FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

(DIVISION 2)

Hugo v Affinity Education Group Pty Ltd [2025] FedCFamC2G 1536

File number(s):	DNG 1 of 2025
Judgment of:	JUDGE LIVERIS
Date of judgment:	18 September 2025
Catchwords:	**INDUSTRIAL LAW** – PRACTICE AND PROCEDURE – application to strike out evidence of communications and documents made or prepare in connection with an attempt to negotiate a settlement of the dispute – whether any exceptions apply – whether the evidence and documents a admissible – application allowed – orders made striking the material out orders made prohibiting inspection of the evidence and documents by a non-party **INDUSTRIAL LAW** – PRACTICE AND PROCEDURE – application for security for costs – application of s 570 of the *Fair Work Act 2009* (Cth) whether the applicant's unreasonable act or omission caused the other party to incur the costs – where the applicant is self-represented – application dismissed
Legislation:	*Evidence Act 1995* (Cth) s 131 *Federal Circuit and Family Court of Australia Act 2021* (Cth) ss 134, 169 190, 191, 230, 231 *Fair Work Act 2009* (Cth) s 340, 368, 570 *Defamation Act 2006* (NT)
Cases cited:	*Bahonko v Sterjov* [2008] FCAFC 30 *Finch v The Heat Group* [2024] FedCFamC2G 161 *Hutchinson v Comcare (No 2)* [2017] FCA 370

Khoury v Macquarie Air Pty Ltd [2023] FedCFamC2G 992
Meshram v Bing Lee Electrics Pty Ltd (Costs) [2024] FedCFamC2F 543
Tamu v World Vision Australia (No 2) [2021] FCA 565
Roads Corp v Love [2010] VSC 581

Division:	Division 2 General Federal Law
Date of hearing:	8 August 2025
Place:	Darwin
Counsel for the Applicant:	The Applicant appearing in person
Counsel for the Respondent:	Ms Mendelson
Solicitor for the Respondent:	Herbert Smith Freehills Kramer

ORDERS

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN:	**JOHANNA HUGO**
	Applicant
AND:	**AFFINITY EDUCATION GROUP PTY LTD**
	Respondent
ORDER MADE BY:	**JUDGE LIVERIS**
DATE OF ORDER:	**18 SEPTEMBER 2025**

THE COURT ORDERS THAT:

1. Paragraphs 1(d) and 1(e) of Attachment X and Attachments Y and Z of the Applicant's Reply filed on 12 March 2025 be struck out.
2. Paragraphs 1(d) and 1(e) of Attachment X and Attachments Y and Z of the Applicant's Reply filed on 12 March 2025 not be available for inspection by any non-party.
3. The application in a proceeding filed by the Respondent on 9 June 2025 be dismissed.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 24.04(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (Cth)), or to record a variation to the order pursuant to r 24.04 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2025* (Cth).

REASONS FOR JUDGMENT

JUDGE LIVERIS

1. Johanna Hugo started employment with Affinity Education Group Pty Ltd on 11 June 2024. She was employed as a Lead Educator, based at Milestones Early Learning Palmerston.
2. On 20 November 2024, Affinity Education Group terminated Ms Hugo's employment.
3. On 21 January 2025, Ms Hugo commenced these proceedings. She has been self-represented throughout. Ms Hugo alleged that she was dismissed by Affinity Education Group in contravention of the general protections in Part 3-1 of the *Fair Work Act 2009* (Cth). She applied for compensation in the sum of $533,243.11.
4. In her application, Ms Hugo stated that the grounds of her claim in the following terms:

> I was dismissed in contravention of the general protections provisions in Part 3-1 of the Fair Work Act 2009. Division 3 - Workplace rights. Section 340 Protection. Affinity took adverse actions, they did not follow legal procedures and did not comply with my workplace rights as per my employment agreement. Workplace rights such as:
>
> Point no. 21 (comply with company policies and procedures such as safety reporting), Point no. 22 (report safety concerns) and Point no. 26 (performance procedures.) My performance was not assessed by my Centre Manager or under the required categories, but based on unimportant / irrelevant allegations.
>
> I was dismissed because of investigation discussions, not performance discussions.
>
> I have the right to be free from discrimination in the workplace. I was bullied by P2 staff, but Affinity did not protect me.
>
> I was dismissed because of false allegations that we never discuss with me or proven.
>
> I was dismissed, because of fictional file notes that were created by these bullies after I lodged an application with the Fair Work Commission.

5. Ms Hugo has since sought to expand her claim to include a cause of action under the *Defamation Act 2006* (NT) under the court's associated jurisdiction in s 134 of the *Federal Circuit and Family Court of Australia Act 2021*

(Cth).[1] She now claims damages for compensation, economic loss, non-economic loss and aggravated damages, totalling more than $2.5 million. She also seeks Affinity Education Group issue her a public apology.

6. The parties do not dispute that Ms Hugo's employment was terminated on 20 November 2024, but they are in dispute about the circumstances of the termination.

7. In the response filed on 7 March 2025, Affinity Education Group disputed that it breached s 340 of the *Fair Work Act*. It said that Ms Hugo did not exercise a workplace right and that it did not take action to dismiss her because she exercised a workplace right. Affinity Education Group asserted that Ms Hugo was dismissed because of serious and ongoing performance issues.

