-[77].

A7. **Third, as to credit:**

(a) **The Senator**

- Numerous veiled suggestions are made in the ACS, un-tethered to any substantive basis, to supposed "problems with the Senator's credit" and the like: see for example ACS [17], [18]; and elsewhere the Court is apparently encouraged to reject, or to be sceptical of, aspects of the Senator's evidence, seemingly for no reason other than that the evidence is contrary to the Applicant's case theory in some way: see for example ACS [30], [40], [41], [45].
- All of these suggestions and insinuations should be rejected out of hand. The Senator gave her evidence in a straightforward and dignified way.

(b) **Mr Turner**

- By contrast, Mr Turner's credit was badly damaged in several significant respects: see the oral submissions at T620.39-624.19; and see below at [25]-[35]; [227]-232], [233]-[234], [235]-[237], [256]-[262].
- A significant consequence of that damage to his credit is that his affidavit evidence as to hurt to feelings, extravagant and selective as it was, should be treated with considerable caution.

The matter

1. The Applicant (**Mr Turner**) sues on one publication only, namely a media release (**the Price release**) published by the Respondent (**Senator Nampijinpa Price**) on 21 and 22 July 2024: Statement of Claim, CB 2, p 9.

2. Senator Nampijinpa Price published the Price release as Shadow Minister for Indigenous Australians and Senator for the Northern Territory.

3. The Price release did not name Mr Turner. It did refer to *"the CEO"* of the Central Land Council (**CLC**). That CEO was and is Mr Turner.

4. Senator Nampijinpa Price published the Price release in two ways:

   (1) late on Sunday evening 21 July 2024, it was sent by email to a distribution list of various addressees: Further Amended Defence (**Defence**) [4(b)]: and

   (2) on Monday morning 22 July 2024, it was uploaded to Senator Nampijinpa Price's website, from which it was removed some six weeks later, on 3 September 2024: Defence [4(a)] and [8(e)]; and see Reply [4(viii)].

Issues

5. The primary issues between the parties on the pleadings are:

   (1) Whether Mr Turner's imputations (a) and (c) were conveyed by the Price release;

   (2) Whether Senator Nampijinpa Price has made out one or both of the qualified privilege defences on which she relies, namely

      (a) at common law (extended *Lange* defence); or

      (b) pursuant to s. 27 of the *Defamation Act 2006* (NT) (as at July 2024) (**the NT Act**);

   (3) Mr Turner's allegation of malice; and

   (4) The quantum of any award of damages.

B. RELEVANT FACTS

6. Two appendices are provided with these submissions:

   (1) **Respondent's Chronology** (in tabular form);

   (2) **Respondent's Summary of Evidence in the Court Book**.

   The contents of both Appendices are derived only from the Court Book.

7. The following paragraphs highlight some of the central features of the evidence overall.

Prior to 18 July 2024

8. Elected to the Senate in May 2022, and appointed Shadow Minister for Indigenous Australians in April 2023, Senator Nampijinpa Price repeatedly called for an Inquiry into the Land Councils generally and into the operation of the Land Rights Act: Price [2], [16], [26]-[31], [39], [43], [45], [47].

9. In June 2023, the Australian National Audit Office (**ANAO**) published its report on "Governance of the Central Land Council": CB 14, p 346. The ANAO report included findings as to the CLC's failure to carry out fraud risk assessments since at least 2018 and as to the absence of a fraud control plan ("the fraud findings"): CB 14, pp 400-401, 427-8. Senator Nampijinpa Price regarded the fraud findings as damning and as a further reason for the need for an Inquiry: Price [42].

10. Over many years, Senator Nampijinpa Price had acquired a wide-ranging appreciation of the problems facing indigenous Australians, especially those in remote areas and especially Traditional Owners: Price [4]-[38], [49], [68]-[73]. That appreciation came both from her own personal experience and from what numerous indigenous people had told her, including about the CLC and Mr Turner.

11. In the period leading up to June 2024, as the Senator understood it, the elected Chair of the CLC, Matthew Palmer, had formed the view that serious change of direction and leadership was needed at the CLC, including (but not limited to) the removal of Mr Turner as CEO. He believed, according to what he told Senator Nampijinpa Price and Dr Morris, that he had the overwhelming support of the 90 CLC delegates in that regard: Price [74], [78], [83].

12. By 7 June 2024, Mr Palmer's plans to move against Mr Turner were well advanced. He had informed Dr Morris that he had the full support of all 90 delegates; Dr Morris had met with the Chief Minister of the Northern Territory who knew about it; and Dr Morris had informed Senator Nampijinpa Price: Price [74]; CB 18 p 493.

12A. At ACS [35], a suggestion is advanced, apparently intended to be somehow pejorative or sinister, that *"it is difficult to believe that it is a coincidence"* that Dr Morris' 7 June communication to the Senator came two days after Mr Turner's 5 June letter to Mr Palmer. The suggestion, left inchoate, seems to be that the move to replace Mr Turner as CEO was a response by Mr Palmer, within 48 hours, to that 5 June letter (assuming he did receive it within those 48 hours). Such a suggestion is untenable.

13. Between 7 June 2024 and 18 July 2024, Senator Nampijinpa Price was informed numerous times, by people she trusted including in particular the Chair, Mr Palmer, that a motion to remove Mr Turner as CEO was going to be moved by Mr Palmer, with the support of all 90 delegates, at a meeting of the full Council of the CLC scheduled for 16-18 July 2024:

7 June Message from Dr Gavin Morris to Senator Nampijinpa Price

- Price [74]; CB 18/493

11 July Telephone conversation between Dr Morris and Ms Lila (media adviser to Senator Nampijinpa Price)

- Price [75]-[77]; Lila [8]-[11]; CB 18/495

11-18 July Telephone conversations by Senator Nampijinpa Price with Mr Palmer and Dr Morris

- Price [78]

18 July Senator Nampijinpa Price received a copy of the document headed "DRAFT RESOLUTIONS THURSDAY 18th JULY, 2024" (**the 18 July Motion)**, which included resolutions for the instant dismissal of Mr Turner as CEO

- Price [85]; CB 18/502

Wednesday 17 July

14. On 17 July, on the second day of the meeting of the full Council, the first item on the Agenda was described as "Governance Matters", to be presented by Mr Turner and CLC Principal Legal Officer Ms Kate O'Brien: Ex A1 CB 27, p817.

15. The subject matter, not disclosed in the Agenda, concerned Mr Palmer's having signed a particular "letter", in the nature of a certificate, relating to Traditional Owner status in respect of certain land. No documents had been provided to delegates; nor was any proposed resolution notified in the Agenda.

16. Mr Turner's evidence was that on 11 June, in a meeting between him and Mr Palmer, Mr Palmer had explained that he had signed the document in circumstances where he had been deceived by Mr McCormack into the belief that Kate O'Brien (Senior Legal Officer for the CLC) had seen the document and was OK with it; however, Mr Turner said that he did not recall whether Mr Palmer had given the same explanation at the 17 July CLC meeting: T348.18-43.

17. Following the presentation by Mr Turner and Ms O'Brien and some discussion (including an explanation from Mr Palmer), the delegates present (Mr Palmer having been asked to leave the meeting) voted on three options (Ex A1 CB 28, p827):

    (1) do nothing – no further action: 18 votes;

    (2) a reprimand, in terms to be considered: 37 votes;

    (3) an election for a new chair: 3 votes.

18. The effect of the vote was thus that although there would be a reprimand, Mr Palmer was reconfirmed as Chair by an overwhelming majority: see Williams T154.20; Turner T163.12-13.

19. A "reprimand" motion was then drafted on the spot and passed "on the voices": Ex A1 CB 28 pp 827-8.

Thursday 18 July

20. By Thursday 18 July, Mr Wilks had prepared a **First Draft**, from which Ms Hart had prepared a **Second Draft**, of a media release which it was proposed Senator Nampijinpa Price would issue once the result of the 18 July motion was known. Both those drafts included an assertion (then anticipated, but as yet unknown because the meeting had not yet occurred) that the CLC had voted to dismiss Mr Turner: Hart [22]-[24], [27]-[32]; Wilks [27]-[35], [38]-[39]; CB 20 p 655 (First Draft); Ex R5 CB 31 (Second Draft).

21. On that day, 18 July, Senator Nampijinpa Price, Mr Wilks and Ms Hart all received copies of the 18 July Motion: Price [85], Wilks [23], Hart [20]; CB 18, p 502.

The men only session

22. On Thursday 18 July, during a men only session of the CLC Council meeting, Mr Palmer (the Chair of the CLC) brought forward and spoke to the 18 July Motion, but although the subject matter of that Motion was discussed and debated for some 25 minutes, the Motion was not put to a vote: Ex R5 CB 89 (recording) and 30 (transcription).

23. As to the transcription, Mr Warren Williams identified the "other voice" at 16.33 and 17.19 as Mr Geoffrey Matthews, a Warlpiri speaker who spoke against removing Mr Turner: T222.46-223.4; T224.1-28; T224.40-225.11 T230.4-8.

24. The CLC recording (Ex R5 CB 89) and transcription (Ex R5 CB 30) establish *inter alia* that:

(1) Mr Palmer spoke to the meeting about the subject matter of the 18 July Motion.

(2) The progress of the discussion, which takes place over some 25 minutes, is such as to suggest that many at least of those present were already aware of the contents and/or the subject matter of the Motion.

(3) Mr Palmer identified and spoke about several unsatisfactory aspects of Mr Turner's conduct as CEO, including

- the *"middleman"* (evidently Mr Turner) impeding the flow of government money to *"the people";*
- Mr Turner's spending time in Canberra rather than among the CLC's constituency;
- Mr Turner's not working with him, and excluding him, and keeping things from him.

(4) After Mr Palmer had been speaking for a time, Mr Hargraves asked Mr Williams to read the Motion out (13.21ff, 14:35ff). Mr Palmer said in Arrernte that *"they will listen/read it and move and pass"* (13.22);

(5) Mr Williams refused to do so. He did not read out any part of it (14.53ff; and see now T225.18-227.5);

(6) No other particular individual was asked to read it out;

(7) Mr Geoffrey Matthews said in English that if they went ahead and signed Mr Turner might take them to court (16:33);

(8) Mr Palmer responded in English (and also Arrernte) to the effect that the handling of the "Governance Matters" resolution (as referred to in the Motion) was sufficient for him to take Mr Turner to court (17:00ff);

(9) Mr Matthews, referring evidently to those delegates who supported Mr Palmer, said in English "*Well you mob can sign it because I don't wanna be in jail*" (17:19ff).

(10) A Warlpiri speaker (presumably Mr Matthews) pointed out that Mr Palmer was still the Chair, repeated that *"there's no proof",* and reiterated that Mr Turner would *"take us to court"* (17:55ff);

(11) Mr Hargraves responded (in English mixed with Warlpiri) that there **was** proof, evidently referring to the contents of the Motion (18:08ff) – a rustle of paper can be heard;

(12) Mr Williams (in English mixed with Warlpiri) then repeated that Mr Palmer was still the chair *("he's won that"),* and so *"You can't take it, No"* (18:17ff);

(13) Mr Palmer said (in mixed English and Arrernte) that he could put him (Mr Turner) in court, referring again to Mr Turner going to Canberra by himself and leaving Mr Palmer as Chair with *"no information"* (18:47ff);

(14) Mr Hargraves repeatedly spoke in favour of the Motion, including (emphasis added): "*We gotta think hard about it you know, because it's a time that **we** stood up, **we** stood up*" (19.12ff) and "***This** is the choice of **our people**. **This** what **we** want. **We're** not happy about what he's doing and what he's done*" (22.33ff). *"This"* is plainly a reference to the Motion;

(15) No vote was taken on the Motion;

(16) Mr Palmer closed the meeting in Arrernte suggesting that his supporters should break away from the CLC.

Whether, what, and when Mr Turner knew

25. There emerged at the trial a stark conflict between Mr Turner on the one hand, and two of his own witnesses (Dr Douglas and Mr Williams) on the other hand, as to what Mr Turner knew, by 21 July, of what had happened at the men only session.

26. Mr Turner gave his oral evidence after all his witnesses (including Dr Douglas and Mr Williams) had been called and cross-examined. Mr Turner sat in Court while all those witnesses gave their evidence.

27. The issue arose in this context. The First *NT News* article on Sunday 21 July, following the publication of the Palmer release on Saturday 20 July, had said *inter alia* that Mr Turner had been "dumped", that "members" had "moved a motion of instant dismissal", and that there was "majority support for change of direction and leadership at the CLC". Mr Turner told his staff that afternoon that the article was factually inaccurate. Yet

neither he nor they had been present at the men only session. So how did Mr Turner know that the article was factually inaccurate? What checking had been done?

28. Dr Douglas testified (T78.41-80.36) that on the Sunday afternoon, when the First _NT News_ Article had been published, she met with Ms O'Loughlin and Ms O'Brien at her home. While they were all present, a phone call was made to a CLC staff member known as Tiger Fitz, because it was known that Mr Fitz had driven back from Kings Canyon with a senior delegate called Michael Jones. Mr Fitz was asked whether he had any knowledge of a motion that was put to the men only session in regards to the CEO and dismissing the CEO. Dr Douglas said that Mr Fitz in response said that there was an attempt at a motion, by the Chairman, but that it came to nothing.

29. Dr Douglas was then asked whether she told Mr Turner what Mr Fitz had said. The four questions and answers on that issue were as follows (T80.20-30):

> *Did you tell Mr Turner that?---I can't recall the exact conversation that we had on Sunday, but the understanding was that the motion came to nothing, didn't happen.*
>
> *Well, when you say "the understanding", whose understanding?---The understanding of myself, Tess, Kate and Mr Turner.*
>
> *And Mr Turner would have got that understanding from one of the three of you telling him, I assume?---Well, we would have had that discussion, yes.*
>
> *So Mr Turner knew as from Sunday afternoon that there had been an attempt to move a motion to dismiss him?---Yes.*

30. Mr Williams' evidence was that he did not recall speaking to Mr Turner on 18 July soon after the men only session, but that he did see him, and speak to him, the next day (19 July): T236.28-238.23.

