

CITATION: *Christopher Francis v Australian Fisheries Academy Ltd* [2021] NTLC024

PARTIES: CHRISTOPHER FRANCIS

V

AUSTRALIAN FISHERIES ACADEMY LTD
(ABN 89 086 232 760)

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO(s): 2020-01168-LC

DELIVERED ON: 25 May 2021

DELIVERED AT: DARWIN

HEARING DATE(s): 10 March 2021

JUDGMENT OF: Gordon JR

CATCHWORDS:

Request for further and better particulars; requirements for pleadings; requirements for Rule 9.01(3); adequacy of particulars.

Work Health Act 1986

Work Health Court Rules 1999

Ben Daniel Harris v Northern Territory of Australia [2019] NTLC 03

Mac-Attack Equipment Hire Pty Ltd v AJ Lucas Operations Pty Lth [2011] NTSC 01

Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor [2006] WASC 281

Work Social Club Katherine v Rozycki NTCA 224 (1998)

Horne v Sedco Forex Australia Pty Ltd 106 FLR 373

Dare v Pulham (1982) 148 CLC 658

REPRESENTATION:

Counsel:

Worker: Mr Downs

Employer: Mr Roussos

Solicitors:

Worker: NT Law

Employer: Roussos Legal Advisory

Judgment category classification: B

Judgment ID number: 024

Number of paragraphs: 113

IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2020-01168-LC

BETWEEN:

CHRISTOPHER FRANCIS

Worker

AND:

**AUSTRALIAN FISHERIES ACADEMY LTD
(ABN 89 086 232 760)**

Employer

DECISION OF L GORDON JR

(Delivered 25 MAY 2021)

1. The Application before the Court is for further and better particulars of the Worker's Statement of Claim filed 2 July 2020. I note that the Claim was filed when the Worker was represented by a former legal representative, however the Worker continues to rely upon the pleadings and opposes the Orders sought by the Employer in relation to further and better particulars.
2. The Application filed by the Employer on 3 February 2021 sought particulars as set out in a request for further and better particulars filed 30 July 2020 and under cover of correspondence from the Employer to the Worker's legal representative dated 15 December 2020.
3. By the time of the Hearing of the Employer's Interlocutory Application some of the less controversial particulars had been provided and it was clear that the Court would not be minded to make Orders strictly in terms of the Application, in the event it was successful.
4. Accordingly, to streamline and better define the issue in dispute the Employer filed an updated Minute of Orders on 5 March 2021. Thus, the Orders being sought in the current application are:

1. *The Worker to state and provide particulars [of] the weekly benefits claimed for total and / or partial incapacity claimed in paragraph a. of the claim for relief in the Statement of Claim filed 2 July 2020 and state how that is calculated.*
2. *The Worker to provide particulars of the past and present hospital, medical, pharmaceutical, psychological and like expenses claimed in paragraph b. of the claim for relief in the statement of claim.*
3. *In accordance with Rule 9.01(3)(j) of the Work Health Court Rules, the Worker provide clear and concise details of the amount claimed for hospital, medical, surgical or rehabilitation treatment and the nature of treatment.*
4. *In relation to paragraph 2(b) of the Employers Request for Particulars dated 30 July 2020, the Worker to state and confirm the injury claimed by the Worker occurred between 4 April 2019 and 6 January 2020.*
5. *In accordance with Rule 9.01(3)(c) of the Work Health Court Rules, the Worker to provide clear and concise details of the nature of the injury.*
6. *In accordance with Rule 9.01(3)(d) of the Work Health Court Rules, the Worker to provide clear and concise details of the manner in which the injury occurred.*
7. *In accordance with Rule 9.01(3)(e) of the Work Health Court Rules, the Worker to provide clear and concise details of the nature of the disability suffered as a result of the injury.*
8. *In relation to the claim of total incapacity in paragraph 9 of the Statement of Claim, the Worker provide particulars of:*
 - (a) *his inability to undertake paid employment because of the injury.*
 - (b) *the period(s) of the total incapacity.*
9. *In relation to the claim of partial incapacity in paragraph 9 of the Statement of Claim, the Worker provide particulars of:*
 - (a) *the nature and extent of his limited ability to undertake paid employment because of the injury.*
 - (b) *the period or periods of the partial incapacity.*
 - (c) *of any amount earned by the Worker in employment or self employment.*
10. *In relation to paragraph 10 of the Statement of Claim, the Worker to provide particulars of:*

- (a) *the date and place of each items of medical expenses, the name of provider and the nature and extent of each treatment.*
- (b) *each cost the Worker alleges he incurred, the date and place of each item, the name of provider and the nature and extent of each treatment.*

The Legal Authorities

5. The law in relation to pleadings and particulars is well established. *Dare v Pulham*¹ provides:

*“Pleadings and particulars have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it; they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial.”*²

6. In the case of *Barclay Mowlem Construction Ltd v Dampier Port Authority & Anor*³ (*Barclay Mowlem*) Martin CJ held:

“The purpose of pleadings include the definition of issues to be determined in the case and enable assessment of whether they give rise to an arguable cause of action or defence as the case may be and apprise the other parties to the proceedings of the case they have to meet... Particulars of a pleading should only be ordered where necessary to enable one or other of the purposes of pleadings to be achieved.”