8. Ms Hugo filed and served a reply on 10 March 2025. The reply is styled partly as a pleading and partly as an affidavit. It comprises of four documents, respectively marked Attachments W, X, Y and Z. Attachment X takes the form of a pleading in that it provides Ms Hugo's reply to the matters raised in Affinity Education Group's response.

9. On 14 March 2025, Affinity Education Group filed an application in a proceeding seeking that paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z of the reply be struck out on the basis that those parts of the reply impermissibly attempt to adduce evidence of communications and documents made or prepared in connection with an attempt to negotiate a settlement of the dispute, contrary to s 131 of the *Evidence Act 1995* (Cth).

10. On 9 June 2025, Affinity Education Group filed another application in a proceeding seeking an order that Ms Hugo provide security for its costs of and incidental to these proceedings in the amount of $32,500. That application was made after correspondence passed between the parties on 15 April 2025 about those issues.

11. On 13 June 2025, I made orders including that Ms Hugo file and serve a statement of claim by 14 July 2025. A statement of claim was filed on 10 July 2025. On 1 August 2025, Affinity Education Group filed a further application in a proceeding seeking orders striking out large portions of the statement of claim. A further amended statement of claim was filed on 4 August 2025. The application filed on 1 August 2025 is yet to be heard.

12. On 8 August 2025, the first strike out application and the security for costs applications were heard. Ms Hugo opposes both applications.

13. Against that background, the central issues that require determination are as follows:

> (a) Does s 131(1) of the *Evidence Act* apply to paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z of the reply, such that they should be struck out?
> (b) Should an order be made requiring Ms Hugo to provide security for Affinity Education Group's costs, and if so, in what sum and in what form?

DOES S 131(1) OF THE EVIDENCE ACT APPLY TO PARAGRAPHS 1(D) AND 1(E) OF ATTACHMENT X, ATTACHMENT Y AND ATTACHMENT Z OF THE REPLY, SUCH THAT THEY SHOULD BE STRUCK OUT?

14. Paragraphs 1(d) and (e) of Attachment X of the reply state:

> The Respondent breached s 340 of the Fair Work Act 2009 (Cth) (FW Act) or otherwise when it terminated the Applicant's employment on 20 November 2024 within her six month probation period because:
>
> ...
>
> **(d) Offering the Applicant compensation.**
>
> In the Respondent's response they oppose the Applicant seeking compensation. However, on 07 February 2025 Affinity offered me compensation in the amount of $12,500 (gross). When I declined, they asked me to give them an amount I would consider, by way of counter claim; essentially, an admission of guilt. (Please see Attachment Y.)

(e) Claim the Applicant was dismissed based on performance issues.

After I lodged my application, Affinity's National Performance Manager, Ms Belinda Pcino, made several attempts to have discussions with me. Why would she want to have a discussion with me, if the reason for my dismissal was alleged poor performance? quote: "I wanted to open a discussion to understand your position on your case and explore how we can reasonably settle the matter you have raised and provide support." (Please see her email dated 18 February 2025, Attachment Z.)

...

15. As is evident, Attachments Y and Z are communications between Ms Hugo and Affinity Education Group in connection with an attempt to settle the dispute between them. The email at Attachment Y was sent by the Head of Human Resources. The email at Attachment Z was sent by the National Performance Manager.
16. The email at Attachment Y is marked without prejudice save as to costs and strictly private and confidential. It references these proceedings, and reaffirms that the offer of settlement is made on a without prejudice basis.
17. The email at Attachment Z is not marked without prejudice but states " ... I wanted to open a discussion to understand your position on your case and explore how we can reasonably settle the matter you have raised and provide support."
18. Section 131(1) of the *Evidence Act* provides:

131 Exclusion of evidence of settlement negotiations

(1) Evidence is not to be adduced of:

(a) a communication that is made between persons in dispute, or between one or more persons in dispute and a third party, in connection with an attempt to negotiate a settlement of the dispute; or
(b) a document (whether delivered or not) that has been prepared in connection with an attempt to negotiate a settlement of a dispute.

19. On 13 March 2025, Affinity Education Group's legal representatives wrote to Ms Hugo and drew her attention to s 131(1) of the *Evidence Act*. The letter pointed out, with reference to authority, some of the latitude that courts may give self-represented litigants in circumstances such as these, but summarised Affinity Education Group's position that the emails marked as Attachments Y and Z were not admissible.
20. The letter also attached s 131, as well as relevant extracts of the *Federal Circuit and Family Court of Australia Act 2021* (Cth), the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) and the *Federal Court Rules 2011* (Cth). Ms Hugo was invited to withdraw paragraphs 1(d) and (e) of Attachment X, and Attachments Y and Z. The letter otherwise reserved Affinity Education Group's rights.
21. The letter was sent to Ms Hugo by email on 13 March 2025, at 10.41am.
22. On 13 March 2025 at 1.17pm Ms Hugo replied to Affinity Education Group's legal representatives, stating that she would not withdraw the reply. She asserted that the relevant portions of the reply fell within the exceptions to s 131(1), particularly s 131(2)(g). In her affidavit filed in response to the strike out application, Ms Hugo has asserted that s 131(2)(d), (e) and/or (g) apply.
23. Those provisions are as follows:

(2) Subsection (1) does not apply if:

...