31. Mr Williams testified that he spoke with Mr Turner on 19 July 2024 and told him (T237.28-238.23):

    (a) that the men only session was *"all about the CEO";*

    (b) that Mr Palmer *"was just trying to get rid of our CEO for whatever reasons we didn't know about";*

    (c) that *"there was a written letter there"*, seeking Mr Turner's dismissal; and

    (d) that Mr Palmer had spoken to the meeting in favour of Mr Turner's dismissal.

32. When the evidence of Dr Douglas and Mr Williams as to these events was put to Mr Turner, he rejected both their accounts. As to Dr Douglas, see T277.13-279.25; as to Mr Williams, see T274.29-276.42; and see also T333.32-336.7.

33. According to Mr Turner (T272.36-273.25), his only information about what happened at the men only session was that, when it concluded on 18 July, about eight "senior men", including Mr Williams, "called him over" and said that Mr Palmer had asked Mr Williams to read out a letter, but that it had not been read out and the meeting had broken up. Mr Turner said that he was not told, and did not ask, what the letter was about.

34. Later in his evidence (T346.9-13), Mr Turner said that he did not enquire about what had happened at the men only session because it was "a cultural matter". But the matter-of-fact evidence of Mr Williams was that he had told Mr Turner what had happened at that session when he spoke to him on 19 July. And the full Council (men and women) plainly proceeded on the footing that it was <u>not</u> a cultural matter, when they listened to and discussed the CLC recording of the men only session, at each of the meetings of 28 August (Ex R5, CB 49 p 896) and 17 September (Ex R5, CB 54 p 912).

35. It is submitted that the evidence of Dr Douglas and Mr Williams should be preferred and accepted. Mr Turner's evidence should be rejected. One corollary is that Mr Turner's credit is unfortunately called into question, particularly as to hurt to feelings.

<u>*Mr Turner's awareness of the existence and content of the 18 July motion*</u>

36. Mr Turner said he had not seen, and was not aware of, the 18 July Motion, prior to the men only session on 18 July: T272.8-24.

37. There is no evidence directly to the contrary. However,

    (a) Mr Williams gave evidence that Mr Palmer had provided the 18 July Motion to CLC staff on 16 July: T219.9-220.42; see also T241.43-46;

    (b) Consistent with that evidence, Mr Palmer told the CLC meeting on 17 September that he had given the 18 July Motion to CLC staff about a week before *"everything was on the news"*: Ex A1 CB 54, p 916 (5th line).

19 July

38. On Friday 19 July, Mr Palmer informed Senator Nampijinpa Price (in a telephone conversation in which Dr Morris and others also participated) that at the meeting all the

men and women had been behind him in relation to the 18 July Motion, apart from two men (Mr Williams and Mr Matthews) and one woman (Barbara Shaw) – but that the Motion did not pass because the two men scared the other men about the consequences that might flow if it were passed: Price [89]-[90]; Hart [30]; Lila [14]-[18]; CB 19 p 571.

39. That telephone conversation was recorded (CB 87) and transcribed: CB 19 p 571. Hence there can be no doubt what Mr Palmer said, and did not say, in this telephone conversation. In particular, he said:

- that *"two fellas saved Les",* the deputy chair *"and a fella named, from Lajamanu",* that *"the rest of the men were behind me";* and that *"only two saved Les"* (p 571);
- that he didn't get to pass the motion, *"cos they was a bit too scared"* (p 571);
- that *"they was all behind me, only two men"* (p 572);
- that *"This is really what … all of these old men want, even the women … except for Barbara"* (p 573;
- that *"those two men were saying, especially Geoffrey* [Matthews] *from Lajamanu … he was saying oh – he'll put you in jail"* (p 574);
- that *"they you know our mob got really frightened … and they reckon … I don't want to go to jail"*, "*That's why I'm not, I'm not doing any voting he reckoned*" (p 575).

40. Senator Nampijinpa Price's evidence in cross-examination at T424.23-425.30, when she was not taken either to these passages or to her affidavit at [89], needs to be considered by reference to this objectively-established evidence.

41. On the same day, Dr Morris informed Mr Wilks that the Motion had been moved, but that it had been ultimately unsuccessful, despite majority support: Wilks [40].

20 July

42. On Saturday 20 July, Mr Palmer in his capacity as Chair of the CLC sent a media release (**the Palmer release**) to at least four major media outlets, one of them being news.com.au: Ex R5 CB 32, 33; see also Wilks [42]-[46].

43. The Palmer release was headed *"CLC Council voice no confidence in CEO Lesley Turner*". It stated, *inter alia*:

- that, at the recent CLC meeting, *“members moved a motion of instant dismissal”* of Mr Turner *“based on insubordination and unprofessional conduct”,*
- that Mr Turner had *“lost the confidence of CLC delegates”,* and
- that there was *“majority support for change of direction and leadership in the CLC”*.

44. On that same day, 20 July, an interview with Mr Palmer was broadcast on ABC Radio: Boffa [7] and T133.42-135.16; Douglas T96.46; Williams [12] and T140.35-141.23.

45. The interview was short but included more than just Mr Palmer’s words as included in the later broadcast on 23 July 2024 (Boffa T133.42-135.16), those words being:

> *A lot of the directors and delegates got the same feeling, they dont get much help, much support, and funding, they just get broken promises year after year.*

46. Mr Williams recalled that what Mr Palmer said on the radio interview included *“that the Council had made up their mind not to have Les as our CEO on the day”*: T141.5.

47. Importantly, Mr Williams said that what Mr Palmer said in the 20 July radio interview *“went right across the communities”, “about his dismissal”*: T 141.10-23.

47A. At ACS [99], it is asserted that it *“is unlikely that any such broadcast did occur”.* That submission should be rejected. Both Dr Boffa and Mr Williams (whose evidence on this topic is ignored in the ACS) heard the interview. Dr Douglas was aware of it. Mr Williams said that Mr Palmer’s statement, in that radio interview broadcast on 20 July, about Mr Turner’s dismissal, *“went right across the communities”.* The full CLC meeting on 28 August made specific reference to the ABC telephone interview (without specifying a date): Ex R5, CB 49, p 897 (9th and 10th lines).

21 July

48. On the following day, Sunday 21 July, the <u>*NT News*</u> (a News Corp Australia publication) published online, on its website, an article whose headline was (emphasis added) *“Lindsay* (sic) *Turner **dumped** as Central Land Council chief executive”* (**the First <u>*NT News*</u> article**): CB 9, p 162.

49. That article referred to and quoted from the Palmer release at length. Statements made in the body of the First <u>*NT News*</u> article included, in relation to the CLC meeting:

- *“A Northern Territory land council has moved to sack its chief executive, citing ongoing poverty and poor conditions”;*

- *"There has been change at the top of the Central Land Council, with the board moving against chief executive Lesley Turner";* and
- that Mr Palmer had said, in a statement, that at the meeting *"members moved a motion of instant dismissal against Mr Turner",* and that *"there is majority support for change of direction and leadership in the CLC".*

50. On that Sunday afternoon, Mr Turner discussed the First *NT News* article with Ms O'Loughlin. She then spoke to the author of the article (Camden Smith) and to an editor of the NT News (Ms Griffiths): O'Loughlin [4]-[13]

51. At about 2.30pm on that day, Senator Nampijinpa Price and her staff became aware of the First *NT News* article: Price [98], Wilks [48], Hart [37].

52. Later on that day, 21 July, the First *NT News* article was taken down.

53. At 2.56pm on 21 July, Mr Wilks sent the Palmer release to Senator Nampijinpa Price and Ms Hart: Wilks [54].

54. At about the same time, Mr Wilks discovered that the First *NT News* article had been taken down: Wilks [49]-[54].

55. Also on 21 July, Mr Wilks and Ms Hart were in communication about changes to the draft media release in the light of what Senator Nampijinpa Price had been told by Mr Palmer on 19 July and what Mr Wilks had been told by Dr Morris (also on 19 July): see [38] and [41] above.

56. Ms Hart duly prepared a **Third Draft**: Price [104]-[106]; Wilks [47], [56]-[58]; Hart [36], [41]-[45]; CB 18 p 542 (Third Draft).

57. Among the changes in the Third Draft were to say that a motion of no confidence had been *"moved",* rather than that a vote of no confidence had been *"carried",* and to remove reference to the CLC having *"agreed to dismiss"* the CEO.

58. Mr Wilks also made contact again with Dr Morris, who confirmed that the First *NT News* article was not correct, and that Mr Turner had not been dismissed: Wilks [61]-[63].

59. At 5.21pm on 21 July 2024, Ms O'Loughlin (on behalf of the CLC) emailed Ms Griffiths of the *NT News* (CB 16, p 456) asserting *inter alia* that (emphasis added):

> *No "motion of instant dismissal against Mr Turner" was* ***moved by council*** *at its meeting last week.*

60. At 6.11pm, the first article having come down, Ms Griffiths told Ms O'Loughlin that the journalist Camden Smith would get in touch the next day to "do the story": CB 17, p458.

61. At 8.25pm on 21 July, after further communications between Mr Wilks and Ms Hart, Ms Hart prepared a **Fourth Draft**: Price[108]-[110]; Wilks [62]-[64]; Hart [48]-[52]; CB 18 p 540 (Fourth Draft).

62. Among other things, the Fourth Draft specifically added that the motion was "unsuccessful".

63. At 9.01pm on Sunday 21 July 2024, Senator Nampijinpa Price approved the issuing of the Fourth Draft (being the **Price release** as ultimately issued): Price [110]. She understood and believed it to be accurate: Price [109], [110].

64. Senator Nampijinpa Price published the Price release in two ways:

    (1) late on Sunday evening 21 July 2024, it was sent by email to a distribution list of various addressees: Further Amended Defence (**Defence**) [4(b)]: and

    (2) on Monday morning 22 July 2024, it was uploaded to Senator Nampijinpa Price's website, from which it was removed some six weeks later, on 3 September 2024: Defence [4(a)] and [8(e)]; and see Reply [4(viii)].

65. The Price release, unlike the First NT News article, did not name Mr Turner.

22 and 23 July

66. On Monday morning 22 July 2024, the *NT News* published a second online article (**the Second *NT News* article**). This time it was headed (emphasis added) *"No confidence motion against Lesley Turner **defeated**"*: CB 9, p 171.

67. In that second article, *inter alia*, the *NT News*:

    (a) repeated the statement made in its first article the day before, that the CLC had *"moved to sack its chief executive, citing ongoing poverty and poor conditions"*;

    (b) again referred to and quoted from the Palmer release at length, including its statements that CLC members had *"moved an instant dismissal motion against Mr Turner",* and that *"there is majority support for change of direction and leadership in the CLC";*

    (c) included a paragraph saying that the CLC had *"denied an instant dismissal motion was **moved**"* (emphasis added);

(d) referred to and quoted from part of the Price release.

68. On Monday morning 22 July 2024, at about 10.24am, the CLC issued a media release (Ex R5 CB 37; CB 9 p 169), which stated *inter alia* (emphasis added):

> *Senator Jacinta Price's statement and the NT News report are inaccurate.* ***There was no motion*** *to dismiss Central Land Council's chief executive Mr Lesley Turner at its full council meeting last week.*

69. That CLC media release was issued following discussions within the CLC between Mr Turner, Ms O'Loughlin, Dr Douglas and Ms O'Brien: Turner [39]-[40], O'Loughlin [15]-[17], Douglas [5]-[6].

70. At 11:36am (ACST), the *NT News* shared, on its Facebook page, a hyperlink to the Second *NT News* article. The *NT News* Facebook post began with the words *"A Northern Territory land council has moved to sack its chief executive, citing ongoing poverty and poor conditions. [emoji] Here's what happened. [emoji]",* followed by a hyperlink to the article showing images of Mr Turner and Senator Nampijinpa Price and the caption *"'Need to step up': Price weighs in on Land Council spat"*: CB 9, p181 (***NT News*** **Facebook post**).

71. There is no link to the Price release in the *NT News* Facebook post, nor was there any link to the Price release in the Second *NT News* article itself: O'Loughlin T36.47.

72. At 3:48pm, Senator Nampijinpa Price shared the *NT News* Facebook post on her own Facebook page.: CB 9, p216 Senator Nampijinpa Price's post began with the words:

> *The fact of the matter remains an inquiry into Land Councils and Statutory Authorities is what we the coalition have been calling for for months. Albanese, his Greens mates and Senator Pocock voted down an inquiry every time we put up a motion. They don't care about the needs of our marginalised!*
>
> *The Central Land Council should not gaslight its members when they have clearly called for better leadership and real outcomes! The people are calling for change!*

73. There then followed the *NT News* Facebook post (and thus a hyperlink to to the Second *NT News* article).

74. The *NT News* online is a subscription service. The articles are behind a paywall: see CB 18, p 530 and Hart [37]. Hence only *NT News* subscribers could have actually accessed the Second *NT News* article from the link in the *NT News* Facebook post. Similarly, only *NT News* subscribers could have actually accessed the Second *NT News* article from Senator Nampijinpa Price's Facebook post.

75. On 22 and 23 July 2024, other media outlets published reports about the 18 July motion, including the ABC and the *National Indigenous Times* (CB 38, p 859).

76. In the case of the ABC, it published at least three broadcasts on those two days:

- first on Monday 22 July, on television, on the 7pm TV news bulletin (Ex R5 CB 74, 75);
- on Tuesday 23 July, on ABC Radio Alice Springs (CB 22, p 747, and Exhibit R1)
- also on Tuesday 23 July, on ABC Radio Darwin and abc.net.au (where it remains) (Ex R5 CB 76, 77 and 86).