7. The Supreme Court of the Northern Territory considered the importance of pleadings in the Work Health Court in the matter of *Horne v Sedco Forex Australia Pty Ltd*⁴ holding:

“(1) The purpose of the pleadings in the Work Health Court is the same as it is in the Supreme Court. The first function is to define the issues between the parties. The second is to control the admission of evidence at trial’ and noted

(9) Many of the problems occasioned by this appeal could have been avoided if the parties had taken the trouble to provide adequate pleadings in accordance with the Work Health Court Rules 1987 (NT).”

8. At the hearing of this application, the Employer also drew the Courts attention to the expectations established by the full Court of Appeal in *Work Social Club Katherine v Rozycki*⁵ (*Social Club*), which found:

¹ (1982) 148 CLC 658

² *Ibid* at 664 (references omitted)

³ [2006] WASC 281

⁴ 106 FLR 373

⁵ NTCA 224 (1998)

“The Work Health Act is an extremely complex piece of legislative drafting. In the Northern Territory magistrates are extremely busy, and neither have the time nor the resources to deal adequately with compensation claims unless given the utmost of assistance by the legal profession. It behoves counsel, especially those appearing for workers, to give magistrates assistance in analysing disputed factual and legal issues, and in arriving at appropriate and necessary findings of fact and law. Because of the complexity of this jurisdiction, magistrates would be best assisted if counsel were to set out, preferably in written form, each of the elements which has to be proved, carefully addressing the facts and legal issues with respect to each of those elements in a clear and orderly fashion, and addressing the language used by the Act.”⁶

9. The Employer also relied upon the recent decision of Judge Armitage in *Harris v Northern Territory of Australia*⁷ (*‘Harris’*) which represents the first judicial consideration of the ‘reasonable management action’ defence, as provided for in the 2015 amendments to the *Return to Work Act 1986*.
10. The Employer submitted that *Harris* established the importance of clearly identified facts and causes of an alleged injury, prior to the Hearing of the matter. With respect, I disagree that the matter of *Harris* has a relevant bearing on the outcome of this Interlocutory Application.
11. It is of course, always preferable to have the matters for determination at Hearing as narrowed and well defined as possible prior to the Hearing. In *Harris* her Honour notes that *“Following a 5 day hearing which concluded with detailed written submissions, the parties limited the issues in dispute.”*⁸ Notably, the injury was no longer disputed. The causal nexus of arising in the course of employment was agreed. Defences related to the proper notice of the injury were abandoned.
12. Her Honour also gave a detailed analysis⁹ of the relevance of pre 2016 events, which were pled, in the Statement of Claim and on which evidence was given. Again her Honour noted *“However at the close of the hearing Mr Harris no longer pressed the 2015 events as contributing to his mental injury.”*¹⁰ And concluded *“In light of those submissions is it necessary to consider the pre 2016 events in any detailed way? In my view it is. The events of late 2014 and 2015 shed light on two live issues in the proceedings”*¹¹, which her Honour goes on to set out.
13. Despite these issues being agitated throughout the litigation and at Hearing, before seemingly falling away, there is no judicial criticism levelled at the parties for an inability to adequately define issues for Hearing, or more pertinently, for deficiencies in the manner in which the proceedings were pleaded.