> (d) the communication or document included a statement to the effect that it was not to be treated as confidential; or
> (e) the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute; or
>
> ...
>
> (g) evidence that has been adduced in the proceeding, or an inference from evidence that has been adduced in the proceeding, is likely to mislead the court unless evidence of the communication or document is adduced to contradict or to qualify that evidence; or
>
> ...

24. It is trite that whether or not the privilege in s 131 applies to evidence or a communication does not depend on whether the communication is expressly marked without prejudice. A communication that is marked without prejudice may be privileged if the necessary statutory preconditions are satisfied and equally, a communication that is marked without prejudice but does not satisfy the preconditions will not attract privilege. The underlying objective is to enable parties to speak freely about all of the issues in a dispute when seeking compromise.
25. In submissions, Ms Hugo said that the reason she pleaded paragraphs 1(d) and 1(e) of Attachment X and provided Attachment Y and Attachment Z was because she felt it was inconsistent. She disputed the purpose of Attachment Y was for use as an admission of guilt, but I do not accept that, as that is not how Ms Hugo sought to categorise the email in paragraph 1(d).
26. Ms Hugo also made submissions questioning how Affinity Education Group could oppose orders for compensation and seek orders that the application be dismissed with costs, when it had offered her money to settle the claim. She again reiterated the purpose of pleading these matters in providing these documents was to show the inconsistencies.
27. I am unable to accept these submissions. In my opinion, paragraphs 1(d) and 1(e) of Attachment X is evidence of communications made between persons in dispute in connection with an attempt to negotiate a settlement of the dispute. Attachment Y and Attachment Z are documents prepared in connection with an attempt to negotiate a settlement of the dispute.
28. I am also of the opinion that the exclusions relied on by Ms Hugo do not apply. Ms Hugo's reliance on s 131(2)(d) is misplaced. None of the communications or documents included a statement to the effect that they were not to be treated as confidential.
29. I do not consider that s 131(2)(e) and (g) of the *Evidence Act* apply. I do not accept Ms Hugo's submissions that the court is likely to be misled unless paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z are admitted. No evidence has been adduced about the course of an attempt to settle the dispute. Ms Hugo's reliance on these provisions for the purpose of establishing inconsistencies in Affinity Education Group's response against its conduct in February 2025 seeking to resolve the proceedings is also misplaced.
30. Section 131(1) of the *Evidence Act* applies to prevent this evidence being adduced. The provision enables parties speak freely and make admissions against interest during settlement discussions with the protection against disclosure of those matters in court proceedings.
31. Section 190 of the *FCFCOA Act* provides that the overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.
32. The protection in s 131(1) of the *Evidence Act* is consistent with the obligation that parties to a civil proceeding in the court have to: [2]

> ... conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose.

33. I will order that paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z of the reply be struck out.
34. I will also order that paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z not be available for inspection by any non-party. Sections 230 and 231 of the *FCFCOA Act* relevantly enable the court to make orders prohibiting or restricting the publication or other disclosure of material lodged or filed in the court to prevent prejudice to the proper administration of justice. In light of my conclusions about paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z, in my opinion it is necessary to restrict non-party access to these materials. I will make an order in the terms sought by Affinity Education Group.

SHOULD AN ORDER BE MADE REQUIRING MS HUGO TO PROVIDE SECURITY FOR AFFINITY EDUCATION GROUP'S COSTS, AND IF SO, IN WHAT SUM AND IN WHAT FORM?

35. The power to order security for costs is contained in s 215(2) of the *FCFCOA Act*. In proceedings under the *Fair Work Act*, when considering whether security for costs should be ordered, the court is required to have regard to s 570.
36. The principles that apply to an application for security for costs in this context were summarised in *Khoury v Macquarie Air Pty Ltd*[3] as follows:

> The effect of s 215(2) of the Court Act is that this Court has power to order an applicant to provide security for the costs the Court may order (following the exercise of the discretion contained in s 570 of the Act).[4] Rule 22.01 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth) (**Rules**) provides that the Court may order an applicant to give such security for the respondent's costs of the proceeding as it considers appropriate.
>
> In *Ryan v Primesafe* [2015] FCA 8; (2015) 323 ALR 107 at [64] to [65] Mortimer J (as her Honour then was) described s 570 of the Act as being an "access to justice provision" aimed at ensuring:
>
> > that the spectre of costs being awarded if a claim is unsuccessful does not loom so large in the mind of potential applicants (in particular, in my opinion) that those with genuine grievances and an arguable evidentiary and legal basis for them are put off commencing or continuing proceedings.
>
> The onus of persuading the Court that an award of security for costs should be made lies with the party seeking security: see *CBS Records Australia Ltd v Telmak Teleproducts (Aust) Pty Ltd* (1987) 72 ALR 270 at 284 to 285 per Bowen CJ. The onus does not shift,[5] albeit if the analysis reaches a point where impecuniosity is established, the applicant (being the respondent to the security application) bears the onus of establishing any stultification alleged in support of a submission that security ought not be ordered: see *Flynn v PPK Mining Equipment Pty Ltd* [2023] NSWCA 151 at [41] per Stern JA.
>
> In *Australian Battery Distributors Pty Ltd v Robert Bosch (Australia) Pty Ltd* [2015] FCA 1164 Edelman J summarised the aforementioned principles as follows at [25]:
>
> > The authorities and principles concerning the onus of proof in applications for security for costs are explained by Gleeson J in Austcorp Project No 20 Pty Ltd v LM Investment Management Ltd (in liq) [2014] FCA 1371 [25]–[28]. The onus of proof in a security for costs application

> rests, from first until last, upon Bosch Australia to persuade the court that the order for security should be made. However, there is an evidential burden upon ABD to adduce evidence concerning matters which establish reasons why security should not be granted in circumstances where it will be unable to pay the costs of Bosch Australia if Bosch Australia is successful in its defence.

