CITATION:	*McArthur River Mining Pty Ltd v Calibre Engineering Pty Ltd* [2026] NTWHC 4
PARTIES:	McArthur River Mining Pty Ltd v Calibre Engineering Pty Ltd
TITLE OF COURT:	WORK HEALTH COURT
JURISDICTION:	WORK HEALTH
FILE NO(s):	2025-03080-LC
DELIVERED ON:	15 October 2026
DELIVERED AT:	Darwin
HEARING DATE(s):	17 September 2026
DECISION OF:	Judge O'Loughlin

CATCHWORDS:

Pleadings – Irrelevant Pleadings – Pleading Conclusions - Strike out

Local Court (Civil Jurisdiction) Rules 1998 r 28.02

Joy v UGL Operations and Maintenance Pty Limited [2021] FCA 1282
Motor Accidents (Compensation) Commission v Toyota Motor Corporation Australia Limited & Anor [2023] NTSC 65
Trade Practices Commission v Australian Iron & Steel Pty Ltd (1990) 92 ALR 395
Unity Insurance v Rocco Pezzano (1998) 192 CLR 603

REPRESENTATION:

Counsel:

Applicant:	W Roper SC
Respondent:	D McConnel SC

Solicitors:

Applicant:	A Lai, Sparke Helmore
Respondent:	Z Cleal, Clayton Utz

Decision category classification:	B
Decision ID number:	[2026] NTWHC 4
Number of paragraphs:	19

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

No. 2025-03080-LC

BETWEEN:

MCARTHUR RIVER MINING PTY LTD
Applicant

AND:

CALIBRE ENGINEERING PTY LTD
Respondent

REASONS FOR DECISION
(Delivered 15 October 2026)

JUDGE O'LOUGHLIN

Introduction

1. The Applicant has filed a statement of claim seeking an indemnity from the Respondent in respect of compensation it paid to a worker of the Respondent.

2. The Respondent is critical of the Applicant's pleadings and has applied for parts or all of the statement of claim to be struck out.

Background

3. In October 2022 a worker of the Respondent was injured and that he subsequently made a claim for compensation under the *Return to Work Act 1986*.

4. The Respondent did not have workers compensation insurance and this caused the worker to make a claim on the Applicant.

5. The Applicant accepted the claim, paid benefits and eventually settled the ongoing liability for a lump sum. The Applicant then initiated this proceeding against the Respondent pursuant to section 127(3) of the Act:

> *(3) A principal contractor who is liable to pay compensation under this section is entitled to be indemnified by any person who is liable to pay compensation to the* worker *other than by virtue of this section*

6. The essential elements of the Applicant's s. 127 case against the Respondent are the following:

    a. The Respondent was the employer of an injured worker;

    b. The Applicant was a principal contractor, and the Respondent was a subcontractor, for the purposes of section 127(1) of the Act;

    c. The worker made a claim for compensation on the Applicant as principal contractor (pursuant to section 127 of the Act);

    d. The Applicant reasonably accepted the claim;

    e. The Applicant reasonably paid ongoing compensation to the worker;

    f. The Applicant reasonably settled the claim with the worker for a lump sum;

    g. The Respondent is required to indemnify the Applicant for the reasonable compensation paid and other associated costs pursuant to section 127(3) of the Act.

7. The Applicant would have to prove the settlement (its loss) was <u>objectively</u> reasonable: see, for example, *Unity Insurance v Rocco Pezzano* (1998) 192 CLR 603 at [6] where Brennan CJ stated:

    "The plaintiff must show that the sum accepted in settlement was reasonable (29)The test of reasonableness is, as Hayne J says, an objective oneEvidence of the advice which the insured received to induce it to accept the settlement is not proof in itself of the reasonableness of the settlement advisedThe factors which lead to the giving of the advice are factors relevant to the reasonableness of the settlement …"

8. The Applicant also pleaded a claim in estoppel, election and waiver, but there is no criticism of this pleading.

9. The Respondent complains that the claim pleads irrelevant matters, pleads evidence and pleads conclusions.

Law

10. *Local Court (Civil Jurisdiction) Rule* 28.02 deals with striking out a pleading:

    Where a pleading:

    (a) does not disclose a cause of action or defence;

    (b) is scandalous, frivolous or vexatious;

    (c) may prejudice, embarrass or delay the fair hearing of the proceedings; or

    (d) is otherwise an abuse of the process of the Court,

    the Court may order that the whole or part of the pleading be struck out or amended

11. Both parties referred to the usual authorities on pleadings including decisions of the Supreme Court dealing with its similar rule, *Supreme Court Rule* 23.02. One such case is *MACC v Toyota* [2023] NTSC 65 where Luppino AsJ handily summarised at [14] many of the reasons why a pleading may be struck out:

"Examples of the types of pleadings which are embarrassing, insofar as they are relevant to the current case, are:-