⁶ Per Mildren J at

⁷ *Ben Daniel Harris v Northern Territory of Australia* [2019] NTLC 03

⁸ *Ibid* at para 3

⁹ *Ibid* commencing at para 20

¹⁰ *Ibid* at para 21

¹¹ *Ibid*

14. Accordingly, whilst I accept the Employer's submissions regarding adequately defining issues for Hearing, which are heavily supported by the case law referred to above, I do not find any guidance in the decision of *Harris* which bears on the determination of the current request for further and better particulars.
15. *Mac-Attack Equipment Hire Pty Ltd v AJ Lucas Operations Pty Lth* [2011] NTSC 01 (*Mac-Attack*) is a decision of Master Luppino (as he then was) which "is an example of a case where a party was ordered to provide further and better particulars despite having already pleaded extensive particulars"¹²
16. In *Mac-Attack* Master Luppino set out the principles relevant to be applied in an application for further and better particulars (references omitted)¹³:
 - a. *"The purpose of pleadings is to define with clarity the issues which are in dispute and to require each party to give fair and proper notice to the other of the case to be met.*
 - b. *Particulars define the issues to be tried and enable the parties to know what evidence it will be necessary to have available at trial.*
 - c. *Particulars are required to ensure that litigation is conducted fairly, openly and without surprises and incidentally to reduce costs.*
 - d. *As the generality of a pleading of a material fact may not sufficiently inform the other side of the case to be met, particulars are designed to limit that generality.*
 - e. *Pleadings and particulars enable the relevance and admissibility of evidence to be determined at the trial.*
 - f. *Pleadings and particulars are not intended to disclose the manner by which the case is to be proved.*
 - g. *A Defendant is entitled to particulars of the damages claimed notwithstanding that Order 13.12(4) of the Rules deems that allegations of loss and damage are denied. A claimant must particularise any items capable of substantially exact calculation. Particulars must give the other side access to the facts which make such calculations possible and thus show the party the case they have to meet and so that any necessary expert evidence can be obtained.*
 - h. *The sufficiency of pleadings is something which can vary from case to case. Hence whether to order particulars and the extent of the order for particulars is a matter for the Court's discretion."*
17. With respect to the application of the Courts discretion Associate Judge Luppino reflects (references omitted):¹⁴

¹² *Pleadings* A paper presented by Vince Luppino, Master [as he then was] Supreme Court of the Northern Territory, January 2017 at p 31.

¹³ *Mac-Attack Equipment Hire Pty Ltd v AJ Lucas Operations Pty Lth* [2011] NTSC 01 at para 3

- i. *“The degree of particularity depends on common sense and the circumstances of the case and accordingly there is some room for discretion in respect of an order for particulars as it is often a matter of judgment as to whether the appropriate level of particularity has been provided”*

18. Herein lies the subjective and challenging aspect of adjudicating a dispute in relation to further and better particulars, applying those discretionary factors within the structure established by the authorities.

Application of law to the present case

19. The *Work Health Court Rules 1999* deal with pleadings at Part 8 and relevant to the dispute at hand, provide as follows:

8.01 *Form and content*

(1) *A pleading is to:*

- (a) *be expressed in plain English and in non-technical language except to the extent required by the nature of the claim;*
- (b) *be divided into paragraphs numbered consecutively and each allegation, so far as practicable, is to be referred to in a separate paragraph;*
- (c) *contain, in a summary form, a statement of all the material facts on which the party relies but not the evidence by which those facts are to be proved; and*
- (d) *[omitted].*

and

8.06 *Particulars of pleading*

- (1) *A pleading is to contain the particulars of a fact or matter pleaded.*
- (2) *Without limiting subrule (1), a party must give particulars if they are necessary to enable the opposite party to plead, define the questions for hearing or avoid surprise at the hearing*

20. Many of the further and better particulars sought in this instance relate to Rule 9.01(3) which requires:

- (3) *If a worker claims compensation for an injury or disease, the statement of claim is to contain clear and concise details of the following (as applicable):*
 - (a) *the worker's date of birth and occupation;*

¹⁴ *Pleadings* A paper presented by Vince Luppino, Master [as he then was] Supreme Court of the Northern Territory as part of the CPD Programme of the Law Society of the Northern Territory, October 2012 at p 37.

- (b) *the date when and the workplace where the injury occurred or the disease was contracted;*
- (c) *the nature of the injury or disease;*
- (d) *the manner in which the injury occurred or the disease was contracted;*
- (e) *the nature of the disability suffered as a result of the injury or disease;*
- (f) *the worker's normal weekly earnings at the date the injury occurred or the disease was contracted;*
- (g) *the dates of the periods for which compensation payments are claimed;*
- (h) *the amount claimed for permanent impairment and the nature of the permanent impairment;*
- (j) *the amount claimed for hospital, medical, surgical or rehabilitation treatment and the nature of treatment.*

21. In submissions the Employer indicated they simply want to know:
- a. What is the injury being alleged;
 - b. For how long has the Worker suffered the injury;
 - c. What incapacity arises from the injury; and
 - d. What loss arises from the injury and resultant incapacity.
22. These are of course, not unusual or unreasonable requests in relation to a disputed application before the Work Health Court. While the pleadings play an important role in defining the issues and constraining the evidence to be led, it must also be noted pleadings, particulars and material facts do not extend to the evidence to be relied upon to support a party's case¹⁵.
23. Further, while I accept the Employers submission that discovery does not obviate the need for particulars, where a pleading complies with legal authority and the Rules of Court, discovery can be further used to refine issues and reduce the risk of surprise. Thus potentially reducing the need for the Court to exercise its discretion to order further and better particulars.
24. The key documentation which comprises the exchanges between the parties with regard to the further and better particulars sought are as follows:
- a. Request for further and better particulars filed by the Employer on 30 June 2020 ('the Request')
 - b. Correspondence from Roussos Legal Advisory for the Employer to the Workers former legal representatives dated 28 May 2020;

¹⁵ Rule 8.01(c)

- c. Response to request for further and better particulars filed by the Worker on 9 November 2020 ('the Response');
 - d. Letter from NT Law for the Worker to Roussos Legal Advisory dated 2 December 2020;
 - e. Letter from Roussos Legal Advisory to NT Law dated 15 December 2020; and
 - f. Letter from NT Law to Roussos Legal Advisory dated 20 January 2021.
25. These exchanges, together with the submissions of the parties at the hearing of the application set out the parties respective positions as to the merits of the application and whether the particulars should be ordered.
26. I will address each of the Orders sought by the Employer.