It is well accepted that an order for security is a discretionary matter for the Court. That discretion is unfettered and broad,[6] other than the requirement to act judicially. The factors which regularly arise for consideration in exercising the discretion to order that security be given for costs are generally accepted to be:[7]

> (a) the applicant's prospects of success;
> (b) the extent of the risk that any adverse costs order made against the applicant may not be met;
>
> (c) whether an order for security for costs would be oppressive in that it would stultify a reasonably arguable claim;
>
> (d) whether any impecuniosity of the applicant arises out of conduct the subject of the proceeding;
>
> (e) any public interest matters which might weigh in the balance in relation to the making of an order for security; and
>
> (f) other particular discretionary matters specific to the circumstances of the case.

However, for the reasons discussed below, where proceedings engage the Act the starting point is not the general principles informing the discretion because of the rebuttable proscription in s 570 of the Act which, in essence, imposes a precondition to the discretion to award costs (even in the ordinary course). This warrants consideration of s 570 prior to any assessment of the general principles if, depending on the outcome of the s 570 assessment, it becomes necessary to consider them at all.

In *Haley v Laing O'Rourke Australia Management Services Pty Ltd* [2021] FCCA 257 (***Haley***), Judge Manousaridis considered the question of the principles which govern, or ought to govern, the Court's exercise of the power under s 215(2) of the Court Act[8] to order an applicant in a matter arising under the Act to give security for costs that may be awarded against them under s 570 of the Act.

After considering the decision of the Full Federal Court in *Augusta Ventures Ltd v Mt Arthur Coal Pty Ltd* [2020] FCAFC 194; (2020) 283 FCR 123 (*Augusta Ventures*), his Honour summarised the relevant principles applying to an application for security for costs in a matter arising under the Act as being whether:

> (a) the claim in respect of which the application for security is made is "*a matter arising under*" the Act: see *Haley* at [21];
> (b) there is a tangible prospect that circumstances will arise that will engage s 570(2) of the Act in relation to the claims made by the applicant; and if so

> (c) applying the usual principles for the granting of security for costs, the circumstances warrant the Court exercising its discretion to order that the security be given, and in what amount: see *Haley* at [27] to [28].

This approach, whereby an assessment of s 570 precedes consideration (if ultimately necessary) of the usual principles which apply to the discretion to award security is, with respect, preferable to which appears to have been contemplated by the Full Bench of the Fair Work Commission in *Zornada v St John Ambulance Australia (WA) Inc* (2013) 237 IR 48 to which the respondent referred, and in which the Commission said the following at [36]:

> Accordingly, the Commission should award security for costs only in the rarest of circumstances, once the Commission has balanced the merits of the application, the financial position of the parties, and what is just in the circumstances.

First, the Fair Work Commission was discussing the similar, yet not identically worded, s 611 of the Act. Second, the Fair Work Commission was clearly seeking to emphasise the rarity and caution which attends the making of an order under sections of that ilk, more than elucidating the order in which the matters ought be considered. There is nothing to suggest that had the Fair Work Commission approached the questions in the order found in *Haley*, it would have resulted in a different outcome, or altered the concept of rarity and caution conveyed.

In addition, the order referred in *Zornada* (*supra*) is contrary to the approach of Courts when considering a costs application in a matter arising under the Act. It is not the case that the Court first assesses the relative merits of the costs claim and only then goes on to consider whether s 570(2) is enlivened.

The respondent suggested that in *Zou v Superway Pty Ltd* [2021] FedCFamC2G 144 Judge Cameron took a slightly different approach by balancing the absence of the application in that case from the jurisdiction with s 570. However, I find there to be no relevant distinction, let alone inconsistency, between the approaches in *Haley* and *Zou* such that I would not, as invited by the respondent, need to prefer the approach of one case over the other. The principles identified by Judge Manousaridis in *Haley* are, with respect, correct and accords with the approach to s 570 generally. As Judge Cameron said in *Zou* at [23] and [25], citing *Augusta Ventures*:

> [23] In *Augusta Ventures v Mt Arthur Coal*, the Full Court stressed the policy of s.570: that, subject to s.570(2), parties to FW Act litigation are to bear their own costs and not the risk of the costs of each other: at 468-469 [66]; 474 [89]; 476-477 [103]. Unless s.570(2) were satisfied, ordering security for costs in a FW Act action would subvert that policy

...