77. Neither Mr Turner nor most of his witnesses made any reference, in their affidavits, to any of the ABC broadcasts, notwithstanding that:

(a) Mr Turner watched the ABC television broadcast on the evening of 22 July: T386.43-388.10;

(b) Mr Turner received a transcript, and listened to a recording, of the 23 July ABC Radio broadcast, on that day: T388.12-389.23;

(c) Dr Douglas:

- watched the 22 July ABC television broadcast at the time it was broadcast (T93.8-94.1);
- was aware of the 20 July Palmer radio interview (T96.46); and
- was probably aware of and listened to, on the day, the 23 July ABC Radio news broadcast (T94.3-95.17);

(d) Ms O'Loughlin

- ▪ became aware of the 22 July ABC TV broadcast, possibly from Dr Douglas, and watched it, probably the next day: T44.15-23 T 49.19-40;
- was in direct contact, by telephone and then email, with the ABC on 23 July, about the ABC Alice Springs Radio broadcast of that day: CB 22 p 747, T50.3-24; and
- discussed the ABC Radio broadcast internally with staff that may have included Dr Douglas and Mr Turner: O'Loughlin T51.40-53.5.

78. On Tuesday 23 July, the NT News published in its print edition, in the *Centralian Advocate* section, an article headed *"Divisions fracture at CLC"*: Ex R5 CB 39, p 862. This article was in similar terms to the Second NT News article (published online on 22 July).

29 July: Concerns Notice to Senator Nampijinpa Price

79. On 29 July, Mr Turner's solicitors (BlackBay) sent a Concerns Notice to Senator Nampijinpa Price: CB 9, p 236. That Concerns Notice identified six imputations and then continued, under the heading **"Generally"**, (emphasis added):

> *"The assertion by you in the [Price] Release that Mr Turner was* ***the subject of a no confidence motion*** *by Central Land Council members last week is* ***completely false****."*

80. Senator Nampijinpa Price's solicitor responded to the Concerns Notice by his letter dated 3 September 2024: CB 4 p 17; CB 22 p 760. In that letter Mr Kalantzis said, *inter alia*:

> *The Media Release was created by reference to material provided to our client by the Chairman of the Central Land Council Mr Matthew Palmer which included a media release and draft resolution.*
>
> *We note that your client relies on a statement from the Central Land Council that the Media Release was "factually incorrect" in asserting that the Media Release was false. We have been provided with signed statements by persons in attendance at the meeting held on 18 July 2024 who attest to the fact that a motion to dismiss the Central Land Council's chief executive was tabled.*
>
> *It is not possible for our firm to advise our client properly about the claim in your letter that the Media Release was "factually incorrect" in these circumstances without a copy of the transcript and the minutes of the meeting.*
>
> *Accordingly, in order that we may properly advise our client in relation to your client's claims and the requests made in your letter, we request that you provide a copy of any transcript or minutes of the Central Land Council meeting held on 18 July 2024.*
>
> *In the meantime, in the interests of resolving this matter and without any admissions our client will remove the Media Release from her website.*

81. No such transcript or minutes were provided (even though the meeting had been recorded). It was not until July 2025 that the CLC produced, on subpoena, the CLC's recording of the meeting (CB 29) and the CLC's transcription of that recording (CB 30).

82. Instead Mr Turner commenced these proceedings on 5 September 2024.

30 July: Concerns Notice to *NT News*, and correspondence leading to apology

83. On 30 July, BlackBay sent a Concerns Notice to News Corp Australia (in relation to both *NT News* articles (of 21 and 22 July): CB 9 p 254. The asserted imputations were substantially the same as those in the Concerns Notice to Senator Nampijinpa Price.

84. On 26 August 2024, NewsCorp sent a letter to BlackBay comprising an "Offer to Make Amends": CB 46. Thereafter there were several letters back and forth between BlackBay and News Corp, on 27, 28 and 29 August: Ex R5 CB 47, 48, 52. That correspondence culminated in an apology being published online in the *NT News* on 29 August 2024: CB 9, p 281; CB 61.

85. In that apology, the *NT News* did not retract any of what it had published in either the First *NT News* article or the Second *NT News* article.

86. The apology referred only to one topic, namely the supposed fact that the Palmer release had stated that "the CLC's board" had "moved" a motion to dismiss Mr Turner. [In fact, the Palmer release had not said that. It had said that CLC "members" had moved such a motion: CB 32, p 847. It was the *NT News* itself, in its first article, which had attributed that move to the "board": CB 9, p 162.]

87. On that one single topic (whether or not a motion had been "moved"), the apology merely added that *"Mr Turner subsequently contacted the NT News and informed us that* [the Palmer release] *was incorrect and no motion was moved."* The apology made no concession that Mr Turner's contention in that regard was accurate.

88. In summary, the progress of negotiations between BlackBay and News Corp, as revealed by the correspondence in evidence, was as follows:

    (1) In the Concerns Notice of 30 July (CB 9, p 254), BlackBay demanded *inter alia*:

        (a) a "retraction and apology", from both the *NT News* and Camden Smith, in words which included an admission that allegations in the two articles were *"false and defamatory"*;

        (b) $60,000.00 in damages; and

        (c) "reasonable legal fees".

    (2) In its first "Offer to Make Amends" on 26 August (CB 46), News Corp offered *inter alia*:

(a) an apology (from the _NT News_ only), but no retraction of anything, and no admission that anything was *"false"* or *"defamatory";*

(b) inclusion in that apology of words to the effect that Mr Turner had informed the _NT News_ that (contrary to one small part of what it had published) no motion to dismiss him *"was ever put before the CLC's board, let alone moved"*;

(c) nothing for damages; and

(d) $3,000.00 for legal expenses.

(3) News Corp stressed in that 26 August letter (CB 46, p 880), in explaining why it was making only that offer:

- that the First _NT News_ article had been removed without admission;
- that *"there was no reason for [News Corp] to doubt the accuracy of a press release concerning events of a CLC board meeting, which was sent by the person presiding over that board"*.

(4) In its response of 27 August (CB 47), BlackBay:

(a) said that *"having regard to the genuine* [sic] *apology that is being offered"*, Mr Turner would accept $10,000.00 (for damages) plus a contribution of $4,500.00 towards his legal costs;

(b) proposed a form of words for the "apology" which was substantially as offered by News Corp – including all the features noted in (2)(a) and (b) above.

(5) On 28 August (CB 48), News Corp made a new "Offer to Make Amends", in which it:

(a) proposed a payment of $10,000.00 in all, being $5,500.00 (as compensation) plus $4,500.00 for legal costs;

(b) proposed a slightly different form of words for the "apology" – still including all the features noted in (2)(a) and (b) above except that, as to (b), what would be noted was merely that Mr Turner had informed the _NT News_ that no motion *"was moved"*.

(6) News Corp stressed in that 28 August letter, in explaining why it was now making only this offer, that:

- it *“remained concerned that has been unable to independently verify that no such motion was ever put before the board to be voted on. It has simply taken your client at his word, as per the Concerns Notice …”*;
- *“To date it appears that CLC has only been able to confirm to our client that no motion was passed”;*
- it *“remained concerned to name Mr Palmer where definitive proof that a motion wasn’t put before the board has not been forthcoming. … If your client and/or the CLC were to provide documentary evidence to prove the accuracy of the apology proposed in your 27 August letter, our client would reconsider its position”.*

(7) On 29 August, BlackBay responded by simply saying: *“The terms of your client’s offer are agreed”*: CB 52.

(8) The apology, in the form offered by News Corp, was accordingly published that day in the *NT News*: CB 9, p 281; CB 61.

89. Thus in the space of three days, Mr Turner went from: (a) demanding a retraction as well as an apology, and $60,000.00 plus costs; to: (b) accepting no retraction at all, and $5,500.00 plus costs.

7 August

90. On 7 August 2024, there was a meeting of the CLC’s Executive Committee (without Mr Palmer, the Chair and Sandra Morrison (Region 6)): minutes Ex R2; Ex A1 CB 45 pp 876, 877.

91. At that meeting, those present “resolved” that “*what happened at the CLC Council meeting on 18 July 2024”* was as set out in 13 numbered paragraphs which followed.

92. What emerges from the evidence includes the following:

(1) Mr Turner first addressed the meeting, by reference to a typed statement (Exhibits R2, p1 and R4, p1; and see T281.10-16, T 343.1-347.15).

(2) In that statement, Mr Turner

- focused almost entirely on the damage and hurt caused to him by the Palmer release and by the media coverage of what Mr Palmer had said, including *“My concern is that there are still people all over Australia who believe that I was terminated because of my so called ‘insubordination and professional conduct’.”*

- used very forceful language to urge that *"this"* (ie the position of Mr Palmer) be *"resolved as a matter of urgency"*
- asserted that at the men only session there had been "no debate". As CB 74 and CB 75 show, that assertion is quite wrong.

(3) Of the nine Exexutive Committee members present, two were women (Barbara Shaw and Valerie Martin). They were not at the 18 July men only meeting.

(4) Of the remaining seven, one (Kevin Petrick of Region 8) was not present at the 18 July meeting at all (nor was his alternative Pepe Drover): Ex A1 CB 28, p834.

(5) Thus three of the nine persons present on 7 August had not been at the men only session.

(6) Of those present on 7 August, one abstained on both "resolutions": Ex R2 p2;

(7) It was Geoffrey Matthews and Mr Williams – both of whom

- had opposed Mr Palmer's motion at the men only session,
- had been (together with Barbara Shaw) the three (out of 60) delegates who had voted for the election of a new Chair at the 17 July "Governance Matter" session,
- were the "two men" who, according to Mr Palmer on 19 July in his telephone conversation with Senator Nampijinpa Price, had scared the other men against the motion –

who told those who had not been present at the men's only session as to what had occurred: Williams T224.21, 240.34-35.

(8) The voting on the "resolution" was not recorded and is not known.

93. The CLC's recording of that 18 July meeting (Ex R5 CB 89), and the transcription (Ex R5 CB 30), show that the 7 August "resolution" is not reliable as a factual record.

94. The meeting also resolved to call a meeting of the full Council to consider the conduct of Mr Palmer at the 18 July meeting and what action if any should be taken about it.

26 August

95. On or about 26 August 2024, the Second *NT News* article was taken down: CB 46.

28 August

96. On 28 August 2024, there was a meeting of the full Council of the CLC: Ex A1 CB 49.

97. 61 of 90 delegates attended, as did some 24 staff including (for some of the time) Mr Turner. Mr Palmer was present, but without his lawyers.

98. Mr Turner again made a statement, *"about the impact on him personally and on the CLC of* ***the media that came out on Sunday 21 July*** *after the Watarrka Council meeting"*: CB 49 p 898(6th line) (emphasis added).

99. The meeting discussed what had happened on 18 July, including *inter alia* listening to a recording of the relevant part of that meeting.

29 August

100. On 29 August 2024, as noted above, Mr Turner settled with the *NT News,* and the *NT News* published its apology.

3 September

101. On 3 September 2024, the Price release was taken down.

5 September

102. On 5 September 2024, Mr Turner commenced these proceedings.

17 September

103. On 17 September 2024, there was a further meeting of the full Council of the CLC: Ex A1 CB 54.

104. 65 of 90 delegates attended, as did some 26 staff including (again for some of the time) Mr Turner. The meeting was again chaired by the Deputy Chair, Warren Williams, rather than by the Chair (Mr Palmer). Mr Palmer was present, and his lawyers participated in part of the meeting by Zoom.

105. At the meeting, among other things:

- A *"consensus statement"* as to what occurred on 18 July, broadly similar to the 7 August *"Statement of Facts",* was *"resolved";*
- It was resolved that Mr Palmer had broken various CLC Rules;
- Mr Palmer was removed as a delegate, and thus as Chair. He was asked to leave the meeting, and did so;
- Warren Williams was elected Chair, and Barbara Shaw Deputy Chair.

October

106. In October 2024, Mr Turner was reappointed CEO of the CLC for a further 3 years: Turner 1 at [15].

C. MEANINGS

107. Senator Nampijinpa Price accepts that imputation (b) was conveyed by the Price release: Defence [6].

108. The Court would find, however, that imputations (a) and (c) were not, in fact, conveyed.

109. Senator Nampijinpa Price accepts that, to the extent that the Court finds that any of the three imputations was conveyed, each of them was defamatory of Mr Turner.

110. The principles to be applied by a judge alone in assessing whether imputations are conveyed in fact are well-settled: see, for example, recent statements in *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496 at [70]-[85] and *Mond v The Age Company Pty Limited* [2025] FCA 442 at [72]-[91].

111. **Imputation (a)** is that Mr Turner's dismissal was (in fact) *"warranted",* because he had (in fact) *"behaved so unprofessionally"*. But the ordinary reasonable reader would readily appreciate that the Price release was not saying either of those things.

112. The Price release did say that a "*majority"* of CLC members had *"showed their support"* for the dismissal of the CEO *"due to unprofessional conduct"* (and also that, according to the Chair, there was *"majority support"* for *"change of direction and leadership"* in the CLC). But it said nothing about what such *"conduct"* was, or whether that conduct had actually been *"unprofessional",* much less about whether it had been *"so"* unprofessional that it did, in fact, *"warrant"* his dismissal.

113. More fundamentally, the Price release stated plainly that the motion for Mr Turner's dismissal had been *"unsuccessful*". It was *"moved",* but it was "*unsuccessful"*. So readers were told that, notwithstanding whatever may have indicated the existence of *"majority"* support for the dismissal of the CEO and/or for *"change of direction and leadership"*, and notwithstanding that the motion for dismissal was *"backed"* by the Chair (Mr Palmer), the motion had actually failed. Whatever the *"support"* had consisted of, it had not been sufficient to result in the passing of a motion.

114. In the teeth of that expressly-stated failure of the motion, and in the absence of any further information, the reasonable reader would **not** then have leapt to the

unreasonable (if not perverse) conclusion that the Price release was nevertheless simultaneously asserting both that Mr Turner's dismissal was (actually) *"warranted",* and that it was warranted because his behaviour was (actually) *"so unprofessional".*

115. Imputation (a) is pitched too high and is not conveyed.

116. **Imputation (c)** is that Mr Turner was (in fact) *"unfit"* to continue to occupy the role of CEO. Again, this imputation is pitched too high.