The Worker to state and provide particulars [of] the weekly benefits claimed for total and/or partial incapacity claimed in paragraph a. of the claim for relief in the Statement of Claim filed 2 July 2020 and state how that is calculated.

27. The Worker's Response¹⁶ provides:

"Based on the employer's discovery of pay slips, which do not cover the 12 months prior to the first compensation date, the workers normal weekly earnings immediately before the first compensation date are \$3,138.15"

28. The Workers submission is that the Worker's normal weekly benefits figure has been provided. It has been calculated using the statutory formula provided for by the Act. The calculations taken from the legislation need not be pleaded. Any deficiencies with respect to those calculations arise out of a lack of disclosure of pay slips.
29. Indeed, the Worker raised with Dr Ewer¹⁷ that a lack of financial transparency with respect to his correct earnings and how they were calculated was a contributory stressor during his employment.
30. In my view, the Employer is aware of the normal weekly earnings as asserted by the Worker. The Employer has not made a submission that that figure is incorrect based on their calculations. The Employer is aware of how to apply the statutory formula, based on the Workers pre injury earnings, to form their own view as to the normal weekly earnings.
31. If they have done so, and reached a different figure, then it is apparent that normal weekly earnings will be in dispute and a matter for determination by the Court. In light of the statutory formula, and in the absence of any suggestion a forensic expert is to be engaged to attempt to resolve any calculation dispute, the absence of the Worker's calculations in the particulars does not, in my view, offend the principle set out by Associate Judge Luppino at paragraph 16(g) above.

¹⁶ At 2. f.

¹⁷ Report of Dr Ewer, Psychiatrist, dated 11 November 2020 at page 5, Annexure "AHD-3" of the Affidavit of Antony Howard Downs sworn 9 March 2021.

32. I do not find that ordering the calculation of the normal weekly earnings will assist to better define the issues in dispute, or avoid surprise, accordingly it will not be ordered.
33. Of course, that is not to say parties should not exchange and discuss their respective calculations of normal weekly earnings prior to any final Hearing, in an effort to reduce issues in dispute. Rather simply, that in my view, it is not strictly required to achieve the purposes of pleadings in this instance.

The Worker to provide particulars of the past and present hospital, medical, pharmaceutical, psychological and like expenses claimed in paragraph b. of the claim for relief in the statement of claim.

In accordance with Rule 9.01(3)(j) of the Work Health Court Rules, the Worker provide clear and concise details of the amount claimed for hospital, medical, surgical or rehabilitation treatment and the nature of treatment.

34. I will deal with items 2 and 3¹⁸ together, noting in essence they jointly seek (in brief) particulars of treatment; the nature of treatment and the costs of same.
35. The Request relates to the order for compensation sought by the Worker in the Statement of Claim¹⁹ being “*payment of past, present and future hospital, medical, pharmaceutical, psychological and like expenses*”.
36. In response to the Request for particulars of same the Worker advises “*These details will be provided once and as known and will also be provided by way of ongoing discovery*”²⁰
37. The Employer argues that this response is inadequate²¹ and submits that discovery does not obviate the need for the provision of particulars.
38. The Worker submits that the medical costs are ongoing and developing, they are not a statement in time, as is a pleading. Further, that a pleading which deals with a claim still developing and ongoing in nature, cannot be expected to be subject to routine and regular updates by way of amendments for further and better particulars of medical expenses.
39. I accept that the Employer is on notice as to medical expenses being sought. It is clearly defined as a head of compensation and it is difficult to see a risk of surprise in relation to this issue, unless evidence were led pertaining to treatment costs seemingly unrelated to the alleged workplace injury. In any event this risk, to the extent it exists, is largely mitigated by the obligation for ongoing discovery.
40. However, in assessing the adequacy of the particularisation of this claim, I must also consider the *Work Health Court Rules 1999*, which prescribes the details required in relation to medical expenses.

¹⁸ As set out in paragraph 4; subparagraphs 2 and 3 above.

¹⁹ Filed 2 July 2020 at b.

