

CITATION: *Collie v NDE Solutions Pty Ltd* [2026] NTWHC 1

PARTIES: *Jacob Collie*
v
NDE Solutions Pty Ltd (ACN 627 975 071)

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: CIVIL

FILE NO(s): 2025-01870-LC

DELIVERED ON: 3 February 2026

DELIVERED AT: Darwin

HEARING DATE(s): 3 February 2026

DECISION OF: Judicial Registrar Gordon

CATCHWORDS:

PRACTICE AND PROCEDURE – Discovery – Application for further and better discovery – Deficiency in current discovery – Broadness of discovery request – Broadness does not itself defeat the application

Local Court (Civil Jurisdiction) Rules 1998 r 16.01

Taxicare Club Pty Ltd v Arcuri and Associate Pty Ltd and Anor [2014] VSC 231

Wang v HMG Capital Pty Ltd [2022] VSC 748

Wickham Point Development Pty Ltd v Commonwealth of Australia & Ors (No 5) [2020] NTSC 31

REPRESENTATION:

Counsel:

Plaintiff: Chris Osbourne

Defendant: Ryan Sanders

Solicitors:

Plaintiff: Hunt & Hunt Lawyers

Defendant: Snow Legal

Decision category classification:	B
Decision ID number:	[2026] NTLC 1
Number of paragraphs:	66

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

No. 2025-01870-LC

BETWEEN:

Jacob Collie
Worker

AND:

NDE Solutions Pty Ltd
Employer

REASONS FOR DECISION
(Delivered 3 February 2026)

JUDICIAL REGISTRAR GORDON

1. The Plaintiff has brought an application for further and better discovery filed 20 October 2025 and heard 10 December 2025.
2. The Plaintiff relies on the Affidavit of Shaine Marie Dulay Taborada filed 20 October 2025 and the Affidavit of Jacob Collie filed 27 November 2025; the latter comprising of some 1177 pages. At the hearing a further significant bundle of material which had been accidentally omitted from Annexure 5 of that Affidavit was handed up.
3. The Defendant relies on the Affidavit of Brenna Phaedra Reay Mackay filed 9 December 2025.

Factual Background

4. The Plaintiff has pleaded the following claim¹ (original emphasis):
 - a. *“The Plaintiff was employed under an employment contract (**‘the employment contract’**) that had the following relevant terms; including that the Plaintiff would receive a 5-10% profit share on branch income (**‘Profit Share’**).*

Particulars of Employment Contract

- i. *Prior to the commencement of the Plaintiffs employment at NDE he was advised by the Defendant that he would receive an incentives contract*

¹ Statement of Claim filed 16 June 2025

whereby the Plaintiff would receive, in addition to his annual salary, a 5-10% profit share on branch income ('the Incentives Contract').

- ii. On 8 April 2022, the Director of the Defendant, Kimal 'Kim' Singh ('the Director') emailed the Plaintiff the plan for the Darwin Branch ('the Plan').
- iii. The Plan detailed the Darwin branch ownership structure and stated that the Plaintiff is the branch owner and is to receive 5-10% profit share on the branch income.
- iv. On 4 August 2022, the Plaintiff was provided with a formal employment contract document.

b. In breach of the employment contract, the Defendant has failed to pay to the Plaintiff the Profit Share to which the Plaintiff is entitled and was agreed.

[Omitted – Particulars of Breach]

c. In or around May 2024 the Plaintiff resigned from his employment.

d. As a result of the breach of the employment contract by the Defendant, the Plaintiff has suffered economic loss by way of the unpaid 5 -10% profit share based on the Profit for the period 11 May 2022 to 30 June 2024."