117. To say that someone is *"unfit"* to hold a position of authority is a rhetorical flourish, often favoured by lawyers, such as the drafters of imputations. It is a sweeping and pejorative attack on the person so stigmatised.

118. The ordinary reasonable reader would not read the Price release as making any such attack on Mr Turner. Not only is he not named, but the relevant *"conduct"* on his part is not identified, and it is expressly stated that the motion to dismiss the CEO was *"unsuccessful".* Whatever had led to that unsuccessful outcome, the reader would realise that those participating in the reported *"vote"* on the motion cannot have regarded the un-named CEO as *"unfit"* to remain in that position. Again, the reasonable reader would not leap to the contradictory and unreasonable conclusion that the Price release was itself nevertheless positively asserting that Mr Turner was (in fact) *"unfit".*

119. The Court should accordingly approach the remaining questions for determination on the basis that only imputation (b) was conveyed.

D. QUALIFIED PRIVILEGE

120. These proceedings fall to be determined under the common law and the NT Act – as the NT Act stood prior to the amendments enacted on 11 August 2025 as to such matters as serious harm (s. 9A), concerns notices (ss. 11A and 11B), public interest (s. 26A) and qualified privilege (s. 27).

121. Senator Nampijinpa Price relies on two species of qualified privilege:

    (1) at common law (extended *Lange* defence): Defence [11] – [13];

    (2) pursuant to s. 27 of the NT Act (as at July 2024): Defence [14] – [17].

122. Although the two defences are not identical or coterminous, they both require the publisher to establish, *inter alia,* that publication of the matter complained of was "reasonable" in the circumstances.

123. However, whereas under *Lange* the enquiry as to such reasonableness is at large, the statute includes a checklist of factors bearing upon reasonableness which a court "may" take into account: see the discussion by Lee J in *Palmer v McGowan (No 5)* [2022] FCA 893 at [207] and [212]-[223].

124. Notwithstanding that the legislation does not make it compulsory for a court to do so, there have been many cases in which judges have chosen to approach reasonableness through that prism. Such authorities will not necessarily provide a suitable guide to dealing with reasonableness under *Lange*.

125. Accordingly, while the "reasonableness" requirement in *Lange* will typically equate to that requirement under the statute, it may be that this would not always be so.

Extended *Lange* defence – government and political matters

126. In 1997, in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 (***Lange***), the High Court explained at 570 that the categories of qualified privilege at common law must be extended, because the common law's requirement of reciprocity of interest or duty *"must now be seen as imposing an unreasonable restraint"* on freedom of communication, *"especially communication concerning government and political matters"*.

127. The Court then stated, at 571, that:

> *Accordingly, this Court should now declare that each member of the Australian community has an interest in disseminating and receiving information, opinions and arguments concerning government and political matters that affect the people of Australia. The duty to disseminate such information is simply the correlative of the interest in receiving it. The common convenience and welfare of Australian society are advanced by discussion - the giving and receiving of information - about government and political matters. The interest that each member of the Australian community has in such a discussion extends the categories of qualified privilege. Consequently, those categories now must be recognised as protecting a communication made to the public on a government or political matter.*

128. The Price release is plainly such a communication, comprising *"information, opinions and arguments concerning government and political matters that affect the people of Australia"*.

Section 27 of the NT Act

129. The NT Act was enacted in 2006, some nine years after *Lange*.

130. Section 27 (as at 21 July 2024) provided:

> *(1) There is a defence of qualified privilege for the publication of defamatory matter to a person (the recipient) if the defendant proves that:*
> *(a) the recipient has an interest or apparent interest in having information on some subject; and*
> *(b) the matter is published to the recipient in the course of giving to the recipient information on that subject; and*
> *(c) the conduct of the defendant in publishing that matter is reasonable in the circumstances.*
>
> *(2) For the purposes of subsection (1), a recipient has an apparent interest in having information on some subject if, and only if, at the time of the publication in question, the defendant believes on reasonable grounds that the recipient has that interest.*
>
> *(3) In determining for the purposes of subsection (1) whether the conduct of the defendant in publishing matter about a person is reasonable in the circumstances, a court may take into account:*
> *(a) the extent to which the matter published is of public interest; and*
> *(b) the extent to which the matter published relates to the performance of the public functions or activities of the person; and*
> *(c) the seriousness of any defamatory imputation carried by the matter published; and*
> *(d) the extent to which the matter published distinguishes between suspicions, allegations and proven facts; and*
> *(e) whether it was in the public interest in the circumstances for the matter published to be published expeditiously; and*
> *(f) the nature of the business environment in which the defendant operates; and*
> *(g) the sources of the information in the matter published and the integrity of those sources; and*
> *(h) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person; and*
> *(i) any other steps taken to verify the information in the matter published; and*
> *(j) any other circumstances that the court considers relevant.*
>
> *(4) To avoid doubt, a defence of qualified privilege under subsection (1) is defeated if the plaintiff proves that the publication of the defamatory matter was actuated by malice.*
>
> *(5) However, a defence of qualified privilege under subsection (1) is not defeated merely because the defamatory matter was published for reward*

131. Under s 27(1)(a), the defendant must prove that the recipient of defamatory matter has either an *"interest",* or an *"apparent interest",* in having information on some subject.

132. The High Court in *Lange* recognised that all Australians have an interest in having information concerning *"government and political matters that affect the people of Australia"*. The Price release gave recipients information on such matters. Here,

therefore, the requirement of *"interest"* in s 27(1)(a) of the NT Act is met: see *Jensen v Nationwide News Pty Ltd & Anor (No 13)* [2019] WASC 451 at [344], [349], [365]-[378] per Quinlan CJ.

133. Additionally, in this case, the recipients of the Price release also had an *"apparent interest"* in the subject matter of the Price release. Senator Nampijinpa Price believed that there was a public interest in publishing the Price release: Price [112]. That belief was eminently reasonable given the subject matter of the Price release and her positions as Senator and Shadow Minister.

133A. At ACS [13], it is submitted that *"the defamatory aspect"* of the Price release *"does not concern government or political matters"*. That submission should be rejected. Mr Turner was the CEO of a body corporate, being a Land Council, which was created under Commonwealth legislation, was subject to the *PPGPA Act 2013,* was the recipient of substantial public funds, and was the frequent subject (along with other Land Councils) of public and parliamentary debate. The "defamatory matter" in question, relating to Mr Turner's discharge of his role, plainly concerns government or political matters.

133B. In any event, s 27(1)(b) provides a defence where "the matter is published to the recipient in the course of giving to the recipient information on that subject". The authorities relied upon at ACS [13], which are directed to the language in s 27(1)(c), do not limit the occasion of qualified privilege created by the statute through the broad language of "in the course of giving".

Reasonableness

134. Both defences are engaged in circumstances where a mistake has been or may have been made. As Mr Turner put it in his opening submissions at [19] (underlining added):

> *Because the defence does not require the defendant to prove that the matter published is substantially true, <u>it presupposes that there may be significant factual inaccuracies in what is published</u>. The truth or falsity of the factual assertions in the matter is not in itself relevant to the defence: Duma v Fairfax Media Publications Pty Ltd (No. 3) [2023] FCA 47 at [239]-[265] per Katzmann J.*

135. To similar effect, in *Hockey v Fairfax Media Publications Pty Ltd* (2015) 237 FCR 33 at [228], in a judgment dealing with the statutory defence (in its then form in s 30 of the *Defamation Act 2005* (NSW) (the **NSW Act**), White J said that

> “*reasonableness should not be interpreted as requiring a counsel of perfection, given that the predicate on which it operates is that the imputations in question are not true and that the conduct of the defendant is accordingly not beyond criticism*”.

136. In the same judgment, as to the ten “checklist” factors (a)-(j) listed in s 27(3), White J said that those matters (which are the same ten factors as then listed in s 30 of the NSW Act) *‘are not to be regarded as “a series of hurdles to be negotiated by a publisher before [it can] successfully rely on qualified privilege"’*: *Hockey* at [228], quoting *Jameel v Wall Street Journal Europe Sprl* [2006] UKHL 44; [2007] 1 AC 359 at [33].

137. Further, as Simpson AJA said in *Bailey v WIN Television NSW Pty Ltd* (2020) 104 NSWLR 541; [2020] NSWCA 352 at [121], “*The test for reasonableness of a publisher's conduct is less rigorous than the test for proving the truth of a defamatory imputation*”.

138. Thus, among other things it does not detract from reasonableness that a publisher did not expressly turn his/her/its mind to the particular defamatory imputations that the matter may be found to carry. Rather: *“What is important is that there is no basis for concluding that* [the publisher] *believed* [the imputations] *to be untrue”*: *Bailey* at [131] per Simpson AJA.

139. Senator Nampijinpa Price's reasonableness under both defences also needs to be assessed having regard to her position, in that she was a Parliamentarian and politician, a participant in the affairs the subject of the publication, not a journalist or media company: see *Leyonhjelm v Hanson-Young* (2021) 282 FCR 341; [2021] FCAFC 22 at [276]-[280] per Wigney J; at [418] (1st sentence) per Abraham J; and at [74] and [96] per Rares J (in dissent but not on this issue).

140. It is submitted that the following factors, in particular, tell in favour of the reasonableness of Senator Nampijinpa Price's conduct given the circumstances with which she was confronted:

    (1) Senator Nampijinpa Price's role and responsibilities in her senior position as Shadow Minister for Indigenous Australians and Senator for Northern Territory;

    (2) Her long public record of pressing for reform of Australia's Land Councils generally and of the Land Rights Act, and for an inquiry into the governance of the Land Councils and the treatment of Traditional Owners, both in Parliament and by advocacy outside Parliament;

(3) In that context, the importance of the CLC as the second largest of all the Land Councils in Australia, and the extent of public funding received by it;

(4) Senator Nampijinpa Price's awareness of and concern about the findings of the ANAO Report in June 2023 as to the CLC's having failed, under Mr Turner, to carry out fraud risk assessments or to develop a fraud control plan that dealt with identified risks – as to which see also [256]-[262] below;

(5) The significant, legitimate and immediate public interest in an attempt by the Chair and/or members of a Land Council, in this case the CLC, to remove the CEO of that Land Council;

(6) Senator Nampijinpa Price's acute awareness of, and determination to do something about, the continuing disadvantages suffered by indigenous Australians, including Traditional Owners, especially those within the CLC region where she lived, whose predicament *("land rich but dirt poor")* and rights should in her view have been more effectively addressed and advanced, including by the Land Councils;

(7) The fact that the main source of Senator Nampijinpa Price's information about the 18 July Motion was the Chair of the CLC, Mr Palmer, whom the Senator had known and respected for many years, whose motion it was, and who was personally present (unlike Mr Turner) at the 18 July meeting;

(8) Senator Nampijinpa Price's awareness that Mr Palmer's views about Mr Turner's performance were also held by other Traditional Owners who had spoken to her, and accorded with her personal observations of the out-stations and conditions for indigenous Australians in the CLC region during Mr Turner's tenure;

(9) Senator Nampijinpa Price's understanding by 18 July 2024, including from several communications directly from the Chair, that there was broad support in the membership of the CLC for the removal of Mr Turner as CEO (as part of overall change to the CLC's direction);

(10) Senator Nampijinpa Price's understanding by 18 July 2024, including from several communications directly from the Chair, that at the meeting Mr Palmer intended, with the support of all delegates, to move to remove Mr Turner;

(11) Senator Nampijinpa Price's awareness, on and after 18 July 2024, of the existence and contents of the 18 July Motion;

- At ACS [46]-[51], submissions are made to the effect that because the language of the 18 July Motion included specific reference to an *"Agenda Item: Governance Matter held on Wednesday 17th July 2024",* Senator Nampijinpa Price and/or her staff should have made inquiries as to what the *"Governance Matter"* was, before publishing her release. It is also claimed that the omission of reference to the *"Governance Matter",* in the Price release, created an impression of general, rather than specific, *"unprofessional conduct".*

- Similar submissions are made in other contexts elsewhere in the ACS; see for example ACS [66]-[74].

- Such contentions overstate the importance of the reference to the obliquely-phrased *"Governance Matter"* in the 18 July Motion, both as to what that "matter" might actually have been, and as to whether the Senator or her staff should realistically have somehow surmised that such language might have indicated that Mr Palmer's motion related to something other than what he had communicated to the Senator several times in the days and weeks leading up to 18 July – namely that the proposed removal of Mr Turner was part of an attempt to effect substantial overall organisational change, including but not limited to that removal (the reasons for which, as conveyed to and understood by the Senator did relate to his conduct as CEO generally).

- It is submitted that the real significance of their receipt of the 18 July Motion was to confirm, to the Senator and her staff, that Mr Palmer was indeed going through with his long-foreshadowed move. It is unsurprising, and not unreasonable, that the detail of the language used, in the particular written document produced and chosen by Mr Palmer as the form by which he would seek to achieve that objective, was not something to which they gave particular attention.

(12) Senator Nampijinpa Price's understanding, including from communications directly with the Chair on 19 July 2024, that on 18 July all the men and women had been in favour of the removal of Mr Turner as CEO apart from two men

and one woman, but that nevertheless the motion had not passed because the two men scared the other men about possible legal repercussions, including being taken to court and/or going to jail;

- At ACS [55]-[56] and elsewhere, and also in oral closing submissions, it has been repeatedly submitted for Mr Turner that it was illogical, or nonsensical, for there to have been majority support for the Motion and yet for it to have failed. But Mr Palmer told the Senator on 19 July exactly why that had come about namely that the "two men" (Messrs Williams and Matthews, as is now established) had scared the other men away from passing the Motion with their talk of going to court or going to jail if they did so. Yet at ACS [55(c)], even though a summary of Mr Palmer's explanation is supplied at ACS [54], it is again claimed that somehow there was a mystery about the motion failing. The submission should be rejected.