²⁰ Response to Request for Particulars filed 9 November 2020 at 2.i

²¹ Letter from Roussos Legal Advisory to NT Law dated 15 December 2020 at paras 11.2 and 12.2

41. Rule 9.01(3)(j) requires *clear and concise details* of “*the amount claimed for hospital, medial surgical or rehabilitation treatment and the nature of the treatment*”.
42. The Workers pleading falls short of the requirements set out in the Rules. “*Payment of past, present and future hospital, medical, pharmaceutical, psychological and like expenses*” cannot be seen to provide clear and concise details of the amount claimed as required by the Rules (my emphasis). Further particulars should be provided.
43. I should note however, that I do not interpret the requirements of the Rules to go as far as contemplated by the Employer in the Request for Further and Better Particulars²² at paragraph 6.
44. That request was for:
 - 6.1 *the date and place of each items of medical expenses, the name of the provided and the nature and extent of each treatment;*
 - 6.2 *each and every cost Mr Francis alleges he “incurred”, the date of place of each item, the name of the provider and the nature and extent of each treatment.”*
45. This request is excessive and oppressive. While details are to be provided, they must be clear and concise. There is no requirement, in my view, for itemisation in order to reach compliance with the Rules and fulfil the purpose of pleadings.
46. Further, the particulars of medical expenses will be ‘to date’. There is clearly an inability to accurately plead future medical expenses.

In relation to paragraph 2(b) of the Employers Request for Particulars dated 30 July 2020, the Worker to state and confirm the injury claimed by the Worker occurred between 4 April 2019 and 6 January 2020.

47. Rule 9.01(3)(b) requires “*the date when and the workplace where the injury occurred...*”.
48. The current pleadings provide “*During the period up to and including 16 December 2019 the Worker sustained an injury during the course of his employment with the Employer.*”²³
49. When asked to clarify “*the period leading up to...*”²⁴ the Worker provided “*The period is from 4 April 2019 to 6 January 2020*”²⁵.
50. When pressed in correspondence to confirm the amended timeframe for the injury, the Worker declined to do so, asserting the matter had been dealt with.
51. During submissions Mr Downs, for the Worker noted that a further medical report will likely further adjust the timeframe of the injury.
52. I am satisfied that on the basis of the current pleadings and particulars, there is sufficient ambiguity with respect to the date the alleged injury occurred, such that the Employer may not know, with sufficient clarity, the case it has to meet.

²² Filed 30 July 2020 at paragraph 6

²³ Statement of Claim at paragraph 3

²⁴ Employers Request for Particulars dated 30 July 2020 at 3.1(a)

²⁵ Response to request for Particulars at 3.1(a)

53. Noting the intention of the Worker to amend their pleadings in any event, this issue can seemingly be resolved by granting leave to the Worker to attend to those deficiencies in amendments to the pleadings.

In accordance with Rule 9.01(3)(c) of the Work Health Court Rules, the Worker to provide clear and concise details of the nature of the injury.

54. The Statement of Claim at first instance described the injury as “a mental injury within the meaning of the Act including but not limited to adjustment disorder”.

55. The Workers Response to the Request for particulars further provides²⁶:

“The nature of the injury and disease as claimed is:

- i. Stress and anxiety;*
- ii. High blood pressure;*
- iii. Acute Stress Disorder;*
- iv. Greif Reaction;*
- v. a physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development;*
- vi. a temporary or permanent bodily or mental abnormality or loss caused by an injury;*
- vii. the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease; and*
- viii. anxiety, depression or other mental condition that affects the worker’s psychological, emotional or physical wellbeing.”*

56. The Employer contends “*The allegations in relation to each subparagraph of paragraph 2c of the Particulars 9 Nov 20 are vague, ambiguous or imprecise.*”²⁷

57. The parties acknowledge that items v – viii above are extracted from definitions provided for in the Act²⁸. While inclusion of the legislated definitions is likely superfluous, the inclusion of these descriptors in relation to the injury, does reflect the recommendations made in *Social Club*, to adopt the language of the Act.

58. Setting aside the potential redundancy of the need to plead the legislated definitions, the Worker cannot be tasked to cure any vagueness, imprecision or ambiguity arising from the legislation and accordingly these subparagraphs should not be subject to an Order for further particularisation.

59. In considering whether the first four items²⁹ the Worker relies upon clearly and concisely detail of the nature of the injury, I am advised they have been derived from

²⁶ Ibid at 2.c.

²⁷ Letter from Roussos Legal Advisory to NT Law dated 15 December 2020

²⁸ s 3; disease; impairment; injury (s 3A) and mental stress respectively.

²⁹ Paragraph 55 above

the Workers Compensation Claim Form and medical certificates obtained by the Worker.

