



Essentials Series: Spring Edition

THURSDAY 25 SEPTEMBER 2025

ACT LAW SOCIETY



Civil: Pleading in Statement of Claim and Defences in the ACT

Ben Jullienne,
Barrister

25 September 2025



Objectives

- Purpose and rules of pleading
- Risks of bad pleading
- Case examples

Purpose of pleadings



Procedural Fairness: Allow opposing party a fair opportunity to meet the case being put



Relevance: Define the issues and enable relevance to be determined for the proceeding

Risks of not properly pleading

- Pleadings struck out (though will usually be allowed to re-plead)
- Deemed admissions
- Limit discovery and interrogatories
- Restricted in what evidence can be adduced
- Limit submissions on the evidence
- Costs: CPR r448

Starting a civil proceeding

Originating Application vs Originating Claim



```
graph TD; A[Originating Application vs Originating Claim] --> B[Rule 33-35: When originating claim and originating application must/may be used]; B --> C[Default position as to evidence: r6700]; C --> D[Originating Claim: "must be given orally in open court"]; C --> E[Originating Application: "must be given by affidavit"];
```

Rule 33-35: When originating claim and originating application must/may be used

Default position as to evidence: r6700

Originating Claim: "must be given orally in open court"

Originating Application: "must be given by affidavit"



Rule requirements of pleadings

- Formal requirements: r 405
- Content and matters to be pleaded:
 - Content: r406
 - Matters specifically required to be pleaded: r407
 - Matters not required to be pleaded: r409
 - Spoken words: r411
 - Inconsistent allegations: r414
 - Kind of damages: r417

COURT PROCEDURES RULES 2006 - REG 405

Pleadings—formal requirements

- (1) Each pleading must be in writing.
- (2) If a pleading alleges or otherwise deals with several matters—
 - (a) the pleading must be divided into paragraphs; and
 - (b) each matter must, as far as convenient, be put in a separate paragraph; and
 - (c) the paragraphs must be numbered consecutively.
- (3) If a plaintiff seeks relief in relation to 2 or more distinct claims based on different grounds, they must be stated, as far as possible, separately.
- (4) If a defendant relies on 2 or more distinct grounds of defence, set-off or counterclaim based on different facts, they must be stated, as far as possible, separately.
- (5) If a pleading is settled by counsel, it must state—
 - (a) that it was settled by counsel; and
 - (b) counsel's name.

COURT PROCEDURES RULES 2006 - REG 406

Pleadings—statements in

(1) Each pleading must—

- (a) be as brief as the nature of the case allows; and
- (b) contain a statement in a summary form of the material facts on which the party relies but not the evidence by which the facts are to be proved; and
- (c) state specifically any matter that if not stated specifically may take another party by surprise; and
- (d) subject to rule 41 (Pleadings—other relief), state specifically any relief the party claims; and
- (e) if a claim or defence under a statute is relied on—identify the specific provision of the statute.

(2) A party may raise a point of law in a pleading if the party also pleads the material facts in support of the point.

Matters specifically required to be pleaded: r407

-
- an accident the cause of which is unknown and undiscoverable
 - breach of contract or trust
 - breach of statutory duty
 - damages of every kind claimed, including, for example, special and exemplary damages
 - duress
 - estoppel
 - extinction of right or title
 - fraud or illegality
 - interest (including the rate of interest and method of calculation) claimed
 - malice or ill will
 - motive, intention or other condition of mind, including knowledge or notice
 - misrepresentation
 - negligence or contributory negligence
 - payment
 - performance or part performance
 - release
 - statute of limitations
 - a statute requiring that contracts be in, or evidenced by, writing (for example, statute of frauds)
 - undue influence
 - want of capacity, including disorder or disability of mind
 - Waiver
 - voluntary assumption of risk
 - that a testator did not know and approve of the contents of a will
 - that a will was not properly made
 - Wilful default
 - anything else required by a practice note to be specifically pleaded

Further matters in Employment claims

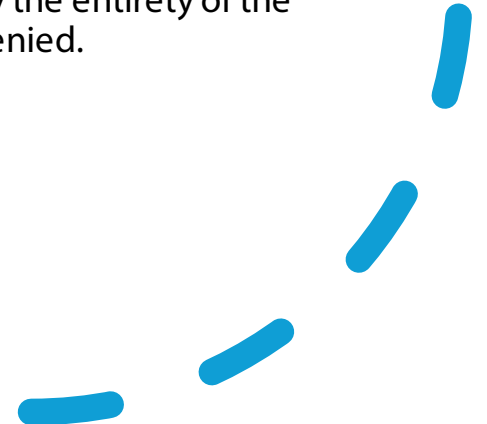
- Employment death and personal injury cases: r53
- Requirement to plead:
 - Vicarious liability: r53(2)(b)
 - Statutory duty – name and provision of statute and “precise” statement of acts or omissions: r53(2)(c)
 - TOSOC: r53(2)(g)

Requirements of a Defence

- Comply with General Rules of pleading: r406.
- In answering a pleading, a party may plead a:
 - Denial;
 - Non-admission; or
 - Admission.
- The defendant should deal with each allegation of fact specifically: r441(2)
- A party in a pleading must not deny an allegation of fact in an evasive way: r441(4).