[25] Justice White said in *Augusta v Mt Arthur Coal* at 483 [132] that the question is whether effect can be given to the usual principles on which security is ordered while at the same time preserving the protection s.570 afforded to the applicant and respecting its underlying rationale. In this case I am not persuaded that it can be. To order security

> without, for instance, having concluded that the proceeding lacked reasonable prospects of success, would be, in effect, to impose a burden that the FW Act states should not be borne in proceedings brought under it.
>
> Accordingly, in proceedings in which there is a matter arising under the Act in respect of which security for costs is sought, the application of s 570 of the Act should also be determined prior to any consideration of the principles informing the discretion to order security.
>
> An assessment of whether there exists a tangible prospect that circumstance will arise to engage s 570(2) of the Act, can be a difficult task *in potentia*. The assessment contemplated by s 570(2) is ordinarily made at the conclusion of proceedings (or a relevant stage of proceedings such as an interlocutory application) such that the past conduct of the parties is factually available for the Court to examine in ascertaining whether a party instituted the proceedings vexatiously, or without reasonable cause, or that an unreasonable act or omission caused the other party to incur costs.
>
> The task will be easier in respect of s 570(2)(a) when assessing whether proceedings have been instituted vexatiously or without reasonable cause, being an assessment which can conceivably be made on the basis of pleadings alone, shortly after the institution of the proceedings, or even without the matter having been tried: see *Zou* (*supra*) at [24] per Judge Cameron.
>
> However, an application of s 570(2)(b) appears to contemplate a retrospective assessment when it says (emphasis added):
>
> > the court is satisfied that the party's unreasonable act or omission **caused** the other party to incur the costs...
>
> Absent some allegedly unreasonable act or omission being extant at the time the application for security is made, it is difficult (though not impossible) to envisage a circumstance in which the Court could be prospectively satisfied there exists a tangible prospect that a party may act unreasonably, causing costs to be incurred as a result.

37. The application for security for costs is supported by an affidavit of Matthew Ian Cameron affirmed on 9 June 2025.
38. As a preliminary issue, in her affidavit in response to the application Ms Hugo objected to paragraphs 7, 13, 14 and 17 and annexures MC-1, MC-2 and MC-3 of Mr Cameron's affidavit. This evidence primarily and relevantly relates to correspondence between Affinity Education Group's legal representatives and Ms Hugo on 15 April 2025 in connection with the application for security for costs and the grounds for it.
39. On 28 February 2025, I made orders including referring the matter for mediation under s 169 of the *FCFCOA Act*. A mediation was conducted on 2 June 2025. The proceedings did not settle. Ms Hugo has asserted that between the order referring the matter to mediation being made on 28 February 2025 and the mediation being held on 2 June 2025 the parties were in a "mediation period" during which s 131(1) of the *Evidence Act* applied to exclude evidence of any communications between the parties.
40. No authority was provided for the proposition that any and all communication between parties that takes place about the proceedings generally between an order for referral to mediation being made and the mediation being concluded is inadmissible as being evidence of settlement negotiations.
41. I heard submissions from Ms Hugo at the hearing of the application and determined to dismiss her objections. I received Mr Cameron's affidavit and annexures into evidence. I considered that the correspondence Ms Hugo objected to is not evidence of communications or documents in connection with an attempt to negotiate a

settlement of the dispute. I did not consider that there was any other ground by which that evidence and documentation was not admissible.

42. The application for security for costs was made after 15 April 2025 when Affinity Education Group's legal representatives wrote to Ms Hugo setting out Affinity Education Group's concerns, including costs and seeking details from her regarding her financial circumstances and her visa status and residence. As with previous correspondence, that letter also relevantly attached extracts of the *FCFCOA Act*, the *GFL Rules* and the *Fair Work Act*.

43. On the same day the letter was sent to Ms Hugo, she responded by effectively refusing to make a response to the matters set out in the letter. Accordingly, the application for security for costs was made after Affinity Education Group had set out its concerns and attempted to resolve them, and Ms Hugo electing to not engage with those attempts.

44. Affinity Education Group's written outline of submissions set out the applicable legal framework in which the application must be decided, with reference to and in accordance with the summary set out in *Khoury*.

45. At the hearing of the application, Affinity Education Group updated its position about the application of s 570. It no longer says that s 570(2)(a) of the *Fair Work Act* applies. Affinity Education Group accepts that, by the statement of claim filed on 4 August 2025 (and filed after the application for security for costs was made), Ms Hugo has expanded her pleading as to the exercise of workplace rights and, in the circumstances, it was not contended that the court could be satisfied that Ms Hugo instituted the proceedings vexatiously or without reasonable cause.

46. The focus of the application was on s 570(2)(b), and the question of whether the court is satisfied that the party's unreasonable act or omission has caused the other party to incur costs.

47. To this end, Affinity Education Group contends that the following circumstances constitute unreasonable acts or omissions by Ms Hugo, that have caused it to incur costs:

> (a) Refusing to withdraw paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z of the reply, resulting in the necessity for it to make the strike out application. Ms Hugo also maintained her defensive position of the inclusion of these materials in her response to the application dated 26 March 2025, the statement of claim dated 10 July 2025 and her submissions at the hearing.
>
> (b) Asserting an entitlement of approximately $2.5 million in damages, encompassing economic loss, non-economic loss and aggravated damages, across both the general protections and defamation proceedings. In the latter instance, Affinity Education Group also points to the question over whether the proceedings are validly made in the court's associated jurisdiction, and in any event Ms Hugo's failure to commence valid proceedings for defamation under the *Defamation Act 2006* (NT), including the pre-conditions to a claim being filed.
>
> (c) Failing to properly plead or particularise the defamation claim and the general protections claim in the statement of claim.
>
> (d) Refusing to agree to case management orders. This includes filing documents, including a statement of claim that does not comply with the *GFL Rules*, requiring Affinity Education Group to make an application in a proceeding to strike out parts of the statement of claim. It also includes Ms Hugo failing to agree to case management consent orders in advance of the first court date, including the proposed referral to court-based mediation. She replied to email correspondence on 27 February 2025 in respect of proposed procedural orders stating:
>
> > “I do not consent to this order. It’s a waste of the courts time, because they already have both sides of the case. Also, Affinity refused to mediate when they had the opportunity.”
>
> (e) Referring to authorities in her affidavits and submissions that do not appear to exist, giving rise to the suggestion of the use of generative **artificial intelligence** in her materials, and putting it to

additional expense in research to confirm the authorities are false.