60. In my view, this is a perfectly reasonable manner in which to describe an injury, with reference to the medical evidence. There may very well be other descriptors used in the medical material, however the Worker has chosen to constrain himself (and therefore the evidence) to pleading stress and anxiety, high blood pressure, acute stress disorder and grief reaction.
61. Notably, as seen in paragraphs 66 – 69 below, the Employer is equally aggrieved when expansive descriptors of the causes of the medical condition are provided.
62. While it may be the case that further detail could be extracted in relation to the first four injury descriptors, I do not view the Workers particulars so deficient that they fail to identify the issues for Hearing or render the Employer vulnerable to surprise.
63. Ultimately, the existence of the injury and its medical veracity, within the definitions provided for by the Act, will be a matter for medical evidence at Hearing. The Worker asserts that the particulars provided to date are sufficient for the purposes of the pleadings.
64. I concur. I see little benefit in ordering particulars, which will inevitably incur further cost and delay, when the injury is already described in what I consider to be, a clear and concise manner.

In accordance with Rule 9.01(3)(d) of the Work Health Court Rules, the Worker to provide clear and concise details of the manner in which the injury occurred.

65. In the Request the Employer has sought clarity in relation to particulars of Rule 9.01(3)(d) twice. First at 2.(d) asking for particulars of “*the manner in which the injury or disease was contracted*” and again at paragraph 4 when seeking ‘full particulars’³⁰ of paragraph 4 of the Statement of Claim which reads “*The injury arose as a result of the following...*”.
66. Interestingly, the contentious issue in respect of the particulars required by Rule 9.01(3)(d) is that the Worker has now provided too many details, some 21 alleged causes,³¹ in explanation as to how the alleged injury was incurred, together with the additional 15 paragraphs expanding on the particulars plead in the Statement of Claim at paragraph 4.
67. The Worker asserts that these 21 particulars either “*individually or collectively in whole or in part*”³² result in the injury.
68. The Employer submits that the cause of the injury as presented by the Worker is “*imprecise, vague and ambiguous*”³³ and further In the Minute of Orders filed by the Employer on 5 March 2021³⁴ the Employer argues:

³⁰ As defined by the Employer at para 69 below.

³¹ Response to request for Particulars at 2(d)

³² Ibid

³³ Letter from Roussos Legal Advisory to NT Law dated 15 December 2020

“The Employer should not have to deal with a case where each of 21 causes on their own or collectively or in whole or part are alleged to be a cause of the injury. The Employer is entitled to know, clearly and directly, the cause of the injury / mental injury.”

69. The Employer also seeks that the Worker clarify the relationship and identify any duplication in the causes now set out in the further and better particulars at paragraphs 2c. and 4.

70. In *Dow Corning Australia Pty Ltd v Girys*³⁵ Kennedy J noted;

“Whilst it is important that the defendant should know for certain what are the real points in dispute and thereby be enabled properly to prepare the defendant's evidence for the trial, there is another aspect, which is that the issue may be obscured by too much detail. Furthermore, a party who pleads with unnecessary particularity may, by doing so, fetter his hands at the trial or, indeed, may impose on himself an increased burden of proof. (references omitted).

71. Unfortunately, unlike a frank physical injury, a mental injury is more like to have some vagaries in its inception, particularly where it is incurred over a period of time and in relation to a range of events. This may, in part, lead to extensive pleadings.

72. The Employer already had the matters pleaded at paragraph 4(a) – (o) of the Statement of Claim when they requested “full particulars”³⁶ of each of the sub paragraphs.

73. Full particulars are defined by the Employer³⁷ as:

- “(a) times, dates and places.*
- (b) specific duration and periods of time.*
- (c) state every fact, matter or thing Mr Francis relies upon for this allegation; and that support that contention, including full particulars of any events, conversations between whom and what was said by whom and/or incidents on which Mr Francis relies.*
- (d) identify correspondence including electronic documents.”*

74. With respect, this request far exceeds the requirements of Rules 8.01(1) and 9.01(3) and the Worker is entitled to decline to provide evidence or information, which is oppressive and in excess of the Rules of Court.

75. An example of the Employer pressing for “full particulars” (as set above at 73) was in relation to paragraph 4(o) of the Statement of Claim which was originally plead as follows:

“By letter dated 30 December 2019 the Chief Executive Officer wrote to the Worker and invited him to attend a meeting at 11am on Monday, 6

³⁴ At paragraph 6

³⁵ [2001] WASCA 361 at para 10

³⁶ Employers Request for Particulars dated 30 July 2020 at 4.

³⁷ Ibid at 1

January 2020. Prior to attending that meeting and without further notice, the Worker received a notice of termination.'

76. Deemed insufficient by the Employer, when further and better particulars are pressed, the Worker replies:

"it is unclear from the Nominal insurer's request what further particulars are being sought. The worker advised Miller by email and phone that he had been in hospital requiring surgery and that he was "not feeling up to it". There was no response from Miller in relation to changing the time or the meeting."³⁸

77. I share the Worker's view. The request for 'full particulars' goes beyond what is required by the Rules. Were the Employer able to articulate what part of paragraph 4(o) specifically failed to meet the requirements for pleadings, or where the Employer was left uninformed or at risk of surprise, perhaps further particulars ought to be provided.