5. The Defendant denies that the Plaintiff's employment Contracts contained any terms entitling the Plaintiff to a profit share, that there was never an agreement between the parties to that effect and that broadly, any discussions regarding a Profit Share were, inter alia, pre-contractual negotiations, subject to approval by the board of directors and so uncertain so as to be void or unenforceable².
6. While the existence of the profit share entitlement remains in dispute, the Plaintiff has informally sought further discovery from the Defendant in order to attempt to calculate his potential entitlements under the alleged profit share for both the purposes of the Court proceedings and potentially, a negotiated settlement of the claim.
7. On 10 October 2025 the Plaintiff's solicitors wrote the following to the Defendant's solicitors:

"We require financial documents that would enable us to accurately assess the NT Branch's profit margin for the three relevant financial years. These documents are solely within your client's possession and are plainly relevant to these proceedings. Accordingly, please review discovery with your client, particularly in relation to the following categories:

- i. Profit and Loss Statements;

² Notice of Defence filed 30 July 2025

- ii. *Accountant Reports;*
 - iii. *Bank Statements;*
 - iv. *Taxation returns;*
 - v. *invoices;*
 - vi. *Business records (i.e. year-end records, purchase and expense records, lists of debtors and creditors for each relevant financial year, etc);*
 - vii. *Any corporate overhead agreements between the NT Branch and Head Office.”³*
8. On 29 October 2025 the following documents, which detail every transaction made by the Defendant during the relevant period⁴, were provided⁵:
- a. NDE Solutions Account Transactions 11 May 2022 to 30 June 2022;
 - b. NDE Solutions Account Transactions 1 Jul 2022 to 30 June 2023; and
 - c. NDE Solutions Account Transactions 1 Jul 2023 to 30 June 2024.
9. And further the ‘Northern Territory Profit Loss – Financial Year 2022 to Financial Year 2024 - 21 Oct 2025’. The NT Profit Loss document being “a document... retrospectively created by the Respondent in an effort to separate the financial trading of the Northern Territory branch of its operations during the period relevant to these proceedings.”⁶
10. The documents well exceed 1000 pages of financial material and are annexed to the Affidavit of the Plaintiff at “JC-5”.
11. Despite its volume, the Plaintiff remains critical of this discovery.
12. The Plaintiff deposes⁷:

“I had significant concerns in relation to the further financial documents, especially the NT Profit Loss Spreadsheet. In particular, I had identified the following from the NT Profit Loss Spreadsheet:

- a. *There are several invoices missing in the ‘WFM Data’ and ‘FI Data’ tabs. The invoices listed in the NT Profit Loss Spreadsheet do not appear to follow a sequential numbering pattern and appear to skip numbers without explanation for their exclusion. For example, invoices INV-0410 and INV-0411 are not listed in the FI Data tab.”*
13. The Plaintiff explains that both the Work Flow Max (WFM data) and Field Insight (FI data) invoicing systems were used during his employment with the Defendant. The Plaintiff notes

³ Affidavit of Shaine Marie Dulay Taborada filed 20 October 2025 at Annexure ‘SMT-5’

⁴ Brenna Phaedra Reay Mackay filed 9 December 2025 at paragraph 3

⁵ Affidavit of Jacob Collie filed 27 November 2025 at paragraph 39

⁶ Brenna Phaedra Reay Mackay filed 9 December 2025 at paragraph 3.4.1

⁷ Affidavit of Jacob Collie filed 27 November 2025 at paragraph 40

the FI data was more detailed than WFM data with FI invoices being allocated to various categories including, but limited to, Business Division, Business Area, and Owners.

14. On review of the discovery to date the Plaintiff has identified only one invoice relating to the Santos DLE Project, INV-0751 in an amount of \$55,744.44, with the Plaintiff being allocated as owner, Northern Territory (NT) the Business Area and operations being Darwin.
15. Despite this, the Plaintiff has produced a screen shot⁸ taken during his period of employment with the Defendant, showing some FI invoices for the Santos DLE project issued by the Northern Territory branch for the period 19 July 2023 – 12 February 2024.
16. It was not made clear to me why INV-0751 has been identified by the Defendant as being discoverable, while the other purportedly Santos related invoices in the Plaintiff's FI data screenshots are not. The Plaintiff estimates that almost \$3.5M was anticipated to be invoiced to the Santos DLE Project⁹.
17. The Plaintiff is also concerned that some of the expenses identified in the NT Profit Loss Spreadsheet relate to Queensland Branch costs, including accommodation, flights and payroll for Queensland projects.
18. Further, the Plaintiff asserts:

