

CITATION: *Cunningham v MacFarlane Enterprises Pty Ltd*
[2026] NTLC 14

PARTIES: *Joshua Cunningham*

v
MacFarlane Enterprises Pty Ltd
ACN 645 236 415

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2025-03431-LC

DELIVERED ON: 23 September 2026

DELIVERED AT: Darwin

HEARING DATE(s): 8 September 2026

DECISION OF: Judge O'Loughlin

CATCHWORDS:

Summary Judgment – Defamation – Failure to issue a Concerns Notice

Defamation Act 2006 s 11B

Cavar v Campbelltown Catholic Club Ltd [2024] NSWCA 126

REPRESENTATION:

Plaintiff: Self

Defendant: Mr P Ward, Director

Decision category classification: B

Decision ID number: [2026] NTLC 14

Number of paragraphs: 7

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

No. 2025-03431-LC

BETWEEN:

Joshua Cunningham
Plaintiff

AND:

MacFarlane Enterprises Pty Ltd
ACN 645 236 415
Defendant

REASONS FOR DECISION

(Delivered 23 September 2026)

JUDGE O'LOUGHLIN

Introduction

1. The Plaintiff is claiming damages arising from alleged defects in an all-terrain vehicle purchased from the Defendant.
2. The Defendant counterclaimed seeking damages for defamation.

11B Concerns Notice

3. The *Defamation Act 2006* requires a concerns notice to be given to a proposed defendant before a party commences proceedings:

11B Defamation proceedings cannot be commenced without concerns notice

(1) *An aggrieved person cannot commence defamation proceedings unless:*

- (a) *the person has given the proposed defendant a concerns notice in respect of the matter concerned; and*
- (b) *the imputations to be relied on by the person in the proposed proceedings were particularised in the concerns notice; and*
- (c) *the applicable period for an offer to make amends has elapsed.*

4. The Defendant admits that it failed to provide a concerns notice to the Plaintiff.
5. The New South Wales Court of Appeal in *Cavar v Campbelltown Catholic Club Ltd* [2024] NSWCA 126 held that the primary judge was correct to summarily dismiss the plaintiff's

defamation claim as it had been commenced in contravention of an identical NSW provision.

6. I will accordingly summarily dismiss the defamation counterclaim.

Orders

1. The Defendants claim of defamation in paragraphs 3(a) to (e) and 4(b) of the Counterclaim is dismissed.
 2. Costs reserved.
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