78. Nonetheless, the Worker has provided lengthy particulars of all 15 subparagraphs of paragraph 4 in their Response, which goes a significant way to further putting the Employer on notice as to the events that gave rise to the alleged injury³⁹ and what the issues for determination at Hearing will be.

79. In my view, the Employer must share some burden of the volume of causes now identified at paragraph 2d. As recently as correspondence of 15 December 2020⁴⁰ the Employer continued to press *"Please state and describe specifically the alleged cause of the medical condition said to have arise [sic] between a Apr 2019 - 6 Jan 2020."* The Worker, in attempt to enlighten the Employer and mitigate any risk of surprise has ultimately and perhaps inadvertently, introduced vagueness into the explanation of the injury.

80. Ultimately, I do find that the 21 explanations for injury given at paragraph 2d. of the Response give rise to potential ambiguity and may not assist to define the issues for trial.

81. Noting this finding, the Worker will be given leave to amend their pleadings in relation to the manner in which the injury occurred.

In accordance with Rule 9.01(3)(e) of the Work Health Court Rules, the Worker to provide clear and concise details of the nature of the disability suffered as a result of the injury.

82. In response to this request, the Worker referred to Employer to paragraph 2(c) of the Response and *"various medical opinions"*⁴¹.

83. In my view, this is insufficient. While I have already dealt with the validity of the particulars provided at 2(c) of the response in relation to the nature of the injury

³⁸ Response to request for Particulars at 4(o)

³⁹ Response to request for Particulars at 4(a) – (o)

⁴⁰ From Roussos legal advisory to NT Law

⁴¹ Response to request for Particulars at 2(e)

above⁴², they should be used to totally supplant the need to provide detail as to the 'nature of the disability'⁴³ (my emphasis).

84. The nature of the disability is clearly set out as a separate item to 'nature of the injury or disease'⁴⁴ in the Rules. While I accept that the two items may have significant areas of overlap, nonetheless, they should be treated as distinct items in pleadings, as they are in the Rules.
85. Again, I am guided by *Social Club*, which is equally applicable to subordinate legislation and Rules of Court:
- "Because of the complexity of this jurisdiction, magistrates would be best assisted if counsel were to set out, preferably in written form, each of the elements which has to be proved, carefully addressing the facts and legal issues with respect to each of those elements in a clear and orderly fashion, and addressing the language used by the Act."*
86. The reference to 'various medical opinions' is likewise inadequate. While I accept the submission that the issues at Hearing and ability to avoid surprise is facilitated not only by pleadings and particulars, but also discovery, nonetheless, a broad reference to various medical opinions is so all-encompassing that it cannot be seen to meet the purpose of particulars nor the requirement for clear and concise details per the Rules.
87. The Worker will be directed to provide particulars of the nature of the disability suffered as a result of the injury in accordance with Rule 9.01(3)(e).

In relation to the claim of total incapacity in paragraph 9 of the Statement of Claim, the Worker provide particulars of:

- a. his inability to undertake paid employment because of the injury.***
- b. the period(s) of the total incapacity.***

88. In relation to a. the Worker provides "these are medical questions and are matters of evidence" and relation to b.:

"The Nominal insurer denies that the worker suffers any incapacity as an alternative to partial and total incapacity. Accordingly these matters are in dispute and are medical questions which are matters of evidence. The worker refers to the various medical opinions and certificates discovered in these proceedings."

89. Although 'various medical opinions' has been found to be insufficient in relation to clear and concise details of the nature of the disability⁴⁵, that was where concise details are prescribed by the Rules.

⁴² At paras 54-64

⁴³ Required at Rule 9.01(3)(c)

⁴⁴ Required at Rule 9.01(3)(e)

⁴⁵ At 86 above

90. This is not the case for this request. As noted by the Worker, capacity – in every degree – is in dispute. A range of medical evidence will be led and the Hearing Judge will use that evidence to form conclusions regarding the capacity (if any) held by the Worker at any given time.
91. In my view, the Worker is entitled to rely on the full breadth of the discovered medical evidence in order to establish incapacity. While I accept this this could be better particularised, with reference perhaps to some of the symptomology resulting in the alleged reduced &/or total incapacity, a failure to do so does not render this pleading embarrassing.
92. The Employer is, in my view, sufficiently on notice that the issue of capacity is in dispute and is in possession of all of the medical material which may ultimately be relied on to establish periods of total or partial incapacity.
93. I do not accept the submission the “Employer should not have to explore the “various medical opinions and certificates for an answer”⁴⁶. Should the Employer not wish to explore the medical options in order to form their case and be in a position to challenge the Workers case in relation to capacity that is a matter for them.
94. I find that, while capable of further particularisation, the pleading sufficiently meets the established tests for pleadings⁴⁷ and need not be disturbed.