That means that if part of the allegation is admitted but part of the allegation is not admitted, the [Defendants] are not at liberty to simply deny the entirety of the allegation. They must deal with the substance of what is denied.

Elvin v Vuleta [2024] ACTSC 84 (McWilliam J) at [77]



Rule 443 – Defence for Injury claims

1

The Defendant must admit or deny every material allegation of fact, including any allegation by way of particulars: r443(2).

- Failure to comply with rule 443(2) results in admission of the allegation: r443(3)

2

A defendant may state "does not know and therefore cannot admit a fact" which operates as a denial: r443(4)

3

A defendant wishes to prove a version of facts different, the defendant "must plead that version in the defence": r443(5)

4

The defendant must plead every ground of defence to be relied on together with the facts necessary to establish each ground: r443(6).



Rule 425 - Pleadings—striking out out Application

(1) The court may, at any stage of a proceeding, order that a pleading or part of a pleading be struck out if the pleading—

(a) discloses no reasonable cause of action or defence appropriate to the nature of the pleading; or

(b) may tend to prejudice, embarrass or delay the fair trial of the proceeding; or

(c) is frivolous, scandalous, unnecessary or vexatious; or

(d) is otherwise an abuse of the process of the court.

Case examples



Strike out application

QC v The Scout Association of Australia New South Wales Branch [2025] ACTSC 228 (McCallum CJ)

- Plaintiff alleged multiple sexual assaults by the Scout Leader starting in 1980 when he was 12 years old and claims psychological harm including PTSD.
- The Plaintiff alleged in his original pleading and proposed amendments that the Defendant was liable in:
 - Breach of a non-delegable duty of care to take reasonable care to protect him from a risk of harm;
 - vicarious liability for the acts of the scout leader; and
 - agency and joint enterprise.
- Two weeks after filing the action, Bird v DP [2024] HCA 41 was decided.
 - The HCA held that the boundaries of vicarious liability should not be extended beyond a relationship of employment to one that is only “akin to employment.”
- The defendant filed a strike out application, relying on Bird and other authority including NSW v Lepore.

Strike out application

QC v The Scout Association of Australia New South Wales Branch (Cont.)

At [52]:

...But what Garling J was saying (with respect, correctly) in PWJ1 was that it is necessary to plead the material facts relied upon to establish those conclusions. That is not to say that the plaintiff is required to plead the evidence he will adduce at trial. However, he is required to plead, for example, facts capable of sustaining the conclusion that the risk of sexual abuse of Scouts by Scoutmasters had gained public notoriety by 1980, such as (if it be the case) that particular allegations had been widely disseminated or that an inquiry had been demanded or held: cf BTM1 v Scout Association of Australia New South Wales Branch [2023] NSWSC 431 at [8].

(McCallum CJ)





Discovery

Pleadings play a pivotal role in discovery

Mulley v Manifold [1959] HCA 23, Menzies J stated:

- “[I]t cannot be shown by a contentious affidavit that the discovery made is insufficient. Before 1912, it was thought that the insufficiency had to appear from the pleadings, the affidavit of documents itself or the documents therein referred to. However, in *British Association of Glass Bottle Manufacturers Ltd. v. Nettlefold* [1912] UKLawRpAC 45; (1912) 1 KB 369; (1912) AC 709, it was established that the insufficiency might appear not only from the documents but also from any other source that constituted an admission of the existence of a discoverable document. Furthermore, it is not necessary to infer the existence of a particular document; it is sufficient if it appears that a party has excluded documents under a misconception of the case. Beyond this, the affidavit of discovery is conclusive.”

Rule 606(6) prohibits use of an affidavit for an application seeking an order for further discovery, unless the Court otherwise orders



Cossey v Canberra Airport Pty Limited [2022] ACTSC 70

Cossey v Canberra Airport Pty Limited
[2022] ACTSC 70

- Plaintiff alleged negligence causing a fall while descending stairs at the Canberra Airport.
- Justice Kennett noted at [13]:

“... in the correspondence between the solicitors, there appears to have been a difference of view as to the relevance of some documents based on interpretation of the pleadings. That difference related to whether the case pleaded by the plaintiff alleged only that the treads used on the staircase were unsafe, or alleged defects in the design and construction of the staircase more broadly.”
- The application for further discovery succeeded following acceptance by CA at hearing that documents relating to the design and construction were discoverable “even if the current pleadings are properly understood to focus only on the treads used.”