“Regarding the NDE Solutions Account Transaction Spreadsheets, they do not assist in calculating the NT Branch's profit. The data provided in these spreadsheets do not allow me, or my solicitor to trace back to the invoices relevant to the NT Branch. There is no information in the spreadsheets that enables us to identify which transactions pertain specifically to the NT Branch. As a result, this format does not provide an adequate means of tracking the profit and loss specific to the NT Branch.”¹⁰

19. A further request for discovery made by the Plaintiff on 15 November 2025 resulted in the production of audited financial statements. The Plaintiff notes that:

“The audited financial statements state on their final page that the compilation reports have been prepared in accordance with APES 315 Compilation of Financial Information, and that the accountants engaged in compiling the information are not required to verify the reliability, accuracy, or completeness of the information provided to them by the Defendant's management team.”¹¹

20. The plaintiff also notes that the reports do not include the source data or documents for analysis by the Plaintiff to verify the audited financial statements.

⁸ Affidavit of Jacob Collie filed 27 November 2025 at annexure “JC-6”

⁹ Affidavit of Jacob Collie filed 27 November 2025 at paragraph 40(a)(viii)

¹⁰ Affidavit of Jacob Collie filed 27 November 2025 at paragraph 41

¹¹ Affidavit of Jacob Collie filed 27 November 2025 at paragraph 44(a)

21. On 5 December the Defendant wrote to the Plaintiff's legal representatives seeking further particularisation in order to better understand and respond further to the request for discovery. The Defendant noted:

"One such key uncertainty relates to the definition of the "NT Branch's Profits" (or similar terms). For example, your client sometimes refers to "branch income", or "profit share", and sometimes refers to the NT Branch and at other times the Darwin Branch.

Beyond these lexical differences, there is a broader question of how your client says the profits attributable to the NT Branch (however that is ultimately defined) are calculated. For example is it with reference (a) to clients with registered offices in Darwin, (b) work that is physically carried out in the NT or by your client personally, (c) contracts which your client claims to be attributable to staff working in our client's Darwin premises, or (d) something else?" ¹²

22. And herein lies the fundamental barrier to the resolution of the discovery dispute. The Plaintiff says 'It's your business, we don't know how your data is stored or best accessed, the Defendant needs to distil the NT branch records so the Plaintiff can assess his profit share'. While the Defendant says, 'until you can define and articulate the documentation you require and how, the 'profit share' is to be calculated, we can do no more than guess what you need and risk over-delivering in discovery'.
23. The Plaintiff submitted that the significant amount of material provided, in particular the line by line 'dump' of all transactions (nation-wide) provided at annexure "JC-5"¹³ masks the Plaintiffs ability to determine what transactions may relate to or be relevant to the calculation of the profit share. The Plaintiff questions why the Defendant cannot or will not isolate the Northern Territory projects, potentially by reference to invoice numbers, project descriptions or clients?
24. Counsel for the Plaintiff acknowledged that the criticisms of the Plaintiff's inability to precisely articulate what documents he specifically requires, is not necessarily unfair, but submits that the owner of the material, the driver of the operations, and business processes that the Plaintiff worked should have no such difficulty in identifying where the Plaintiff worked, on what projects and when. And thereafter following discovery of all material relevant to same, the parties can make their respective attempts to calculate the, albeit disputed, profit share.
25. The Defendant submits that in circumstances where the existence of the profit share entitlement is disputed, in part because it is so uncertain as to its meaning and effect, that they have done their best to discover a broad range of documents relating to the concepts, 'NT Branch profit margin' or 'NT branch revenue', which they say are not concisely defined and therefore not fully understood.
26. Further complicating discovery and the isolation of the NT 'profits' &/or 'revenue' is the fact that the NT Branch is not separately incorporated. It's income and many overheads are not isolated but form part of the broader national business operations of NDE Solutions Pty Ltd

¹² Brenna Phaedra Reay Mackay filed 9 December 2025 at annexure BM-3

¹³ Affidavit of Jacob Collie filed 27 November 2025

(ACN 627 975 071). The Defendant submits, quite correctly, that while some 'may be readily apportionable, others not so much'¹⁴.