(13) Senator Nampijinpa Price's awareness, by 21 July 2024, of the existence and content of the Palmer release, including Mr Palmer's public statements in his release that members of the CLC had moved a motion of instant dismissal against Mr Turner at the 18 July meeting, that Mr Turner had lost the confidence of the delegates, and that there was majority support for change of direction and leadership in the CLC;

(14) Senator Nampijinpa Price's awareness, on 21 July 2024, of the existence and content of the First _NT News_ article, including its repetition of much of the Palmer release;

- As to ACS [60]-[65]: it may or may not be the case (it remains no more than speculation) that the _NT News_, in saying in its first article that the motion had been successful in that Mr Turner had been "dumped", based that claim on a misinterpretation of the Palmer release. But whether or not that is so, the telling fact is that on becoming aware that the _NT News_ had published such a claim, what the Senator and her staff did was to go back and double-check with the Chair of the CLC, whose motion it was – v*ia* Dr Morris (referred to by Mr Wilks in his text message of 3.30pm as *"the guy who's running this"*), who was their *"facilitator"* and *"intermediary"* with respect to communications with Mr Palmer: Wilks

[53]-[62]; and see T568.42-569.5, 570.25-41. Dr Morris confirmed that the <u>NT News</u> was wrong and that Mr Turner had not been dismissed.

- When Ms Hart referred to waiting to hear from *"the people from the CLC",* it is with respect obvious that she was referring to Mr Palmer (via Dr Morris): see for example Wilks [59]. The same response is made with respect to ACS [76].

(15) Senator Nampijinpa Price's awareness of the skill and experience of her staff, and her legitimate reliance on them to prepare and check her proposed media release;

(16) The fact that Mr Turner was deliberately not named in the Price release, consistent with Senator Nampijinpa Price's broader objectives which were to highlight the concerns and actions of Mr Palmer, and to draw attention to the need for change in the Land Councils generally to support Traditional Owners;

(17) The care taken by Senator Nampijinpa Price and her experienced staff, over several days, to check and successively amend the text of her proposed media release in the light of changing available information;

(18) The steps taken by Senator Nampijinpa Price and her staff during the course of 21 July to re-check what had happened at the meeting, and to further amend the draft release, after learning on that day: first, that the <u>NT News</u> had published (wrongly) that the dismissal motion had succeeded such that Mr Turner had been *"dumped*"; and later, that the <u>NT News</u> had subsequently taken that article down.

- As to ACS [66]-[74]:
    - First, the Court is respectfully referred to the additional submissions appended to sub-paragraph [140 (11)] above.
    - Second, as to ACS [71], no such imputation is pleaded, nor would any such strained or forced meaning be ascribed to an ordinary rerasonable reader.
    - Third, as to ACS [72], Mr Palmer also did not make any reference to the "Governance Matter" in his release. Both the Palmer release and the Price release reflected the general concerns about Mr Turner's performance which Mr Palmer had

communicated to Senator Nampijinpa Price in the preceding ten days or so, that was corroborated by her communication with other traditional owners and her own personal observations: Price [68]-[73],[78],[83].

  - That those wider concerns were what Mr Palmer was in fact agitating at the meeting on 18 July is shown by the recording and transcription of the men only session: Ex R5, CB 30 p837-840, CB 89. The content of the Palmer release could only have reinforced the Senator's understanding that Mr Palmer's concerns were not limited to an "agenda item" on 17 July 2024.
  - Fourth, as to ACS [74], promptness in seizing on a topical matter in order to achieve traction for a broader point is often essential for those practising in the sphere of politics and public affairs: see for example *Leyonhjelm* at [97]-[101] per Rares J.

141. Senator Nampijinpa Price in the above circumstances had reasonable grounds for believing that the imputations were true, and there is no basis to suppose or conclude that she believed them to be untrue: see *Bailey* at [121], [131]-[132]; see also Price [109]-[110].

142. That Senator Nampijinpa Price did not contact Mr Turner prior to publishing the Price release does not indicate any lack of reasonableness on her part. As the High Court recognised in *Lange* at 574, there will be cases where *"it was unnecessary to give the plaintiff an opportunity to respond"*. This is such a case.

143. Senator Nampijinpa Price relied on what she and those assisting her were told directly by the elected Chair of the CLC, whose motion it was, who was present at the meeting, and whose word she trusted.

144. Whereas the First <u>*NT News*</u> article had detonated the explosive headline that Mr Turner had been *"dumped"* as CEO (the Council having *"moved to sack"* him), the Price release stated – after checking – that the motion had been *"unsuccessful"*.

145. The Chair's account was conveyed both

- directly by Mr Palmer to Senator Nampijinpa Price on 19 July: Price [89] and CB 18, p 508; Hart [30] and CB 19 p 571; Lila [14]; and

- by Dr Morris (inferentially from Mr Palmer) to Mr Wilks on 19 July: Wilks [40].

146. The Chair's account had three main components:

(a) that the motion had been moved;

(b) that it had not been passed because two men (Mr Williams and Mr Matthews) had scared the other men; and

(c) that there was nevertheless overwhelming majority support for removing Mr Turner.

147. The first two of those, (a) and (b), are matters of fact concerning what happened at the meeting, of which Mr Palmer had direct personal knowledge. Senator Nampijinpa Price had no reason to suppose that there was any doubt about Mr Palmer's account as to those two matters.

148. The third component, (c), reflected Mr Palmer's assessment of the views of the delegates. Again Senator Nampijinpa Price had no reason to doubt either the genuineness or the accuracy of the Chair's assessment (which had been communicated to her on numerous occasions).

149. The only way of checking that accuracy would have been for Senator Nampijinpa Price to contact and interrogate, not Mr Turner, but most if not all of the 90 delegates. The reasonableness criterion would not remotely require such a process (akin to establishing substantial truth), even on the part of a media publisher.

150. As News Corp pointed out in its 28 August letter to BlackBay (CB 46), *"there was no reason for [News Corp] to doubt the accuracy of a press release concerning events of a CLC board meeting, which was sent by the person presiding over that board".* The force of that point was evidently recognised and conceded by Mr Turner, through his lawyers, in the ensuing correspondence see [88] above.

151. Still less would such a process be required on the part of a person in Senator Nampijinpa Price's position.

152. Further, even supposing Mr Turner may have had, if asked, a different sense or impression of whether or not he (then) had majority support, reasonableness would not impose on Senator Nampijinpa Price a requirement to seek out from him what his

subjective belief was in that regard (if any), and/or to wait for his response and/or to publish it.

153. Nor is consideration of that reasonableness, as at 21 July, affected by the fact that in subsequent months (at the meetings on 28 August and 17 September), for whatever reasons, a majority of CLC delegates present at those meetings are recorded as not (by then) favouring the removal of Mr Turner.

154. As Mr Turner's opening submissions accept, at [19], the truth or falsity of the factual assertions in the Price release is not in itself relevant to the defence.

155. However, in any event, the CLC recording of the 18 July men only session (Ex R5 CB 89) and the CLC transcription thereof (Ex R5 CB 30) establishes that Mr Palmer (the Chair) brought forward and spoke to the 18 July Motion, and that the subject matter of that Motion was discussed and debated for some 25 minutes. Speakers in the debate included Mr Palmer and Mr Hargraves (among others) in favour, and Mr Williams and Mr Matthews against.

156. Whether the 18 July Motion was "moved", either formally or informally, may be unclear from the recording and transcription, but it was certainly put forward and propounded. Mr Hargraves in particular strongly advocated for, and in effect informally "seconded", the Motion.

157. Even Mr Turner's opening submissions acknowledged, at [28], that Mr Palmer *"attempted to move the motion"* at the men only session. See also in that regard BlackBay's letter of 26 November 2024: CB 56, p 935.

158. The oral evidence of Dr Dougas finally revealed that both Mr Turner and his staff knew, from at least 21 July 2024, that Mr Palmer had attempted to move a motion of instant dismissal of Mr Turner at the men only session: Douglas T 77.42 – 82.15.

159. Furthermore, the evidence of Mr Williams revealed that even earlier, on 19 July 2024, Mr Turner had known that Mr Palmer had spoken at the men only session in favour of a "written letter" seeking his dismissal as CEO: Williams T237.28-238.23.

160. Although no voting appears to have taken place, the recording is consistent with Mr Palmer's account on 19 July that all the men but two (Mr Williams and Mr Matthews, Williams T224.21) supported what he was attempting to do, and that those two scared the other men about possible court action or jail: Price [89] and CB 18, p 508; Hart [30] and CB 19 p 571; Lila [14].

161. The fact that the 18 July Motion was not on the Agenda, or circulated to delegates beforehand, is of no moment. CLC Rules did not require those steps: see CB 9, pp 154, 156. Nor was it not uncommon for such steps not to be taken. An example is the obliquely-titled "Governance Matter" dealt with on 17 July: no motion or resolution was on the Agenda, and no documents were circulated to delegates beforehand. [In the case of the 18 July Motion, Mr Palmer did provide a copy to the CLC staff on 16 July 2024: Williams T219.9-220.42; 241.43-46; see also Ex A1, CB 54 p 916 (5th line).]

162. In the light of these matters, the *ex post facto* reconstructions of events found in the 7 August Executive Committee "resolution" (Ex A1 CB 45, p 876] and the 17 September CLC "consensus statement" (Ex A1 CB 54 p 916] – both heavily relied upon in Mr Turner's Reply, and at ACS [52]-[53] – can be seen to be in some respects unreliable and in some respects wrong.

163. The repeated claims by Mr Turner, in his Reply at [2(b)], [2(c)], [2A] and [3(b)], in his opening submissions at [27] and [40], and now at ACS [52]-[53], that those *ex post facto* reconstructions in effect represent the "truth", and that Senator Nampijinpa Price is to be criticised for ignoring that "truth", are untenable.

163A. Further as to ACS [52]-[53]: the 17 September 2024 minutes of the Full Council of the CLC (Ex A1 CB 54, pp916-917) record nothing more than the fact of a "resolution" on that day, about events two months earlier, by a group of persons of whom an unknown number had actually been present on that earlier occasion. Like the 7 August Executive Committee "resolution", this 17 September "resolution" is also inconsistent in numerous respects with the recording (Ex R5 CB 89, see also transcription CB30 p837ff) as to what actually occurred.

163B. In a related context, at ACS [82], it is contended that for Senator Nampijinpa Price to have taken the position (on and following 22 July), that some substantiation was needed of the CLC's 22 July media release bluntly asserting that "*there was no motion",* was *"indicative of a closed mind which had already prejudged the facts"*. In fact the contrary is the case. The Senator had been provided with a written motion, and Mr Palmer had expressly said (on 22 July) that a motion had been moved (but not passed): see Wilks [72], Hart [63]. A bald assertion that *"there was no motion"* did not, on any reasonable view, require her to ignore what the Chair, who was present, had said.

163C. Similarly in this regard, it may be noted that in his 2 September 2024 response (CB 4, p17) to the 29 July concerns notice – of which Mr Turner's lawyers were aware by no

later than November 2024 – the Senator's solicitor expressly requested that he and his client be provided with *"any transcript or minutes"* of what had actually occurred at the meeting. That request was never complied with. Had it been complied with (and the recording and transcription had by then been in existence for months), the Senator could have quite reasonably taken the view that the transcript did not back up either the 222 July CLC media release, or the "resolutions" of 7 August or 17 September, and that in fact it was consistent (or at least not inconsistent) with what Mr Palmer had said back on 19 July. To take that view, it is submitted, would also not remotely have indicated a closed mind; quite the contrary.

164. By 21 July, Senator Nampijinpa Price had known about Mr Palmer's intentions, based on what he said was the support of all the CLC delegates (except, as it turned out, two men and one woman), for over 6 weeks. It is inherently unlikely that Mr Palmer would attempt to take the serious action he did without believing he had that support. Concerns that Mr Palmer expressed to Senator Nampijinpa Price about Mr Turner had been corroborated by other constituents and accorded with Senator Nampijinpa Price's own observations of the conditions for Traditional Owners in the CLC region.

164A. In the following paragraphs 164B – 164K, brief responses are made to some other submissions made in the ACS which are said to relate to reasonableness.

164B. At ACS [29]-[30], an attempt is made to suggest – with so slender a foundation as to be effectively non-existent – that the Senator *"probably did know",* in June-July 2024, of allegations about Dr Morris's conduct at the Yipirinya School. That gossamer thread is then stretched even further to allege that the Senator had *"insisted in her affidavit, sworn after he was charged, that Dr Morris was a reputable and trustworthy person, ... without any acknowledgment of the charges",* and that that supposed *"fact"* was *"a concerning matter which would give the Court cause to question her credit".*

164C. This regrettable submission deserves a withering rejection. It should never have been made. The relevant factors include:

- What the Senator said in her affidavit was that, <u>*as at June-July 2024*</u> – being the only time period relevant to anything relating to Dr Morris in this case – she was (among other things) aware of Dr Morris' *"high reputation in the Alice Sprongs region", "understood him to be honest",* and *"considered him to be trustworthy and a reliable source of information":* Price [60].

- Dr Morris was charged, according to the cross-examiner (only), in August 2024: T486.16
- Again according to the cross-examiner (only), what had happened in June 2024 was that Dr Morris was "reported" to police and the Senator's mother spoke to the police at about that time: T485.39; and that *"a formal police complaint was made on 20 June 2024"*: T486.9.
- The Senator said in plain and unequivocal terms that she was not aware in June-July 2024 of anything in relation to the assaults that were later the subject of charges: T485.36-486.19
- There was not the slightest reason why the Senator, in swearing her affidavit in February 2025, should have referred to the August 2024 charges, then unproven, against Dr Morris.

164B. At ACS [36]-[42], various other aspersions are cast against both Dr Morris and the Senator, none of which survives scrutiny.

- At ACS [37], it is correctly recorded that <u>Ms Lila thought</u> that Dr Morris *"seems desperate"* to get out of Yipirinya School. But then in ACS [38], this opinion on the part of Ms Lila (who was not required for cross-examination) is transmuted into a *"fact"* that Dr Morris was so *"desperate"*.
- At ACS [40], there being (unsurprisingly) no written records of the Senator's various conversations with Mr Palmer, the gratuitous insult is made that *"the Court only has the Senator's word that it occurred"*.
- At ACS [36], [40] and [41], strained attempts are made to suggest that Senator Nampijinpa Price had not spoken to Mr Palmer at all (as she said she had).
- At ACS [42], it is correctly noted that Mr Wilks did offer a suggestion, on 18 July, for the draft Palmer press release provided to him the previous day. What is not mentioned is that:

  (a) that suggestion was not taken up; and

  (b) that the Palmer release as finally issued on 20 July was very different from the 17 July draft, for reasons which evidently had nothing to do with Mr Wilks (or the Senator).