48. Affinity Education Group also points to Ms Hugo's generally uncompromising approach to conducting the proceedings, as seen in her correspondence. For example, she replied to considerate and detailed correspondence that was sent to her as a self-represented party about s 131(1) of the *Evidence Act* within an hour, and refused to withdraw paragraphs 1(d) and 1(e) of Attachment X, Attachment Y and Attachment Z of the reply. It is said the inference is that Ms Hugo gave no consideration to the letter, or at the very least, inadequate consideration.

49. In my opinion the complaints made by Affinity Education Group bring into focus a party's obligation to conduct the proceeding in a way that is consistent with the overarching purpose under ss 190 and 191 of the *FCFCOA Act*, which includes the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute. Additionally, in exercising the discretion to award costs in a civil proceeding, the court must take account of any failure to comply with this duty.

50. Many of the circumstances identified by Affinity Education Group show an inadequate conduct of these proceedings by Ms Hugo. I consider they arise as a result of legal naïveté and misapprehension by Ms Hugo, and her lack of objectivity in a matter where there is, at least from her perspective, significant emotive issues. I accept that the manner in which Ms Hugo has conducted the proceedings has caused Affinity Education Group to incur costs, including being required to take steps such as making applications in these proceedings.

51. However, that does not mean that Ms Hugo's acts or omissions are necessarily unreasonable for the purposes of s 570(2)(b). To that end, whilst Ms Hugo's status as an unrepresented party brings no special privileges and cannot justify lack of proper attention to the interests of other parties,[9] her lack of legal representation has some relevance in assessing her conduct in the proceedings in the context of an application for costs.

52. In *Roads Corp v Love*,[10] Vickery J observed that:

> A relevant factor in the consideration of an award of costs will arise where a party in the litigation is self-represented. In the usual case, such a person, while having every right to proceed unrepresented, will suffer the limitations of a lack of knowledge of the law, an unfamiliarity with court practices and the risk of lack of objectivity.

53. Further, in *Tamu v World Vision Australia (No 2)*,[11] Rangiah J said:

> The starting point is that there should be no order as to costs, so that any award of costs represents a departure from the usual position. An award of indemnity costs represents a greater departure from the starting point. I consider that this is a relevant factor to take into account. **While the applicant's applications for leave to appeal had no reasonable prospects of success, it is also appropriate to take into account that he was unrepresented and, clearly, failed to appreciate the weakness of his case.** I do not accept the respondent's submission that the applicant brought the applications with intent to vex. His applications seemed to be based on a genuine, although misguided, belief in the merit of his case. I do not consider that the applicant's conduct in bringing and maintaining the applications justifies an award of indemnity costs.

54. In *Hutchison v Comcare (No 2)*,[12] Bromberg J, referring to *Bhagat v Royal & Sun Alliance Life Assurance Australia Ltd*[13] said that:

> ... I do not consider that case to be of any assistance to Comcare in circumstances where the Court's discretion to make a costs order is constrained by s 570. As the passage cited by Comcare contemplates, a court does have to make allowances for the position of unrepresented litigants. The actions of unrepresented litigants will be

> viewed more sympathetically by courts in relation to costs than the actions of represented parties. In *Bhagat* that proposition manifested as an order for the unrepresented litigant to pay party-party costs in circumstances where a represented party would likely have been liable for indemnity costs.
>
> The rationale for that approach is bolstered in relation to proceedings brought under the FW Act by the purpose of s 570 as outlined above. It is important to ensure that the disincentive of potential costs orders do not impact more severely upon persons unable to obtain legal representation.
>
> Manifest deficiencies in the pleadings of unrepresented parties are not exceptional. While they may justify the making of a costs order in another jurisdiction, they do not necessarily justify the making of an order under s 570(2)(b). The clear deficiencies in the various iterations of Ms Hutchinson's statement of claim, sufficient to warrant them being struck out, were attributable to Ms Hutchinson's lack of capacity and training to prepare a proper pleading.

55. Affinity Education Group has applied for an order for security for costs, applying the events-based scale in Schedule 2 of the *GFL Rules*. Mr Cameron is a partner of Herbert Smith Freehills Kramer, Affinity Education Group's legal representatives. Mr Cameron estimates that Affinity Education Group's costs in defending these proceedings, on a trial estimate of two days, is in the sum of $32,695.16.

56. The application is made in the sum of $32,500.00 on that basis.

57. Ms Hugo opposes the application for security for costs. In her affidavit dated 30 June 2025, Ms Hugo gave evidence that she is not in a financial position to provide security. She said that an order requiring her to give security would stifle her claim. She said that an order would deprive her of the ability to seek justice.