27. The Santos Project certainly appears to loom large in terms of what may be claimable by the Plaintiff, should he be successful in establishing an entitlement to a 'profit share' payable by the Defendant. The Defendant submits that even if a contractual profit share per se is established the entitlement question remains vexed, and the Santos business relationship shows why.

28. The Plaintiff's evidence is as follows¹⁵:

"22. Due to my prior employment in the Northern Territory, I developed strong relationships with several employees at Santos.

23. In 2023, the Defendant successfully secured a large-scale Santos DLE project based in the Darwin LNG Facility...

24. I believe that my role in building local relationships on-site was crucial to the award of the Santos DLE project....

27. I was responsible for the planning, resourcing, and execution of the project as the lead project manager...

31. From the planning phase through to the completion of the project, I was required to work extensive hours to ensure the Santos DLE Project's success. During the period I was on-site, I was only able to work at a partial capacity for other projects for the Northern Territory Branch.

32. Throughout and after the execution of the project. I received high praise from both the management staff of the Defendant and the client. I believe that my work on this project contributed to the Defendant being awarded the Santos Contractor of the Year for 2024."

29. Whilst not leading evidence (at this interlocutory stage) to dispute the claims of the Plaintiff in this regard, Counsel for the Defendant noted that Santos was in fact an existing client of the Defendant's Adelaide Branch. Development of the Darwin Branch, and the Plaintiff's established working relationship with Santos were discussed on 7 April 2022, prior to the Plaintiff commencing employment with the Defendant. The ability, therefore, for the Plaintiff to make a full claim for a profit share in relation to Santos, is in the defendant's view, far from straight forward.

Analysis

30. The requirement for discovery is established by Rule 16.01 of the *Local Court (Civil Jurisdiction) Rules 1998* which requires the discovery of documents "that relate to a matter in question

¹⁴ Transcript of proceedings at page 11

¹⁵ Affidavit of Jacob Collie filed 27 November 2025 paragraphs 22-24, 27, 31-32

between the parties in the proceeding". In the event of a dispute regarding compliance with Rule 16.01, the Court has a broad discretion to make orders for discovery.

31. The Defendant relies on the Victorian Supreme Court matter of *Wang v HMG Capital Pty Ltd*¹⁶ which establishes that the threshold for documents to be discoverable is "*discerned by reference to the pleadings*". Further noting, the discretion to direct discovery should not be exercised lightly.
32. This is reflected in the findings of Associate Justice Luppino of the Northern Territory Supreme Court in *Wickham Point Development Pty Ltd v Commonwealth of Australia & Ors (No 5)* ("*Wickham*")¹⁷:

"...such an order may be made where it is established on the pleadings, or by evidence, that there are grounds for believing that documents relating to a question in the proceedings may have been in the possession of a party. On its wording, it is a discretionary order and hence the usual principles relative to the exercise of a discretion also apply."

Apparent Deficiency in Current Discovery

33. I also find *Wickham* instructive when considering the Plaintiff's criticism of the deficiencies in the discovery to date¹⁸. In *Wickham*, Associate Justice Luppino noted that

*... the current case, broadly, the pleaded claim is on the basis of the Defendant reneging on various representations it is alleged to have made and which the Plaintiff relied on when agreeing to construct the facility. In my view that clearly satisfies the pleading nexus.*¹⁹