164C. As to ACS [79]-[82], the Court is respectfully referred to [163B] and [163C] above.

E. MALICE

165. In his Reply, as to the qualified privilege defences, Mr Turner alleges that Senator Nampijinpa Price was "actuated by malice", in that she published the Price release "for the improper purpose of harming Mr Turner and/or his reputation": Reply [4]; and see s. 27(4) of the NT Act.

166. The evidence is not remotely capable of making good such a serious allegation.

167. The Price release was published by a Senator in the Australian Parliament, who was at the time both a member of the Shadow Cabinet and the Shadow Minister for Indigenous Australians. It concerned the governance of indigenous Land Councils generally across Australia, including the second largest of them namely the CLC, and the treatment of Traditional Owners by the Land Councils. Over many years, both inside and outside Parliament, Senator Nampijinpa Price had repeatedly called for an inquiry into, and reform of, those matters.

168. It is abundantly clear that the Senator's views on these matters were both long held and strongly held, and that her advocacy in relation to them came from an overarching national and policy perspective. Events which happened to be topical in July 2024, in the form of problems within one particular Land Council, including accusations of unprofessional conduct and loss of support for one CEO, within one particular Land Council, were merely the latest indication of the sorts of issues and problems to which the Senator had been drawing attention for years. The claim that Senator Nampijinpa Price's real objective was to cause harm to one individual, Mr Turner, with whom she had had barely any interaction, is fanciful.

169. That is underlined by the obvious fact that Senator Nampijinpa Price did not name Mr Turner. She referred in the Price release simply to *"the CEO"*. That fact is incompatible with a motive to injure Mr Turner. If that had been the Senator's objective, she could easily have referred to Mr Turner by name, particularly in circumstances where:

    (a) his name had already featured prominently in both the Palmer release and the First *NT News* article; and

    (b) she had been told, by the Chair, that all the CLC members, both men and women, apart from two men and one woman, were in favour of the removal of Mr Turner.

170. But she did not do so.

171. Nor did Senator Nampijinpa Price rush into the blunder that the <u>*NT News*</u> had made, by claiming that the Motion had been passed, and/or that Mr Turner had in fact been "dumped". Instead, she with her staff re-checked and confirmed that the Motion had not been passed, and accordingly spelt out in the Price release that it had been "unsuccessful".

172. For Senator Nampijinpa Price, the significance of the evident disarray within the CLC was that it was a current example or indication of the much wider points that the Senator had been publicly making for years.

173. Thus the second and third sentences of the Price release, in the first and second paragraphs, immediately expand the reader's focus to the overall national issue of *"the needs and concerns of Indigenous Australians"* and to a call by the federal Coalition for an inquiry into *"the governance of the Land Councils".* The last six paragraphs (in a nine paragraph release) relate almost entirely to those wider questions, including the plight of Traditional Owners who are still *"land rich but dirt poor".*

174. Neither the evidence, nor the various species of speculation found at ACS [83]-[86], provides any sufficient basis for a finding of malice.

175. An Applicant alleging malice must displace a presumption that the publisher acted honestly, that is, with a proper purpose: *Roberts v Bass* (2002) 212 CLR 1 at [96], [97]; *Hubba Bubba Childcare on Haig v Bowden* [2020] NSWCA 28; (2020) 101 NSWLR 729 at [59].

176. Such an Applicant bears a heavy onus: malice is a serious matter to which the principles set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-363 apply: see *Hubba Bubba Childcare* at [61].

177. There was no purpose to harm Mr Turner, much less a "dominant" purpose as would be required: see *Roberts v Bass* (2002) 212 CLR 1 at [75], [76], [104].

F. DAMAGES, including AGGRAVATED DAMAGES

178. The relevant provisions in the NT Act are ss. 31 – 36.

179. If the Court were to find, contrary to these submissions, that any of the imputations was conveyed and was not defensible, then the Court would award only very modest damages.

Principles

180. In general, the three purposes of the award of general damages for defamation are consolation for hurt feelings, recompense for damage to reputation, and vindication of the plaintiff's reputation: *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 60-61 per Mason CJ, Deane, Dawson, and Gaudron JJ; *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327 at [60] per Hayne J (Gleeson CJ and Gummow J agreeing).

181. The extent of the actionable publication is a relevant consideration in assessing damages: *Bauer Media Pty Ltd & Anor v Wilson (No 2)* (2018) 56 VR 674 at [165] per Wilson JA.

182. It is, however, only publication to those few who reasonably identified the applicant that is actionable, and thus it is only publication to those very few which is relevant to the assessment of damage: see *Morgan v Odhams Press Ltd* [1971] 1 WLR 120 at 1247 (Lord Reid), at 1262 [Lord Guest), at 1271 (Lord Pearson); see also *Cummings v Fairfax Digital Australia & New Zealand Pty Ltd; Cummings v Fairfax Media Publications Pty Ltd* (2018) 99 NSWLR 173, [2018] NSWCA 325 at [168] (McColl JA, Beazley P and Simpson AJA agreeing).

183. In these proceedings (to which no "serious harm" requirement applies), Mr Turner does not have to prove damage to establish his cause of action. If the elements of the tort (publication, identification and defamatory meaning) are established, and no defence is made out, then the traditional common law presumption applies, that at least some damage to reputation was suffered: *Ratcliffe v Evans* [1892] 2 QB 524 at 528-530; *Jameel v Dow Jones & Co Inc* [2005] QB 946 at [32]; *Bristow v Adams* [2012] NSWCA 166 at [20]-[31].

184. However, Mr Turner must satisfy the Court as to the appropriate quantum of any damages award: see for example *Hayson v The Age Company Pty Ltd (No 2)* [2020] FCA 361 at [165]-[166]; *Palmer v McGowan (No 5)* [2022] FCA 893 at [462].

185. In that regard, the Court is required by s 31 of the NT Act to ensure that there is an appropriate and rational relationship between the harm sustained and the amount of damages. Pursuant to s 32, damages are capped to an indexed amount, which is presently $500,000.

Extent of publication, readership and identification

186. The number of persons who actually read the Price release or even saw it, other than the two parties and their respective staff members and lawyers, is unknown but likely to be small.

187. An even smaller unknown number, of those few persons who did read the Price release, identified Mr Turner.

188. There is no evidence from any person who clicked on the Price release on Senator Nampijinpa Price's website, and there is no evidence that any such person identified Mr Turner.

189. No witness who gave evidence for Mr Turner (with the exception of Ms D'Souza, noted below) claimed to have actually seen or read the Price release, other than Mr Turner himself and his two staff members, Ms O'Loughlin and Dr Douglas,

190. Neither Dr Douglas nor Mr Turner gave evidence that any of the people they spoke to had actually read the Price release: Douglas [8], T92.17-43; Turner [52]-[54], T398.45-399.1.

191. Ms O'Loughlin and Dr Douglas, who did read the Price release, did not believe it: see O'Loughlin [20] and Douglas [4].

192. Ms D'Souza's evidence was at best equivocal, both as to whether or not she actually saw the Price release when she said she clicked on a link in X/Twitter, and as to whether (if she did see it) she read the entire documet: T62.23-29. Apart from Ms D'Souza, there is otherwise no documentary or oral evidence of there ever having been a link to the Price release on X/Twitter.

193. Mr Turner admitted that, as to people with whom he said he had discussed the Price release, he did not know if any of those persons had actually read the Price release; and he accepted that the reality could have been that what such persons saw was *"almost certainly one or other of the numerous media publications"*: T398.27-399.2.

The 21 July email

194. Only a small number of recipients of Ms Hart's email of 21 July (attaching the Price release) responded in terms, or in ways, which indicated that they had read the release, namely:

- Camden Smith (*NT News*);

- Paige Taylor (*The Australian*);
- Stephen Centiempo (2CC Breakfast radio);
- Thomas Denham (The Nightshift TripleM).

195. Although Ms Hart sent the Price release to a large number of email addressees, the meagreness of the response suggests that only a very small number of people read it.

196. The vast majority of the email addresses do not appear to be an individual's email address. As Ms Hart's email was not individually addressed, and had an attachment (see CB 19, p605), it is likely that the email would have been stopped by spam filters or other security settings on many, if not most, of the email addresses.

197. On the evidence, only one of those few persons who read the Price release having received the 21 July email from Ms Hart identified Mr Turner, namely Mr Smith.

198. The responses from Ms Taylor (Ex A1 CB 41), Mr Centiempo (Ex A1 CB 42), and Mr Denham (Ex A1 CB 36) do not suggest that they identified Mr Turner. It is inherently unlikely that personnel from entities such as CCH Political Alert identified Mr Turner.

198A. As to ACS [106], the authority cited by Mr Turner relies upon *Warren v Warren* (1834) 1 C M & R 250; 149 ER 1073 [250]. The principle explained in *Warren v Warren* was based on facts where the letter was in evidence, with a post mark and the seal broken, and there was evidence from the post-master that letter had been received and forwarded to its destination. The Price release was not sent as an individual email addressed to a single person. The stronger analogy is with an online subscription news service. It is not a matter of reasonable inference that more than a limited number of persons opened and read the emails in question.

198B. As to ACS [108], obviously Camden Smith knew that Mr Turner was the CEO of the CLC, but Senator Nampijinpa Price was not asked, and could not know, how many of the addressees of Ms Hart's email knew that fact. Given the number, location and role of most of the addressees, it is most unlikely that any more than a handful of them did have that very particular information. The responses to the emails do not indicate any awareness of that fact.

198C. As to ACS [110], the "byline" of the Second <u>*NT News*</u> Article was not the "basic message" of the Price release. Although the article quoted part of the Price release, being a part which (in the context of that different publication) contributed to the sting of the one imputation, (b), carried by that release, the quoted words are a small and

belated part of the article, the structure and presentation of which is such that the article may well convey a defamatory meaning or meanings which are not conveyed by the Price release.

22 July – 3 September: the website

199. Between 22 July and 3 September, there were 161 *"total views",* and 67 *"unique views",* of the URL to which the Price release was uploaded: CB 5, Defence [4(a)].

200. The expression *"total views"* signifies the number of times the URL was accessed.

201. The expression *"unique views"* signifies the number of separate computers from which the URL was accessed. Individuals who accessed it from more than one computer would be counted each time they did so, as a separate "unique view". Although it may be likely, in the abstract, that some proportion of the individuals represented in the "unique view" number read the Price release, there is no evidence as to how many actually did.

202. Even if the 67 "unique views" were assumed to indicate that 67 persons actually read the Price release on the URL:

    (1) among those 67 were likely to have been

        (a) Senator Price's staff, website manager and legal advisers,

        (b) Mr Turner, his agents and legal advisers; and

    (2) there is no evidence that any of the assumed 67 persons, other than those referred to in (1), identified Mr Turner.

202A. As to ACS [9] and [10], Mr Turner has failed to establish that the Price release (in stark contrast to the numerous contemporaneous mass media publications) was published to a wide range of people in the Northern Territory, let alone Central Australia. Of the limited number of persons by whom it was received and read, there is no basis for supposing that more than a small proportion of those few recipients lived in that region, knew that Mr Turner was the CEO of the CLC, or had any interest in ascertaining the identity of that CEO.

202B. As to ACS [11], there is no evidence that the defamatory sting of the Price release was repeated on social media. Nor is there evidence that any comments on social media were caused by the Price release. The "byline" in the *NT News* Facebook post (Ex A1, CB 9, p181) came from the *NT News'* own reporting on the Palmer release, repeating

the "byline" from the First NT News Article (before the Price release). The text which Senator Nampijinpa Price wrote in her Facebook post (CB 9, p216) was a new and independent publication that did not repeat any defamatory sting of the Price release. The comments on social media are not, and could not have been, comments on the Price release.

Alleged republication of the Price release in the Second *NT News* article

203. A matter is only a republication of another matter where there is no change to the sense and substance of the original publication: *Rush v Nationwide News Pty Ltd* (No 2) [2018] FCA 550; 359 ALR 564 at [121].

204. The Second *NT News* article is not a republication of the Price release. Among other things:

(1) Only parts of the Price release are contained, or even referred to, in the Second *NT News* article;

(2) Even those parts appear only at the end of the Second *NT News* article, the earlier contents of which had already conveyed to a reader the full gamut of Mr Palmer's allegations, and those of Mr Watson, against Mr Turner;

(3) The Second *NT News* article itself, before the reader arrived at the part at the end referring to Senator Nampijinpa Price, had effectively adopted and propounded those damaging allegations – including by merely noting (but not accepting) the CLC's denial that a motion had been moved;

(4) The prominent headline "*No confidence motion against Lesley Turner defeated*", as well as the tepid reference to the CLC's denial, substantially affected the meaning of the Second *NT News* article as a whole; and

(5) The cumulative effect of all such factors is that the sense and substance of the contents of the Price release are not reproduced to a reader of the Second *NT News* article.

205. As noted elsewhere in these submissions, Mr Turner has sought, and received, compensation for defamation in relation to both the *NT News* articles: see [83]-[89] above; and see s. 35(1)(e) of the NT Act

Damage to reputation

206. Although defamatory, none of the three imputations pleaded by Mr Turner is close to what would be regarded in the community as the more serious end of the spectrum of seriousness.

Causation

207. Moreover, and fundamentally, as a matter of causation, whatever damage to Mr Turner's reputation occurred in July 2024 (if any) was overwhelmingly attributable to the welter of other publications which occurred immediately before and immediately after the publication of the Price release.

207A. Generally on the question of causation, see the submissions above at A3 – A5.