58. In many areas, Ms Hugo's submissions reveal serious misunderstandings of the law. For example, her contention that the certificate issued by the Fair Work Commission under s 368(3)(a) of the *Fair Work Act* is a validation of the merit of her claim is fundamentally incorrect. It reinforces that many of the deficiencies in these proceedings are brought about by Ms Hugo's self-representation, lack of legal training and expertise, and her lack of objectivity.

59. The same is true of her misguided position and submissions in relation to the application of s 131(1) of the *Evidence Act*, including her objection to portions of Mr Cameron's affidavit. It is also evident in Ms Hugo's failure to understand or follow the procedures under the *Defamation Act 2006* (NT) that are required to bring a valid claim. Her limited consideration of correspondence sent on behalf of Affinity Education Group and her emotive responses reinforce the point made in authorities such as *Bhagat* that litigants in person can cause great hardship and expense to other parties through their conduct in proceedings. It also reflects incorrect and ill-considered positions taken on issues in the proceedings in the way Rangiah J discussed in *Tamu*.

60. I also accept that Ms Hugo's visa status is uncertain. Ms Hugo elected to not respond to the letter sent on 15 April 2025, and she has not given any evidence directly in response to Mr Cameron's affidavit that Affinity Education Group is concerned that there is a real prospect that Ms Hugo will not continue to reside in Australia by the time of any final judgement. Ms Hugo made a submission from the bar table at the hearing that she is not leaving Australia, however there is not anything I can make of that. I do accept that Ms Hugo has given inconsistent evidence and made inconsistent submissions about her ability to live in Australia lawfully long-term. I also accept that if Ms Hugo leaves Australia, then it will render Affinity Education Group with limited opportunities to enforce any costs order against her, should one be made.

61. Ms Hugo's fairly prompt response to the letter of 15 April 2025 was also misguided. It said that:

> The Respondent chose to dismiss the Applicant. The Applicant therefore reserves the right not to provide the respondent with any explanation or evidence regarding the Applicant's personal circumstances and plans. Further, the proceeding under the

> Defamation Act 2006 is relevant, because the Respondent said it's the reason for the Applicants dismissal.

62. Notwithstanding the attempt by Affinity Education Group to legitimately engage with Ms Hugo about issues in the proceedings more generally, her response to the correspondence again reinforces the level of personal feeling that is influencing Ms Hugo's attitude towards the proceedings.
63. As I have set out, I accept that Ms Hugo's conduct in the litigation has had the effect of causing Affinity Education Group to incur costs. However, overall in my assessment, the facts and circumstances relied on by Affinity Education Group in support of an application under s 570(2)(b) are largely attributable to Ms Hugo's self-representation. This includes the apparent swiftness in which she has dismissed, seemingly out of hand, legal correspondence written to her in a constructive fashion and which is very respectful of her standing as a self-represented litigant.
64. In a similar way to *Meshram v Bing Lee Electrics Pty Ltd (Costs)*,[14] I consider that with Ms Hugo:

> her failure to approach the proceedings with speed and pragmatism is explained, albeit not excused, by the limitations she demonstrated as an unrepresented litigant.
>
> ...

65. Ms Hugo's statement of claim appears with several defects. Affinity Education Group have put her on notice of those matters, and they are the subject of the further application in a proceeding that is yet to be heard.
66. Ms Hugo's statement of claim also raises jurisdictional issues, including as to the claim sought to be brought under the *Defamation Act 2006* (NT). There are also issues with the way in which she has sought to quantify her claim, pleading economic loss, non-economic loss and aggravated damages. She has sought damages including future loss of income for a projected 10 year period. I also accept Ms Hugo's quantification of her claim is a concern. Plainly, Ms Hugo is of the view that her inability to secure employment after termination is as a result of reputational harm caused to her by Affinity Education Group. The way in which this claim is pleaded and quantified is symptomatic of the kinds of concerns Bromberg J spoke of in *Hutchison*.
67. These are all issues which are appropriately dealt with in the additional strike out application that has been made by Affinity Education Group. As the authorities indicate, whilst manifest deficiencies in pleadings filed by unrepresented parties may justify the making of a costs order in another jurisdiction, they do not necessarily justify the making of an order under s 570(2)(b).
68. In my opinion, the same is true of circumstances including Ms Hugo's conduct of the proceedings which has the hallmarks of failing to conduct the proceedings in a way that promotes the overarching purpose, but I find that is attributable to her ignorance of the law and procedure, her lack of objectivity, and her generalised attitude of mistrust towards Affinity Education Group and its legal representatives.
69. I also consider the suggestion that Ms Hugo is using **artificial intelligence** in a similar way. It is clear that Ms Hugo's submissions refer to and cite non-existent authorities. That is a serious issue, including for a self-represented party. In similar circumstances, in *Finch v The Heat Group*,[15] Judge Riley said:

> At the hearing on 17 July 2023, I asked Ms Finch if she had used ChatGPT to generate the names, citations and summaries of authorities that she claimed were examples of cases where MinterEllison had been restrained from acting for a client. She said that she did not know what ChatGPT was.
>
> Ms Finch's provision of 24 authorities which were said to be examples of cases where MinterEllison had been restrained from acting for a client, but which were not, is an egregious instance of Ms Finch misleading the court. While Ms Finch apologised, and is an unrepresented litigant, misleading the court in this way remains a serious issue. If the court had delivered an *ex tempore* judgment on 8 March 2023, and relied on the

summaries of cases Ms Finch provided, the court could have been led into substantial error.