34. In my view, *Wickham* is analogous to the current matter, in that the Plaintiff alleges that he relied upon the planned profit share in deciding to take up employment with the Defendant.
35. In deciding a range of categories for which particular discovery was sought in *Wickam*, Associate Justice Luppino noted, as is the case here, that significant discovery had already been undertaken. In that matter there were circumstances where a Document Management Protocol was in place and multi-levelled discovery review system was being utilised.
36. Luppino AsJ found that:

*...unless some deficiency in the searches is demonstrated, then requiring those searches to be repeated would be futile as the result should be the same... Noting also that there is a discretionary aspect in an order for particular discovery, the adequacy of the searches or otherwise is a factor to take into account when exercising the discretion*²⁰

¹⁶ [2022] VSC 748 at 24

¹⁷ [2020] NTSC 31 at 23

¹⁸ See paragraphs 14 - 19

¹⁹ *Wickham Point Development Pty Ltd v Commonwealth of Australia & Ors (No 5)* [2020] NTSC 31 at 31

²⁰ *Ibid* at paragraph 38

37. Despite the Defendant's evidence that its searches were extensive, and that "*appropriate searches were undertaken, and all documents revealed by those searches...discovered*"²¹, his Honour found in relation to one category of discovery that:

*The Defendant searches have only revealed a relatively minimal number of documents, and there is evidence that some documents have been missed in any case ... the evidence based on the inference the Plaintiff asked me to draw is stronger than the evidence of the Defendant's searches.*²²

38. I have formed a similar view here. Although I accept that the Defendant has attempted to answer the request for discovery and appease the concerns of the Plaintiff, the attempts to do so have given rise to further uncertainties, and when I consider the evidence of the Plaintiff in paragraphs 14 - 19 above, I cannot be satisfied the requirement for discovery has been satisfactorily discharged.
39. In my view, the Plaintiff's inference or submission—that the material provided is insufficient and that there are clear indicators that documents, at the very least relating to Santos NT projects, are missing— is in my view to be preferred over the Defendants submission that discovery is complete.

Breadth of Request

40. The Defendant further relies on *Taxicare Club Pty Ltd v Arcuri and Associates Pty Ltd and Anor*²³ (*'Taxicare'*) noting parallels between the proceedings. Here, Associate Justice Lansdowne of the Supreme Court of Victoria, found that the discovery sought was too broad and imprecise:

*Further, nowhere in the descriptions of what is sought by the summons is there a reference to identification or limitation by vehicle. Rather what is sought is variously described as "all documents" "all correspondence, documents and material", "all letters, correspondence, documents and communication", "correspondence, documents and emails", "documents and records" and so on...*²⁴

41. Here, the discovery requested is as follows:

"...further and better discovery including, but not limited to, all documents relating to the financial position of NDE Solutions Pty Ltd's, and any related entities, Northern Territory (NT) Branch, the Plaintiff's employment and the bonus agreement for the period from 11 May 2022 to 30 September 2024, including but not limited to:

- a) *Profit and Loss statements;*
- b) *Accountant Reports;*
- c) *Company bank statements;*

²¹ Ibid at paragraph 40

²² Ibid at paragraph 45

²³ [2014] VSC 231

²⁴ Ibid at paragraph 59 - 60

- d) *Taxation Returns;*
- e) *Any board or other related meeting minutes;*
- f) *Invoices produced by the NT Branch, including for the Santos DLE project*
- g) *Business Records (i.e. year-end records, employee payroll summaries, purchase and expense records, asset registers, lists of debtors and creditors for each relevant financial year) and*
- h) *Any corporate overhead agreements between the NT Branch and Head Office.*

42. This request is not, in my view, as offensively broad as the oft used “*all correspondence, documents and material*” model, and I am satisfied that the limitation to “*Northern Territory (NT) Branch*” distinguishes the request from the broadness criticised by Associate Justice Lansdowne in *Taxicare*.

43. I indicated to counsel for the Plaintiff at the hearing that my initial view was that the “catch-all” request for documents relating to “*NDE Solutions Pty Ltd, and any related entities*” (my emphasis) went too far, particularly given the so-called undefined ‘related entities’. This view was not challenged.