Interrogatories

Mitchell v Australian Capital Territory [2023] ACTSC 249 (McCallum CJ)

- The Plaintiff sued Canberra Hospital for injury suffered during a CT angiogram
- The pleadings stated while the Plaintiff was being administered contrast the cannula in the plaintiff's right arm tissue causing injury.
- The pleadings rolled up allegations of causation with various breaches of duty.
- The plaintiff had briefed a liability expert with facts not pleaded.
- Interrogatories were sought inter alia to identify the person who inserted the cannula, whether relevant precautions were taken including at what time the defendant took the precaution of checking the cannula and the volume of contrast administered.



Interrogatories

The plaintiff was only partly successful.

McCallum CJ stated at [36]:

“In my view, the interrogatories as framed should not be permitted for the reason I have identified; that is, that they arise from an ambiguity in the plaintiff’s own pleading. That ambiguity gives rise to the form of the interrogatories also being problematic.”

And further at [44]:

“As a general rule, a plaintiff should not be permitted to cure deficiencies in the pleading by administering an interrogatory that does not relate in terms to any present issue. The pleadings do however make a general allegation of failure to administer the appropriate volume of contrast and that is potentially an important issue in the proceedings.”



Hall v Martin [2020] ACTSC 233



Hall v Martin [2020] ACTSC 233 (Mossop J)


- Employment injury common law damages
- Plaintiff worked for sole trader uncle at a scrap metal business, cash in hand – uninsured
- DI Fund's Defence denied the Plaintiff was an employee, and made non-admissions in respect of injury
- At [6] Justice Mossop stated:

These non-admissions operated as denials: Court Procedures Rules 2006 (ACT) (CPR) r 440(2), with the result that the plaintiff was put to proof. However, non-admissions do not permit a positive case to be advanced by the second defendant. No application was made to amend the defence. The confined nature of the defence had the effect that the second defendant was significantly constrained in the evidence that it could lead.


- The Defendant was allowed to lead evidence from witness who said they were at the scene and didn't see Plaintiff the day of the injury.
- 

Alrifai v ACT [2022] ACTSC 48


- Alrifai v ACT [2022] ACTSC 48 (Balla AJ)
 - Medical negligence claim
 - failure to diagnose pancreatic cancer earlier
 - The Defendant had pleaded in Defence that on one occasion she discharged against medical advice
- Rule 443



Palmer v ACT (No 2) [2023] ACTSC 340



Palmer v ACT (No 2) [2023] ACTSC 340
(McCallum CJ)

- Claim by prisoner at AMC for shoulder injury caused by excessive use of force by corrections officer
 - Plaintiff pleaded the force was used in response to his breaking of glass in his cell
 - Defendant :
 - Admitted corrections officers used force;
 - denies the force was excessive
 - says that force was appropriate and reasonable *in all the circumstances*;
 - otherwise denies the matters alleged.
- 

Higgins v Pretorius [2025] ACTSC 64

Higgins v Pretorius [2025] ACTSC 64 (Ainslie-Wallace AJ)

- Defendant struck her neighbour in the side of the head with a rubber mallet
- Defendant charged and pleaded guilty
- Pleading of assault and battery claiming damages including aggravated and exemplary damages
- Defendant admitted liability for the assault.
- Defendant denied every head of damage.
- The Plaintiff asserted exemplary damages should be awarded because of the ongoing denial in the presence of the Defendant's own expert acknowledging PTSD, constituted a contumelious disregard for the Plaintiff.
- Exemplary damages were not awarded.

86 Candles Pty Ltd v Commissioner for Fair Trading [2025] ACTSC 34

86 Candles Pty Ltd v Commissioner for Fair Trading [2025] ACTSC 34 (Balla J)

- Pink Frosting, an online party supplies retailer, operated from August 2015 to March 2020.
- Complaints were made against Pink Frosting regarding non-delivery, incorrect goods, and refund issues.
- Access Canberra investigated complaints and engaged with media inquiries.
- It was asserted the media coverage negatively impacted Pink Frosting's reputation and business operations.
- Pink Frosting and director/owner Ms Curtis, filed a statement of claim seeking:
 - Declaration of procedural unfairness;
 - compensation under s 51 of the ACL.

86 Candles Pty Ltd v Commissioner for Fair Trading (Cont.)

"116. The plaintiffs have failed to clearly articulate their claims against the defendants. Most of the pleadings in the Statement of Claim are no longer relied on. At the commencement of Final Addresses, I was provided with a short Outline of their case which is set out below. Counsel for the plaintiffs concedes that some of the claims set out in that document have not been pleaded."

"129. I then informed counsel for the plaintiffs that I would not deal with the issues raised on an informal basis and, if leave was sought to amend the Statement of Claim, the plaintiffs would need to prepare an Application and an affidavit in support which would be dealt with in the usual way. No such application was made at any time."



Thanks!

Any questions?



Law Society of the Australian Capital Territory
Phone 02 6274 0333 | memberconnect@actlawsociety.asn.au

actlawsociety.asn.au