In relation to the claim of partial incapacity in paragraph 9 of the Statement of Claim, the Worker provide particulars of:

- a. the nature and extent of his limited ability to undertake paid employment because of the injury.***
- b. the period or periods of the partial incapacity.***
- c. of any amount earned by the Worker in employment or self employment.***

95. This request assumes an Order for the subdivision of paragraph 9, as currently pleaded in the Statement of Claim, broken down into an explanation of total incapacity and periods of same and the nature and extent of any partial incapacity and periods of same. This Order will not be made.
96. For the reasons set out above⁴⁸ I have declined to Order the further and better particulars in relation to paragraph 9, finding on balance, that the requires of pleadings are sufficiently met.
97. I will not therefore make the Orders sought at paragraph 9(a) & (b) of the Minute of Orders sought.
98. In relation to item 9(c) I note in the original Request details of earnings were sought at both items 5.1(c) and 5.2(c), which refer to periods of total and partial incapacity respectively. The Worker answered at 5.1(c) of the Response as follows:

⁴⁶ Minute of Orders filed 5 March 2021 at 9

⁴⁷ Set out at 16 above

⁴⁸ At paras 88-94

“The worker has earned \$1,293.60 for 6 days as a labourer in October 2020 and will be performing approximately 60 hours of work at \$75.00 per hour as a boat/ferry operator in November 2020.”

99. In relation to 5.2(c), the Employer was referred to the above in satisfaction of the request.
100. In the Minute of Orders sought, the particulars in relation to these earnings seem to have been omitted from the particulars sought for total incapacity, but remain for partial.
101. This distinction is not explained and in the absence of a submission as to lack of disclosure, it is unclear how the Worker’s income, set out above at 98 above, fails to satisfy the request for particulars of *“any amount earned by the Worker in employment or self employment.”*
102. In my view it does and no further order will be made.

In relation to paragraph 10 of the Statement of Claim, the Worker to provide particulars of:

- c. the date and place of each items of medical expenses, the name of provider and the nature and extent of each treatment.***
- d. each cost the Worker alleges he incurred, the date and place of each item, the name of provider and the nature and extent of each treatment.***

103. I note I have dealt with the further particularisation of the medical expenses at paragraphs 34-46 above. Those particulars as Ordered will, in my view, remedy any potential defect in paragraph 10 of the Statement of Claim and further Orders in this regard are not required.
104. In reaching findings in relation to the Orders sought by the Worker I am mindful of s110A(2) of the *Return to Work Act 1986*:

“The proceedings of the Court under this Division shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and the Work Health Administration Act 2011 and a proper consideration of the matter permits.”

105. I am further guided by *Barclay Mowlem*⁴⁹ where Martin CJ made observations, which I am satisfied are applicable to the case management practice and procedure applied in the Northern Territory Work Health Court.

“In my view, it follows that provided a pleading fulfils its basic functions of identifying the issues, disclosing an arguable cause of action or defence, as the case may be, and apprising the parties of the case that has to be met, the Court ought properly be reluctant to allow the time and resources of the parties and the limited resources of the Court to be spent

⁴⁹ [2006] WASC 281 at 6 -7

extensively debating the application of technical pleadings rules that evolved in and derive from a very different case management environment.

Most pleadings in complex cases, and this is a complex case, can be criticised from the perspective of technical pleading rules that evolved in a very different case management environment. In my view, the advent of contemporary case management techniques and the pre-trial directions, to which I have referred, should result in the Court adopting an approach to pleading disputes to the effect that only where the criticisms of a pleading significantly impact upon the proper preparation of the case and its presentation at trial should those criticisms be seriously entertained.

106. There are a number of areas where I have found that further particulars will assist provide both the parties and the Court with a clearer understanding of the issues in dispute and the matters for determination at Hearing.
107. In relation to other aspects of the interlocutory dispute, I am satisfied that the Worker's pleadings and particulars meet the requirements of the Rules and the jurisprudential guidelines for pleadings.
108. I will make the following Orders with respect to the filing of amended pleadings and particulars and hear the parties further in relation to an appropriate timetable for same and costs.

ORDERS:

109. In accordance with Rule 9.01(3)(j) of the Work Health Court Rules, the Worker to provide particulars of the amount claimed for hospital, medical, surgical or rehabilitation treatment, as claimed in paragraph b. of the Statement of Claim, to date.
110. In accordance with Rule 9.01(3)(l) of the Work Health Court Rules, the Worker to provide particulars of the nature of the disability suffered as a result of the injury.
111. The Worker is granted leave to amend the Statement of Claim in relation to the period in which the alleged injury was incurred.
112. The Worker is granted leave to amend the Statement of Claim in relation to the manner in which the injury occurred.
113. Parties at liberty to apply in relation to costs and any timetable for the execution of Orders 1 - 4.

Dated this 25th day of May 2021

LEANNE GORDON
JUDICIAL REGISTRAR