44. The Plaintiff acknowledged that a broad approach was employed due to the uncertainty and the limitations of their knowledge as to how the business records might best be described or identified.

45. Counsel for the Plaintiff submitted:

“... my client has no documents, apart from a few scattered ones that he has left over from his employment. It's in the employer's - defendant's hands as to what the documents are, how to sort them, what's relevant, what relates to Northern Territory, what relates to our client...”

We say that... it's very clear where our client was employed, what he was doing, what projects he was working on - and so we say there's sufficient material for the defendant to be able to search their documents and find the documents relevant to the project and the office in the Northern Territory...

...we just want what relates to our client's projects. That they must know what projects our client worked on, they're the employer, and they know where he was based, because he was their employee, and so there must be a way in their system... it would be surprising if there wasn't a way for the defendant to narrow their search to what relates to our plaintiff's projects and employment.”²⁵

46. I am minded to share the Plaintiff’s view in this regard. Although I accept this is undoubtedly complicated by the fact that the NT Branch is not separately incorporated, it is unsatisfactory for the Defendant to be unable to exclude materials relating to interstate projects or for the

²⁵ Transcript of proceedings pages 6-8

Plaintiff to be tasked with extracting NT Branch activities from the nationwide financial discovery produced at annexure JC-5 of the Plaintiff's Affidavit.

47. I am satisfied that any imprecision which is present in the Plaintiff's current request can be reworked and remedied in an order for discovery, and that such broadness does not in and of itself defeat the application.

Accounting Methodology

48. The Defendant also argues that the Plaintiff must settle how he is to calculate his alleged profit share. Noting, quite correctly, that differing accounting methodologies will alter the nature and depth of discovery in relation to particular categories of material. The Defendant submitted,

*"If NT profits are calculated by reference to the hours recorded by Northern Territory employees, then invoices become all but irrelevant. It's time costing records that are relevant. Conversely, if invoice fees, then time-costing reports become of potentially no relevance. If we're accounting on an accruals basis, then bank statements become irrelevant. If we're counting on a cash flow basis, then invoices become certainly of much less relevance, potentially irrelevant."*²⁶

49. But the Plaintiff says, he simply cannot move to the next step of narrowing his accounting methodology based on the current discovery. He submits:

"So, let's say we're right, let's say he was entitled to 10 percent. What does that profit look like? Was there a profit, what does it look like, how is it calculated? And in order to do that, we say that we need the documents around the work done by the branch that my client was basically managing ...

*So, what we're saying is that we need to have a look at... what our clients did heading up those projects, and what the profit was in relation to those projects... How do we measure - if we are successful, how do we measure, quantify, what that profit share looked like, what it's based on. So, the defendant has provided us with significant amounts of material, which we say [masks] the fact that we are still unable to define, locate, point to what actually came from our client's work in the Darwin branch, and with the Darwin branch's profits."*²⁷

50. Unfortunately, something has to give, the matter cannot remain at this impasse.
51. On balance, I am of the view that the Plaintiff's claim should not be penalised or hamstrung for not knowing what he cannot know. I am satisfied that he needs further documentation to formulate a view as to how he will calculate his purported profit share.
52. I do not agree with the Defendants proposition that unless he can articulate his accounting methodology at this juncture that this stymies the application for further discovery. I suspect, once the Plaintiff is furnished with further discovery in relation to the Darwin Branch he will use it to his greatest advantage. He will choose the most favourable or most compelling way

²⁶ Transcript of proceedings at page 12

²⁷ Ibid at page 4

to calculate his claimed profit share —that is a matter for the Plaintiff, and he will ultimately have the burden of utilising the material in a way that satisfies the Court.

53. And he will need to do so against a Defendant who will argue that he's doing it wrong. That is the nature of litigation.