- *A pleading which does not allege all the material facts necessary to establish the cause of action which a party relies on;*
- *A pleading which pleads, instead of the material facts, the evidence by which those facts will be proved;*
- *A pleading which pleads conclusions;*
- *A pleading which pleads inconsistent allegations unless they are pleaded in the alternative;*
- *A pleading which is too vague and general;*
- *A pleading which is unintelligible or ambiguous;*
- *A pleading which is confusing;*
- *A pleading which lacks a coherent narrative*

12. The only relevant example missing from the above list is that irrelevant matters should not be pleaded: see *Joy v UGL Operations and Maintenance Pty Limited* [2021] FCA 1282 at [15] and *Trade Practices Commission v Australian Iron & Steel Pty Ltd* (1990) 92 ALR 395 at 413.

Irrelevant Pleadings

13. The statement of claim is annexed and it is marked with the objections and a note of my rulings.

14. I agree with many of the criticisms, as many paragraphs are irrelevant in that they are not related to the elements of the cause of action referred to in paragraph 6 above, or plead evidence, and should be struck out.

    a. That the Respondent did not have workers compensation insurance is irrelevant to the claim and subparagraph 1 (b) (v) is struck out. A similar pleading is made in the estoppel, election and waiver claim but there is no strike out application in respect of this pleading and it is arguably relevant in that cause of action.

    b. Paragraph 1 (d) (ii) pleads that the worker worked in performance of the subcontract between the Applicant and Respondent. This is not relevant to the Applicant's claim and ought to be struck out.

    c. Paragraph 3 pleads the injury to the worker's back and by way of "particulars" refers to a number of medical reports. This is a pleading of evidence rather than material facts and these particulars are to be struck out.

d. Paragraph 4 pleads that the worker properly reported the injury (relevant) but goes on to particularise the evidence that could prove that pleading. These "evidence" parts of paragraph 4 will be struck out.

e. The paragraph 4 particulars are repeated in paragraphs 6 and 7 and the same "evidence" parts ought to be struck out.

f. Paragraph 13 refers to an irrelevant mediation and contains evidence as particulars and these parts are to be struck out.

15. Paragraph 19A is struck out as it pleads a bare conclusion:

> *19A The amount paid to the Worker under the Settlement constituted a reasonable compromise of the Worker's entitlements under the Act*

16. The reasonableness of the settlement is a key issue in the claim, and the Applicant has pleaded it as a bare conclusion with no material facts or particulars leaving the Respondent in the dark as to the case it must meet. Further pleadings and particulars showing the basis on which the settlement was reasonable are required, such as the consistency of the worker's injury presentation, medical opinion on that presentation, prognosis, normal weekly earnings, and costs of treatment.

17. Mr McConnel SC for the Respondent suggested that pleading and particularising any legal advice relied upon is also required. I do not need to rule on this submission in this application, but I suspect the Brennan CJ reference in Unity Insurance above would allow the Applicant to plead and run a case that does not require waiving privilege on legal advice.

18. The following paragraphs were criticised by the Respondent, but they survive the application for strike out:

a. Paragraph 1 (e) pleads that four individuals were employees or agents of the Respondent, and these individuals are mentioned elsewhere in the statement of claim, but these parts effectively plead evidence rather than material facts. However, the individuals are also pleaded as agents in the estoppel claim making paragraph 1 (e) relevant and appropriate.

b. Paragraph 8 pleads that the Respondent was not insured, and this is not relevant to the section 127 claim; however, it is sufficiently relevant to the estoppel, election and waiver case.

c. Paragraphs 10B to 10F are also relevant to the estoppel claim and are not struck out.

d. Paragraph 13 (but not the mediation reference and particulars) survives the strike out as the acceptance of liability is relevant.

19. As only parts of the statement of claim are defective, it is not necessary to strike out the statement of claim completely. I am inclined not to award costs of the application, but any costs application can be on the papers with submissions by the Respondent in 21 days and the Applicant in 28 days.

Orders

1. The following parts of the statement of claim are struck out:

    a. Subparagraph 1 (b) (v).

    b. Subparagraph 1 (d) (ii).

    c. The particulars in paragraph 3.

    d. The following parts of paragraph 4:

    " - Calibre Engineering- Witness Statement Form, Interview of Timms, dated 18 January 2023"

    "- Calibre Engineering- Witness Statement Form, Interview of Uhlot, dated 18 January 2023 and Worker's Compensation Claim form lodged with the Respondent on or about 10 January 2023

    "Correspondence from WorkCover Queensland, 19 April 2023

    e. The particulars in paragraphs 6 and 7.

    f. The following part of paragraph 13 together with all of the particulars:

    "the Applicant's disputation of the Claim was mediated in accordance with Part A Division 1 of the Act and"

    g. All of paragraph 19A.

2. Any application for costs by the Respondent, with written submissions, is to be filed and served within 21 days.

3. Any submissions on costs from the Applicant are to be filed and served within 28 days.