208. The actions of the elected and respected Chair of the CLC, in attempting to remove Mr Turner as CEO (for serious reasons, publicly stated in the Palmer release) and then continuing to claim publicly, days later, that he had strong support for that outcome, were obviously significant and of high public interest.

209. Before even the First *NT News* article had been published, Mr Palmer's claims about the CLC losing confidence in Mr Turner (Boffa [7]), and deciding *"not to have Les as our CEO"* (Williams T141.5), had gone "right across the communities": Williams T141.10-23.

210. Both the *NT News* and the ABC thereafter repeatedly published detailed reporting of the Chair's claims and the reasons for them, repeatedly naming Mr Turner in the course of doing so. By contrast Senator Nampijinpa Price's release focused on linking those already heavily-reported matters to her broader concerns about the Land Rights Act and the need for an Inquiry, and (unlike the *NT News* and the ABC) Senator Nampijinpa Price did not name Mr Turner.

211. The Palmer release was sent to at least four of the largest media outlets in the country. At least one of those (News Corp) published reports about it and/or based on it.

212. The First *NT News* article in particular, on 21 July, was not only strikingly inaccurate but obviously highly critical of and damaging to Mr Turner.

213. The Second *NT News* article, on 22 July, substituted the dismissal motion's being *"defeated"* for Mr Turner having been *"dumped"*. But it otherwise repeated virtually

all of Mr Palmer's allegations against Mr Turner, and those of Mr Watson, as necessitating and justifying the motion.

214. On 20, 22 and 23 July, the evidence reveals at least four ABC broadcasts, one on television and three on radio, namely:

   (1) Saturday 20 July: radio (ABC Radio interview with Mr Palmer): see Boffa [7]; Boffa T113.5-115.29, 134.1-16; Williams T T141.10-23;

   (2) Monday 22 July: TV (7pm TV News: Ex R5 CB 74, 75);

   (3) Tuesday 23 July: radio (ABC Radio Alice Springs, including audio of Mr Palmer himself: CB 22, p 747 and Exhibit R1;

   (4) Tuesday 23 July: radio (ABC Radio Darwin: Ex R5 CB 76, 77, 86).

214A. As to ACS [98(a)], the First *NT News* Article was taken down temporarily, "pending" further developments: (Ex A1 CB 34, p851; CB 17, p458). A further story was foreshadowed for the next day. The First article was online on for almost two hours on 21 July, having been published at 1.04pm (Ex R5, CB 67 p1508) and taken down by about 2.54pm.

215. None of those four ABC broadcasts made any mention of Senator Nampijinpa Price or the Price release. Rather, they all simply published – over and over – Mr Palmer's claims and allegations. In the case of the three for which the actual broadcasts are in evidence, those included Mr Palmer's call for the dismissal of Mr Turner as CEO (Mr Turner being named each time), and Mr Palmer's allegations that a dismissal motion had been moved, that it had strong support, and that the largely remote member base were not getting the support they needed from the CLC.

216. All these publications were overwhelmingly based on the Palmer release, and the allegations by Mr Palmer and Mr Watson about Mr Turner.

217. The ABC, three of whose four broadcasts were made *after* all the other critical publications (the Palmer release, the First *NT News* article, the CLC media release, the Price release and the Second *NT News* article), focused only on what Mr Palmer had to say, with not the slightest reference to what Senator Nampijinpa Price had said about what Mr Palmer had said and done.

218. The same is true, of course, of the first ABC radio broadcast (20 July), and the First *NT News* article (21 July), both published *before* the Price release.

219. It is submitted that, as a matter of causation, if any damage to Mr Turner's reputation occurred in July 2024, it was overwhelmingly attributable to the Palmer release, the two _NT News_ articles and the four ABC broadcasts.

220. The punitive action taken by the CLC against Mr Palmer in September was expressly based, in part, on the claim that it was the Palmer release, and the reporting of statements in the Palmer release by media organisations, that had damaged Mr Turner's reputation (and that of the CLC): CB 54 pp 917, 921.

No damage

221. In October 2024, after these proceedings were commenced, Mr Turner was re-appointed as CEO of the CLC for a further three years: Turner 1 at [15]. That is powerful evidence that his reputation was undamaged: see also O'Loughlin T14.46-15.4; D'Souza T58.4-13; Douglas T71.19-35. In contrast, in the previous month (on 17 September), Mr Palmer had been removed both as Chair and as a delegate of the CLC.

222. The only documentary evidence to which Mr Turner points as purporting to show any effect on his reputation relates to Senator Nampijinpa Price's Facebook post. Mr Turner has not sued on that post, and there is no reference to it in either the Statement of Claim or the Reply.

223. Moreover, there is no evidence that any person who shared or commented on either Senator Nampijinpa Price's Facebook post, or the _NT News_ Facebook post, actually read the Second *NT News* article, let alone the Price release itself. While each of the two posts contained a hyperlink to the Second *NT News* article, that article sat behind a paywall; and neither of the two posts, nor the Second *NT News* article itself, contained a hyperlink to the Price release itself. It is likely that very few, if any, of those persons who saw either of the Facebook posts, actually read the Second _NT News_ article.

224. The evidence does not provide a sufficient foundation either for a finding that there has been any harm to Mr Turner's reputation from anything published in July 2024, or for a finding that (if any such harm did occur) such harm was caused to any material extent by the Price release.

224A. As to ACS [112]-[114], the fact that Mr Palmer and other delegates wanted Mr Turner out was true, and was widely publicised both before (on 20 July, as Dr Boffa and Mr Williams in particular plainly stated, and on the afternoon of 21 July), and after, the Price release.

224B. The opinions of Dr Boffa and Ms D'Souza, as to the possible effect of Senator Nampijinpa Price's contribution to the ongoing public discussion, do not assist the Court. Their opinions essentially comprise speculation about the state of mind of other people.

224C. As to ACS [116]-[117], no basis is suggested for the apparent contention that subsequent Facebook posts (not sued upon, or relied upon in the Statement of Claim as going to damages), and comments thereon, are relevant to the assessment of damage caused by the Price release. The comments may be evidence of the impact of the Senator's words in her Facebook post, but not of the impact of her words in the Price release.

Hurt to feelings

225. Mr Turner gave evidence of hurt to feelings, in his affidavit, by reference to many factors, including:

(1) the contents of the Price release itself: Turner 1, [34]-[38], [64]-[65];

(2) Senator Nampijinpa Price's declining to retract, notwithstanding the claims by the CLC that *"there was no motion",* and/or that no motion had been *"moved",* and/or the claim in the concerns notice that Mr Turner had not been *"the subject of"* a no confidence motion: Turner 1, [42], [57];

(3) Senator Nampijinpa Price's declining to retract, notwithstanding that the *NT News* had supposedly *"recognised its error"*: Turner 1, [62], [63];

(4) Senator Nampijinpa Price's Facebook post: Turner 1, [46]-[51];

(5) the reactions of some people: Turner 1, [53]-[55];

(6) Senator Nampijinpa Price's evidence about the ANAO Report: Turner 1, [67]-[68], Turner 2 [31].

226. Brief submissions are made in relation to each of these below.

227. However, as a general proposition it is also respectfully submitted that there was an inescapable air of unreality about Mr Turner's affidavit evidence in these respects.

228. In particular, while giving highly emotive evidence about the asserted impacts of the factors noted above ("shocked", "dismayed", "very hurt", "outraged", and so on), Mr Turner sought in his affidavit either to avoid entirely, or to downplay as insignificant, the obvious impacts of:

- the Palmer release, published by the Chair of the CLC;
- the First _NT News_ article, which repeated and amplified the allegations in the Palmer release;
- the Second _NT News_ article, which also did so;
- four ABC broadcasts, three on radio and one on television, all of which focused on the allegations by Mr Palmer, and none of which mentioned Senator Nampijinpa Price or the Price release.

229. Plainly Mr Turner was well aware of _NT News_ articles, the Palmer release, the ABC television broadcast and the ABC Radio Alice Springs broadcast: T322.19-323.46, 336.30-31, 390.33-35. Yet in his affidavit he effectively asked the Court to proceed on the fictitious or imaginary footing either that they did not exist, and/or that they had no effect and are of no relevance.

230. He made no mention at all of any of the ABC broadcasts. He said nothing of any impact on him of the Second _NT News_ article. Of the First _NT News_ article, he said only that he was "surprised" to read that he had been sacked: Turner [30]. No suggestion that he was troubled, much less *"shocked"* or *"outraged",* by the many claims in the article, derived from the Palmer release, about the reasons why a motion for his instant dismissal had been moved, or why there was majority support for change of direction and leadership in the CLC.

231. That stance changed radically when Mr Turner gave oral evidence – by then having listened to the testimony of other witnesses, including Ms O'Loughlin and Ms Vandermark, as to his reactions to the other publications.

232. Tellingly, Mr Turner admitted under cross-examination that he had indeed tried to suggest in his affidavit that amongst all these publications only the Price release upset him: T393.5-15. By contrast, under cross-examination he told the Court that the true position was quite different.

233. Moreover, Mr Turner directed the publication of, and/or was party to, successive public or formal assertions that, at the 18 July meeting:

- no motion of instant dismissal was *"moved"* (O'Loughlin email to NT News, 21 July, CB 17 p 456);

- *"there was no motion"* to dismiss him (CLC media release, 22 July, CB 9 p 169);
- it was *"completely false"* to say that Mr Turner had been *"the subject of"* a no confidence motion (concerns notice 29 July, CB 9 p 117).

234. Given such factors as:

(a) the existence and contents of the 18 July Motion (CB 18 p 502);

(b) the CLC recording and transcription of the men only session on 18 July (CB 29, 30);

(c) Mr Turner's awareness, by no later than 21 July, both of the existence of the 18 July Motion, and of what had occurred at the 18 July meeting; and

(d) the recognition by Mr Turner's lawyers that Mr Palmer at least "attempted" to move the 18 July Motion (BlackBay letter of 26 November 2024, Ex R5 CB 56, p 935; Applicant's opening submissions dated 26 August 2025 at [28]);

Mr Turner's willingness to make those assertions is unfortunate, and casts considerable doubt on the extent to which his evidence about hurt to feelings should be accepted at face value.

As to the Price release itself, and the many other contemporaneous publications

235. Mr Turner claimed in his affidavit variously that he was *"shocked", "dismayed", "outraged", "deeply offended",* and *"it cut me up"*, that Senator Nampijinpa Price had said what she said in the Price release.

236. Yet in this context he made no mention of the fact that the matters asserted about him in the Price release were derived from claims actually already made by the Chair, Mr Palmer, in the Palmer release, nor that those claims had been widely published, at much greater length and detail, in both the First NT News article and the Second NT News article.

237. The oral evidence of witnesses, including Mr Turner, as to his reactions to various publications, included the following:

First *NT News* Article

- Ms O'Loughlin said that he was shocked, baffled and confused: T22.41-46; 42.45-43.1.

- Ms Vandermark said in her affidavit that he was "shocked": Vandermark [4].
- She confirmed that in her oral evidence, and added that he reacted with concern, that it was a shock, and felt very anxious and upset: T252.3-16, 253.4-7
- Mr Turner said that he was shocked, angry, hurt, upset and outraged: T323.12-33; 325.22-326.23; see also T346.15-25.

Second *NT News* Article

- Ms Vandermark said that he was shocked, dismayed and upset: T254.22-24, 255.1-5

ABC TV broadcast 22 July, and radio broadcast 23 July

- Mr Turner said that he was upset, hurt, angry, and frustrated by the ABC television broadcast (T387.30-31, 387.40-388.1) and was frustrated by both the ABC broadcasts (T391.38.40)

The cumulative effect of the media publications

Several witnesses gave evidence to the effect that the effect on Mr Turner's demeanour, by about the end of the week beginning Monday 22 July, was probably caused by the overall effect of all the publications: see for example O'Loughlin T42.45-43.1; Douglas T95.14-17; Boffa T134.14-135.40.

237A. At ACS [118]-[122], Mr Turner again seeks to rely on the notion of "*indivisible harm*". Here, the proposition advanced is that hurt to his feelings resulting from any and all of the various publications is all part of *"the indivisible harm"*. The unstated premise, or corollary, of such a proposition is that Mr Turner should be compensated, in these proceedings, not only for hurt to his feelings referable to the Price release (the only publication sued upon), but also for hurt to his feelings caused by the multiplicity of mass media publications. That proposition should be rejected.

237B. In this context, it is significant that in the immediate aftermath of the events of 18 July and the many publications which followed, Mr Turner twice spoke at some length about what it was that had upset him, namely at the 7 August Executive Committee meeting and at the 28 August CLC Council meeting. His focus, on both occasions, was not the Price release, but the Palmer release and the media coverage thereof: see [92(2)] and [98] above.

As to Senator Nampijinpa Price's declining to retract, notwithstanding the CLC's claims and the concerns notice

238. As noted above, those claims (by the CLC and in the concerns notice) are mere bald assertions, bereft of any supporting material.

239. Mr Turner clearly knew, at all relevant times, that it was not accurate to assert, as the CLC and the concerns notice did, that there had been "no motion", or that he had not been "the subject of" a motion. He knew that Mr Palmer had attempted to move a motion to have him dismissed.

240. And he quickly settled with News Corp, notwithstanding that News Corp also refused to retract.

As to Senator Nampijinpa Price's declining to retract, notwithstanding that the NT News had supposedly "recognised its error"

241. As outined above, the *NT News* deliberately and pointedly did not *"recognise its error"*. It made no concession that Mr Turner's contention (that "no motion was moved") was correct. It retracted nothing of what it had published. Its reasons for taking that stance were essentially similar to the position adopted by Senator Nampijinpa Price: that is, it was reasonable to rely on the eye-witness account of the Chair, who actually presided over the meeting in question.

242. Notwithstanding her adoption of that (reasonable) position, Senator Nampijinpa Price took down the Price release from her website on 3 September, only days after the *NT News* had taken down the Second *NT News* article and published its apology.