Disposition

54. At a broad level the proceedings are thus:
- a. The Plaintiff says he was employed by the defendant and was entitled to a 5-10% profit share of the NT branch income²⁸;
 - b. The Plaintiff says he has suffered economic loss due to the unpaid profit share²⁹;
 - c. The Defendant says there was never an agreement for a profit share and any discussions for plans for a profit share are voidable for uncertainty³⁰;
 - d. The Defendant denies the Plaintiff has suffered economic loss and is not entitled to any relief³¹.
55. So, there is a dispute about the existence of any profit share entitlement and any economic loss arising from the non-payment of a share of such profits. Discovery must therefore be directed to the questions: is there a profit share entitlement and, if so, what is the value of any such entitlement?
56. The dispute giving rise to this application pertains to the second element of the dispute, it is not necessary at this point in the proceedings to consider whether there was a contractual and enforceable entitlement for a profit share, that will be borne out in any final hearing. The consideration here is what must be discovered in relation to the value of any profit share entitlement.
57. I am not satisfied that the Defendant has discharged their obligations for discovery in the material discovered to date. I am concerned there is, at the very least, a prima facie indication that material is missing in relation to the Santos Project. I acknowledge that there is a broadness or imprecision to the materials being sought by the Plaintiff, but I am not satisfied he is in a position to rectify that, in the absence of further discovery.
58. I have a sufficient degree of confidence, despite the Defendant's reservations, that the Defendant should be able to and should better attempt to locate the NT Branch financials—in full and without any unrelated interstate materials.
59. I do not accept that the Plaintiff can and should be required, at this time, to precisely narrow his accounting methodology in the absence of further discovery. I accept the submission of the

²⁸ Paragraph 4 Statement of Claim filed 16 June 2025

²⁹ Ibid at paragraph 7

³⁰ Notice of Defence filed 30 July 2025 at paragraph 4 & 4.5

³¹ Notice of Defence filed 30 July 2025 at paragraph 7-8

Defendant that ultimately the nominated mode utilised by the Plaintiff to calculate what he says is his profit share may narrow some discovery and render some previously discovered materials irrelevant.

60. But currently, a matter in question between the parties in the proceedings is, what is the value of the NT Branch profits during the relevant period. Therefore, any documentation that can be used to calculate the profits of the NT Branch should be discovered.
61. Should this Court ultimately find that the Plaintiff is entitled to a profit share, I suspect the accounting exercise required, and the appraisal of what I anticipate will be two very different modes of calculation, will be complex.
62. Any argument about what money earned that should rightfully be attributed as “NT Branch profits” or excluded from same—for instance, in relation to existing clients or projects—is an argument for the final Hearing. If the Plaintiff satisfies the Court he has a profit share entitlement, *then* after hearing from both parties the Court will analyse the correct manner in which to calculate the profits of the NT Branch. Until then, in my view, a broader plain English view of profit should be adopted.
63. The Cambridge Dictionary defines profit as “money that is earned in trade or business after paying the costs of producing and selling goods and services”³².
64. Although I accept this may ultimately extend the threshold of discovery, nonetheless in my view this is the appropriate mode to rectify the current stalemate of “tell me what precisely you want vs I can’t be precise until I see what you’ve got” currently stalling the proceedings. Hopefully such discovery will pave the way for the crystallisation of the value of the Plaintiff’s alleged claim and, potentially, a negotiated resolution.
65. Accordingly, I do intend to exercise my discretion and make an order for discovery.
66. However, I do not intend to adopt the categories proposed by the Plaintiff in their application which were conceded as being too broad at the hearing of the matter.

ORDERS:

1. Within 14 days, the Defendant is to file and serve an updated List of Documents providing further and better discovery including all documents which identify or can be used to interrogate or calculate the profits of the NDE Solutions Pty Ltd.’s Northern Territory Branch for the period from 11 May 2022 to 30 September 2024.
2. Any party wishing to be heard on costs is to notify Registry by email within 14 days; in the absence of such notice costs of the application are costs in the cause.
3. Matter is adjourned for pre-hearing conference on 4 March 2026 at 10.00 am

³² Cambridge Dictionary (Online at 3 March 2025) ‘profit’ (def 1)