SUPREME COURT OF QUEENSLAND

CITATION:	*DGR Global Ltd v P.T. Limited as trustee of the Armour Energy Security Trust* [2026] QSC 226
PARTIES:	**DGR GLOBAL LTD** **ACN 052 354 837** (plaintiff) **v** **P.T. LIMITED ACN 004 454 666 AS TRUSTEE OF THE ARMOUR ENERGY SECURITY TRUST** (first defendant) **PERPETUAL CORPORATE TRUST LIMITED ACN 000 341 533 AS TRUSTEE FOR THE ARMOUR ENERGY NOTE TRUST** (second defendant) **RICHARD SCOTT TUCKER AND ROBERT WILLIAM HUTSON IN THEIR CAPACITY AS THE FORMER RECEIVERS AND MANAGERS OF ARMOUR ENERGY LIMITED ACN 141 198 414 (IN LIQUIDATION), MCARTHUR OIL AND GAS LIMITED ACN 648 622 404 (IN LIQUIDATION), MCARTHUR NT PTY LTD ACN 649 856 315 (IN LIQUIDATION), ARMOUR ENERGY (SURAT BASIN) PTY LIMITED ACN 607 504 905, ARMOUR ENERGY (VICTORIA) PTY LTD ACN 167 298 240, COERA PTY LTD ACN 636 658 574, HOLLOMAN PETROLEUM PTY LTD ACN 126 728 498 AND CORDILLO ENERGY PTY LTD ACN 636 904 204 (ALL SUBJECT TO A DEED OF COMPANY ARRANGEMENT)** (third defendant) **ADZ ENERGY PTY LTD** **ACN 672 466 198** (fourth defendant) **SHUNKANG HOLDING GROUP CO. LIMITED (a company incorporated in the Peoples Republic of China)** (fifth defendant) **BAKER & MCKENZIE (A FIRM)** (sixth defendant)
FILE NO/S:	BS 15575/23
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	2 October 2026
DELIVERED AT:	Brisbane

HEARING DATE: 17 August 2026

JUDGE: Freeburn J

ORDERS:

1. **The amendments in the fourth further amended statement of claim annexed to the application filed 10 June 2026 which are not subject to any objection are allowed.**
2. **The application is otherwise dismissed.**
3. **I will hear the parties on the form of the order, costs and scheduling further steps to trial.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COURT SUPERVISION – AMENDMENT – ORIGINATING PROCESS, PLEADINGS ETC – where the plaintiff seeks leave to file a third further amended claim and a fourth further amended statement of claim – where the fourth further amended statement of claim expands the plaintiff's existing counterfactual on its misleading and deceptive claim to four new 'pathways' – where the first, second, third and fourth defendants oppose the application on grounds that the proposed amendments are defective, unclear and unfair – where this is the plaintiff's fourth application for leave to amend in the proceeding – where the trial listed in December 2024 was adjourned to April 2025 and vacated in February 2025 – where there has been a significant volume of interlocutory disputes in the proceeding – where plaintiff has had an opportunity to amend since late 2024 – where the plaintiff has not provided a satisfactory explanation for its delay in bringing this application – where the nature of the proposed amendments widen the scope of the litigation and foreshadow a further amended pleading based on further disclosure and expert evidence – where the proposed amendments are likely to further delay progression of the litigation and prejudice the court, the parties and other litigants – whether the court should exercise its discretion to permit the amendments applying the factors in *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175

Uniform Civil Procedure Rules 1999 (Qld), r 375

Aon Risk Services Australia Limited v Australian National University (2009) 239 CLR 175; [2009] HCA 27, applied
Dey v Victorian Railways Commissioners (1949) 78 CLR 62; [1949] HCA 1, cited
General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125; [1964] HCA 69, cited
Hartnett v Hynes [2009] QSC 225, cited
Menegazzo v Pricewaterhousecoopers (A Firm) [2016] QSC 94, cited

Monto Coal 2 Pty Ltd v Sanrus Pty Ltd [2014] QCA 267, cited
Resolution Life Australasia Ltd v AMP Ltd [2025] NSWCA 21, cited
Sali v SPC Ltd [1993] HCA 47; (1993) 116 ALR 625, cited
Sanrus Pty Ltd v Monto Coal 2 Pty Ltd (No 7) [2019] QSC 241, cited

COUNSEL: J W Peden KC, with H E Hadgraft, for the plaintiff/applicant
A I O'Brien KC, with A M Campbell, for the first and second defendants
D de Jersey KC, with M W P Ziebell, for the third and fourth defendants
L E Gamble for the fifth defendant
S McCarthy for the sixth defendant

SOLICITORS: DLA Piper for the plaintiff
Cowen Schwarz Marschke for the first and second defendants
Johnson Winter Slattery for the third and fourth defendants
Thomsons for the fifth defendant
Hall & Wilcox for the sixth defendant

[1] This proceeding has a long, tortured history.

[2] The present dispute within the proceeding involves an application by the plaintiff, DGR, to further amend its statement of claim. Some amendments are not opposed. Those amendments will be permitted. I turn to consider the balance of the proposed amendments – that is the amendments that are opposed by one or other of the defendants.

[3] The balance of the amendments proposed by the application to amend are opposed by the first, second, third and fourth defendants. The fifth defendant neither consents to nor opposes the application. The sixth defendant also adopts the stance that it neither consents nor opposes leave to amend. However, the fifth and sixth defendants point out that if any of the objections of the other defendants succeed that result should be the same for all defendants.