243. Mr Turner's speedy willingness to accept a watered-down "apology" plus $5,500 from News Corp, without any retraction of any of the numerous damaging allegations published by it about him, renders of little weight his evidence about his supposed hurt to feelings attributable to Senator Nampijinpa Price publishing (only some of) the same information, to hardly any actual readers, while carefully (unlike the *NT News*) informing any such readers that the motion had been "unsuccessful".

As to Senator Nampijinpa Price's Facebook post

244. Mr Turner claims to have been *"infuriated"* by Senator Nampijinpa Price's Facebook post (Turner 1, [46].

245. He doggedly persists in describing, as claims made by Senator Nampijinpa Price, claims which had actually been made by Mr Palmer: see [46] and [49] (and also, in a different context, [55]).

246. Mr Turner has not sued on, and has neither pleaded nor particularised any claim for damages based on, Senator Nampijinpa Price's Facebook post.

247. As outlined above, it is highly unlikely that anyone who read either Senator Nampijinpa Price's Facebook post, or the *NT News* Facebook post, actually read the Second *NT News* article (which was hyperlinked in both those posts). The Price release itself was not hyperlinked in either of the posts, and so no reader of either Facebook post would have been directed by it to the Price release.

248. What a reader of Senator Nampijinpa Price's Facebook post would have seen, however, was the text composed by Senator Nampijinpa Price by way of introduction – which was directed to Senator Nampijinpa Price's "big picture" concerns, and did not refer to Mr Turner or to the 18 July Motion:

> *The fact of the matter remains an inquiry into Land Councils and Statutory Authorities is what we the coalition have been calling for for months. Albanese, his Greens mates and Senator Pocock voted down an inquiry every time we put up a motion. They don't care about the needs of our marginalised!*
>
> *The Central Land Council should not gaslight its members when they have clearly called for better leadership and real outcomes! The people are calling for change!*

249. Mr Turner's evidence at Turner 1, [47]-[51] is premised on the unsustainable assumption that comments by persons responding to both posts were founded on the contents of the Price release.

250. Despite the sixteen recorded comments on the *NT News* Facebook Post – Mr Turner only has put into evidence one of those posts: CB 9, p181. That comments is muted and does not identify Mr Turner. There is no inference from that comment, in circumstances where the article is behind a paywall, that either that person, or any other person who shared or commented on either of the two Posts (in CB 9 pp181-235) read the Second NT News article, let alone the Price release.

251. That post and all other likes, comments and shares on the Facebook posts should be put to one side in relation to any aspect of damages.

As to the reactions of some people

252. Mr Turner's evidence at [54]-[55], about the reaction of some friends and colleagues and his asserted partial withdrawal from society, once again attributed all such matters solely to the Price release.

253. Once again Mr Turner simply airbrushes out of existence the impact of the Palmer release, the two *NT News* articles and the four ABC reports. Yet under cross-examination he admitted that, as to people with whom he said he had discussed the Price release, he did not know if any of those persons had actually read the Price release; and he accepted that the reality could have been that what such persons saw was *"almost certainly one or other of the numerous media publications"*: T398.27-399.2.

254. Of those seven other publications, only one (the Second *NT News* article) even mentioned Senator Nampijinpa Price or the Price release. All seven of them concentrated (six of them exclusively) on the allegations by the Chair, Mr Palmer.

255. Both the *NT News* and the ABC found Mr Palmer's claims so credible and newsworthy that they continued to publish his claims even after the CLC had issued its 22 July media release.

As to Senator Nampijinpa Price's evidence about the ANAO Report

256. Again, Mr Turner does not plead or particularise, in his Reply or elsewhere, any allegation about Senator Nampijinpa Price's evidence concerning the ANAO report, or about Traditional Owner status. Again, therefore, his florid evidence about his reactions to this evidence, at Turner 1, [67]-[68] and Turner 2, [8]-[12] and [31], can be put to one side.

257. As to the ANAO Report in particular, it is submitted that Mr Turner's asserted concerns about Senator Nampijinpa Price's reliance on the ANAO findings on fraud do him little credit.

258. He claims to have been *"disgusted", "frustrated"* and *"angry"* that Senator Nampijinpa Price said what she said on this subject, that she is *"clutching at straws",* that she is *"taking the ANAO findings out of context"*, and that she has *"misrepresented the totality of its findings"*: see Turner 1, [68]; Turner 2, [31].

259. That evidence is utterly untenable in the light of:

(a) what Senator Nampijinpa Price actually said in her affidavit (including her express acknowledgement that *"parts of the ANAO Report were positive in relation to the CLC"*): Price [41] and [42];

(b) the contents of the ANAO Report itself, CB 14 especially at pp 395, 400-1 and 427-8.

260. The reality is that, on Mr Turner's watch, in flagrant breach of the CLC's own Fraud Policy, the CLC failed to carry out fraud risk assessments for years, and also failed to develop a fraud control plan that dealt with identified risks.

261. The ANAO spelt out that the CLC's arrangements for the proper use and management of resources were largely appropriate, **except for** these failings. It found that the CLC failed to comply with two of the six primary measures that the accountable authority of a Commonwealth entity such as the CLC must take to prevent, detect and deal with fraud.

261A. At ACS [19]-[21], a remarkable attempt is made to resuscitate Mr Turner's case in relation to the ANAO Report. That attempt is doomed, for these reasons:

- Not only is there no evidence that any fraud risk assessment was carried out, even as long ago as 2018, but the explicit finding of the ANAO Report was that as at June 2023 *"there is no fraud control plan"*: CB 14, pp400-401. Yet Mr Turner's submission at ACS [19] depends on the proposition that *"the existing fraud control plan"* might have been satisfactory. The flimsy nature of the rescue attempt is laid bare.
- As to ACS [20]-[21], the Parliamentary Library report (Ex A6 CB 36, pp772-815) does not remotely qualify, much less undermine, Senator Nampijinpa Price's concerns about the governance of the CLC <u>in relation to the fraud findings</u>. Her concerns were specific to the fraud findings, as clearly and fairly spelt out in her affidavit. The Parliamentary Library was making a general observation, based admittedy on a rapid and general overview, about audit results as opposed to a specific observation about those findings.

262. Senator Nampijinpa Price's concerns were soundly based, and soberly and fairly expressed. Mr Turner's asserted dismay, at her pointing out the CLC's failures as identified by the ANAO, indicates not a compensable hurt to feelings but a myopic unwillingness to acknowledge fault. The belated attempt in closing submissions, to advance an exculpatory theory which not only did Mr Turner himself not advance, but

which is merely meretricious, only underlines the difficulty for Mr Turner's case presented by the objective evidence.

Mitigation

263. Mr Turner has sought, and received, compensation for defamation in relation to the two NT News articles: see [83]-[89] above; and see s. 35(1)(e) of the NT Act.

264. The First NT News article made the false claims that Mr Turner was *"dumped"* and *"sacked"*.

265. The Second NT News article (less published than 24 hours later, and remaining online for more than a month) said that a no confidence motion, although "*defeated",* had been *"moved",* and reported (as well) that a motion for instant dismissal had also been moved.

266. The "Centralian Advocate" section of the NT News print edition of 23 July referred to reports that both a dismissal motion and a no confidence motion had been moved.

267. Critically, both NT News articles quoted heavily from, and referred in detail to, the Palmer release. The Palmer release, published by the widely-respected Chair of the CLC:

(1) stated that the CLC Council *"voice no confidence in CEO Lesley Turner"*;

(2) stated that CLC members had *"moved a motion of instant dismissal of Mr Turner based on insubordination and unprofessional conduct"*;

(3) put forward numerous grave criticisms of Mr Turner, and/or of the CLC under his leadership, as reasons why those steps had been taken. Those reasons included:

- dissatisfaction with the current state of CLC operations;
- failure to address the basic needs of Aboriginal people across the region, weakening many communities and contributing to increasingly worse conditions;
- the voices of people in the community had been ignored for too long;
- many in the community were being kept in poverty;
- people were being left behind and the vision of the CLC had been lost;

- the existence of majority support for change of direction and leadership in the CLC;
- the fact that there were Traditional Owners still living in tin sheds.

268. All of those statements and criticisms, and the reasons for them, were published by the *NT News* in one or more of its articles.

269. None of those criticisms or the reasons for them, was retracted, or the subject of any apology, by the *NT News*.

270. The Price release referred to only some of those many criticisms and underpinning reasons, and made the point that the motion had actually been unsuccessful.

271. The circulation and actual reach of the three *NT News* online and print articles dwarfed that of the Price release.

272. Mr Turner's settlement with the *NT News* (for $5,500.00 plus costs, no retraction, and a much watered-down apology) is a significant matter to be taken into account in any assessment of damages.

272A. At ACS[124]-[128], an attempt is made to suggest that because the compensation for which Mr Turner was prepared to settle was so meagre, *"it cannot mitigate Mr Turner's damage to any great extent"*.

272B. The fallacy underpinning this submission is plain. The rationale behind provisions such as s. 35(1)(e) is that a claimant should not be compensated twice for the same defamatory sting. Here, Mr Turner chose to accept compensation comprising a very modest dollar figure, no retraction of any kind, and an apology. Yet he now asks for further compensation for what he says is the same sting (in respect of a publication reaching far fewer readers). It is not to the point whether an observer might regard the level of compensation for which he was prepared to settle as substantial or otherwise.

272C. Moreover, it is Mr Turner's contention (denied by the Senator) that the second *NT News* article was itself a republication of the Price release. But he has sought and received compensation for that article. His attempt to secure a second round of compensation in those circumstances should be rejected.

273. Senator Nampijinpa Price took down the Price release from online before the commencement of these proceedings and within a few days of Mr Turner settling with the *NT News*.

Aggravated damages

274. If the Court were not to be satisfied by Mr Turner's evidence as to his hurt to feelings, then conduct on the part of Senator Nampijinpa Price which might otherwise hypothetically be relevant here cannot aggravate increase any such (non-existent) hurt.

275. Even more fundamentally, aggravated damages are only awarded where the defendant's conduct towards the plaintiff was improper, unjustifiable or lacking in *bona fides*: *Triggell v Pheeney* (1951) 82 CLR 497.

276. Mr Turner advances various matters as supporting a claim for aggravated damages (see Statement of Claim [8]; and Reply [2], [2A], [3] and [3A]).

277. None of those matters meets the criterion of "improper, unjustifiable or lacking in *bona fides*".

278. As to Statement of Claim (**SOC**) [8]:

    (a) As to SOC [8(a)]: for the reasons given in relation to the qualified privilege defences above, the fact that Mr Turner was not contacted before publication was in no way "improper, unjustifiable or lacking in *bona fides*".

    (b) As to SOC [8(b)]: this is a serious allegation of malice, which as submitted above cannot be sustained.

    (c) As to SOC [8(c)]: Senator Nampijinpa Price was not "told unequivocally" on 22 July 2024 that "her claims" were false. Ms O'Loughlin's email of that day, and the CLC statement of that day, both restricted themselves to the assertion that *"there was no motion"* to dismiss Mr Turner (an assertion which, on the evidence, was contestable at best). Substantiation of that single assertion was invited but never provided, and so far as Senator Nampijinpa Price was aware, it was simply incorrect.

    (d) As to SOC [8(d)]: the concerns notice was not ignored. A substantive response was sent (CB 22, pp760-762), and the Price release was taken down from online on a without admission basis.

    (e) As to SOC [8(e)]: it is not unjustifiable, improper or lacking *bona fides* to decline to provide a retraction and apology in respect of defamatory matter that is being genuinely defended, as here: c.f. *Nine Network Australia Pty Ltd v*

Wagner (2020) 6 QR 64; [2020] QCA 221 at [106]-[134] and the cases cited within.

(f) As to SOC [8(f)], it is not unjustifiable, improper or lacking *bona fides* for Senator Nampijinpa Price to issue a media release about what three senior Arrernte elders said both to her and in public: see Ex A1 CB 44 pp870-874; CB90. Mr Turner did not deny their accusations about him, and there is no basis for the Court to suppose, much less find, that she published her media release otherwise than in good faith (a finding akin to malice, that must be established on the *Briginshaw* standard).

(g) As to SOC [8(g) and (h)], there was no "retraction" at all by the *NT News,* of any of the many allegations which it published about Mr Turner, and indeed the *NT News* expressly informed Mr Turner's lawyers that it would not retract them and why.

279. As to Reply [2], [2A], [3] and [3A]:

(1) As to Reply [2(a)]: There was and remains a reasonable basis for this allegation, which relates to the fraud findings made in the ANAO Report.

(2) As to Reply [2(b)]: Neither the fact that a particular motion was moved by a second person as well as by Mr Turner, nor the fact that it was actually passed, has the consequence that a contention genuinely put forward (that there was no legitimate or proper basis for that motion) somehow becomes improper or unjustifiable.

(3) As to Reply [2(c)] and [2A]: Senator Nampijinpa Price relied, as was reasonable, on the direct first-hand account of the Chair as to what had happened at the 18 July meeting

(4) As to Reply [3]: The Palmer release did not say that a motion for instant dismissal had been *"passed"*; and the letter from BlackBay Lawyers dated 26 November 2024 (CB 56) does not establish any of the allegations in [3(a)-(c)].

- Moreover, it is not "improper, unjustifiable or lacking in *bona fides*" to plead a defence of justification based on material properly then available, and then, on becoming aware that anticipated witnesses were no longer prepared to provide affidavit evidence as had been expected, to withdraw it immediately: see CB 80 and 81; c.f. *Stead v Fairfax Media*

Publications Pty Ltd (2021) 387 ALR 123; [2021] FCA 15 at [286]-[293].

(5) As to Reply [3A]: Senator Nampijinpa Price did not "know" either of these things. Dr Morris was a trusted and respected member of the Alice Springs community and was in direct contact with the Chair Mr Palmer.

G. CONCLUSION

280. The Application should be dismissed with costs.

281. If the Court were to find both that one or more of the imputations was carried and defamatory, and that neither qualified privilege defence had been established, then any award of damages should be very modest and near the bottom of the range.

Peter Gray SC 7 November 2025

Barry Dean

Counsel for Senator Nampijinpa Price

NOTICE OF FILING

Details of Filing

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