70. The court has repeatedly and increasingly emphasised the cautions required in the use of **artificial intelligence** in court proceedings by legal practitioners and parties, particularly where the use of **artificial intelligence** is not disclosed, material produced through **artificial intelligence** is not verified and no certification as to accuracy is given. For present purposes, it is sufficient to note Judge Riley's remarks cited in *Finch* about the seriousness of those matters and how they apply to self-represented litigants in court.

71. In *Khoury*, it was said:[16]

> There is no doubt as to the restraint cautioned for in the application of s 570 in cases in which security for costs is sought. In *Augusta Ventures*, the applicant in the proceedings was a representative applicant for a class of persons, whose litigation was being funded by a litigation funder. The primary Judge made an order that the litigation funder pay security for costs, and that the proceedings be stayed if security was not provided. On appeal, the Full Federal Court set the orders aside in circumstances where the potential liability for costs which attached to the representative applicant was governed by s 570 of the Act, there had been no suggestion that the proceedings had been brought other than reasonably (or without reasonable cause) and where the discretion of the litigation funder to pay the security or not would have the potential consequence that the representative applicant (and the class of litigants he represented) would be shut out of the proceedings through no action of their own. Those circumstances are not extant in the instant case which involves no such third-party funder. There are, however, some general observations made in *Augusta Ventures* which do not turn upon the third-party funding aspect of that case. In particular, at [127], White J said as follows:
>
> > First, and perhaps most obviously, the circumstances (if any) in which an applicant in proceedings in relation to a matter under the FW Act should be ordered to provide security for a respondent's costs are likely to be exceptional. An applicant should not ordinarily be required to provide security for costs which, in the absence of unsatisfactory conduct on his or her part, will never be payable.

72. In my assessment, there are a number of circumstances and factors which, absent s 570 of the *Fair Work Act* and absent Ms Hugo's self-representation, may weigh substantially toward a favourable exercise of the discretion to order security for costs.

73. That is not to say that a self-represented party is immune from the costs consequences of their conduct of the proceedings, but it is to say that it is a relevant circumstance in the assessment of the reasonableness of the party's act and omissions in their conduct of the proceedings. I have made some allowance for Ms Hugo's self-representation to explain her failure to approach the proceedings with diligence. In assessing unreasonableness, whilst Ms Hugo's conduct may justify an order for costs in a different jurisdiction, I am not satisfied that it does for the purposes of s 570 of the *Fair Work Act*.

74. I am not satisfied that there is a tangible prospect that Ms Hugo's acts and omissions engage s 570(2)(b) of the *Fair Work Act*.

75. I will dismiss the application for security for costs.

CONCLUSIONS

76. I will make orders sought by Affinity Education Group in the strike out application. I will dismiss the application for security for costs.

I certify that the preceding seventy-six (76) numbered paragraphs are a true copy of the Reasons for Judgmen of Judge Liveris.

Associate:

Dated: 18 September 2025

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[1] Amended Statement of Claim filed 4 August 2025

[2] s 191(1) *FCFCOA Act*

[3] [2023] FedCFamC2G 992 at [10], [12] – [27] (citations as in original).

[4] See *Haley v Laing O'Rourke Australia Management Services Pty Ltd* [2021] FCCA 257 at [23] per Judge Manousaridis considering the relevantly identical predecessor to s 215(2) of the Court Act, being s 80(2) of the *Federal Circuit Court of Australia Act 1999* (Cth)

[5] *Livingspring Pty Ltd v Kliger Partners* [2008] VSCA 93; (2008) 20 VR 377 at [18] to [24] per Maxwell P and Buchanan JA

[6] *Bell Wholesale Co Pty Ltd v Gates Export Corporation* (1984) 2 FCR 1 at 3 per Sheppard, Morling and Neaves JJ, *Bryan E Fencott Pty Ltd v Eretta Pty Ltd* [1987] FCA 102; (1987) 16 FCR 497 at 510 to 511 per French J (as his Honour then was), *Woodhouse v McPhee* [1997] FCA 1509; (1997) 80 FCR 529 at 533 per Merkel J, *Madgwick v Kelly* [2013] FCAFC 61; (2013) 212 FCR 1 at [6] per Allsop CJ and Middleton J and *Waters v Commonwealth of Australia (Australian Taxation Office)* [2014] FCA 1107 at [36] per Griffiths J.

[7] *Equity Access Ltd v Westpac Banking Corporation* [1989] FCA 361; (1989) ATPR 40-972 per Hill J at 50, 635

[8] By reference to its relevantly identical predecessor being s 80(2) of the *Federal Circuit Court of Australia Act 1999* (Cth)

[9] *Bahonko v Sterjov* [2008] FCAFC 30; (2008) 166 FCR 415 at [6].

[10] [2010] VSC 581 at [49].

[11] [2021] FCA 565 at [26] (emphasis added).

[12] [2017] FCA 370 at [10] - [12].

[13] [2000] NSWSC 159 at [13].

[14] [2024] FedCFamC2F 543 at [130].

[15] [2024] FedCFamC2G 161 at [137] – [138].

[16] At [33].