The Discretion to Amend

[4] The written submissions on behalf of DGR refer in some detail to cases such as ***General Steel*** *Industries Inc v Commissioner for Railways (NSW)*[1] and ***Dey*** *v Victorian Railways Commissioners.*[2] I do not find those cases, which concern the caution to be exercised in summarily dismissing claims, of any particular assistance here. I will return to that issue shortly.

[5] This is an application under rule 375 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**). That rule gives the court a discretion to permit an amendment to a pleading. The content of rule 375 is substantially the same as rule 502 of the *Court Procedures Rules 2006* (ACT) which was considered by the High Court in ***Aon Risk*** *Services*

1 (1964) 112 CLR 125; [1964] HCA 69 at 128-129.
2 (1949) 78 CLR 62; [1949] HCA 1 at 91.

Australia Limited v Australian National University.[3] The relevant considerations derived from that case may be summarised in this way:

(a) an order that the amending party pay the costs occasioned by the amendment is not necessarily "*a panacea that heals all*";

(b) the strain that the litigation imposes on litigants, including corporate litigants, is a relevant consideration;

(c) the objectives of rule 5 of the UCPR, that is, the just and expeditious resolution of the real issues at a minimum of expense, does not require that the court refuse applications to amend;

(d) the waste of some costs and some degree of delay are inevitable consequences of amendment; that waste and delay, and the extent of it, are relevant considerations;

(e) the nature and importance of the amendment to the party applying to amend cannot be overlooked;

(f) factors weighing against allowing an amendment may be:

  (i) the extent of the delay;

  (ii) the costs associated with the delay;

  (iii) the prejudice which might reasonably be assumed to follow; and

  (iv) any prejudice that is shown;

(g) much will depend on the point the litigation has reached relative to a trial when the application to amend is made;

(h) a factor to consider is whether the party seeking to amend has had a sufficient opportunity to plead their case and whether it is too late to amend having regard to the other party and other litigants awaiting trial dates;

(i) the exercise of the discretion will invariably require an explanation to be given where there is delay in applying for amendment; and

(j) an applicant will need to show that the application is brought in good faith as well as the circumstances giving rise to the amendment so that they may be weighed against the effects of any delay and the requirements of rule 5.

[6] It is true that, as DGR submits, the considerations in *Aon Risk* are not rigid rules. They are a guide to the exercise of the discretion.

[7] As Applegarth J said in *Hartnett v Hynes*:

> [19] Case management principles do not supplant the objective of doing justice between the parties according to law. However, the interests of justice are not served by courts acceding to late amendments without explanation or justification. Rules such as UCPR 5 that have been enacted since *JL Holdings* indicate that the rules concerning civil litigation no longer are to be

[3] (2009) 239 CLR 175; [2009] HCA 27.

> considered as directed only to the resolution of the dispute between the parties to a proceeding. The achievement of a just but timely and cost-effective resolution of a dispute has an effect upon the Court and upon other litigants.[4]

[8] Case management reflects the view that the conduct of litigation is not merely a matter for the parties but is also one for the court and the need to avoid disruptions in the court's lists with consequent inconvenience to the court and prejudice to the interests of other litigants waiting to be heard.[5]

[9] There is an irreparable element of unfair prejudice in unnecessarily delaying proceedings.[6] Undue delay can undermine confidence in the rule of law, and the modern common law adversarial system is not a system which permits disregard of undue delay.[7]

[10] Finally, it is important to note that the overriding purpose of the rules which is to facilitate the "*just and expeditious resolution of the real issues in civil proceedings at a minimum of expense*".[8] The rules are to be applied with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of the rules.[9] Each party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.[10] And the court may impose appropriate sanctions if a party is in breach of the implied undertaking.[11] Those are overriding, positive obligations.[12]

[11] Before considering the discretionary factors derived from *Aon Risk*, it is necessary to return to DGR's reliance on *General Steel* and *Dey* and similar cases.

General Steel **Principles**

[12] In *General Steel*, Barwick CJ said that the jurisdiction to summarily terminate an action is to be sparingly employed and is not to be used except in a clear case where the court is satisfied that it has the requisite material and the necessary assistance from the parties to reach a definite and certain conclusion.[13] Similarly, in *Dey* Dixon J said:

> A case must be very clear indeed to justify the summary intervention of the court to prevent a plaintiff submitting his case for determination in the appointed manner by the court with or without a jury. The fact that a transaction is intricate may not disentitle the court to examine a cause of action alleged to grow out of it for the purpose of seeing whether the proceeding amounts to an abuse of process or is vexatious. But once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it,

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4 ***Harnett*** *v Hynes* [2009] QSC 225 at [19].
5 *Aon Risk* (supra) at [93] citing *Sali v SPC Ltd* (1993) 116 ALR 625; [1993] HCA 47 at 849.
6 *Aon Risk* (supra) at [5]; *Hartnett* (supra) at [19].
7 *Aon Risk* (supra) at [24]; *Hartnett* (supra) at [19].
8 UCPR rule 5(1).
9 UCPR rule 5(2).
10 UCPR rule 5(3).
11 UCPR rule 5(4).
12 *Hartnett* (supra) at [11].
13 (1964) 112 CLR 125; [1964] HCA 69 at 128-129.

> then it is not competent for the court to dismiss the action as frivolous and vexatious and an abuse of process.[14]

[13] Those principles are well established. But they are principles that apply where the effect of the court's order, to use the language of those two High Court cases, is to summarily terminate a proceeding or to prevent a plaintiff from submitting their case for determination. In other words, the power to strike out a proceeding is an extreme one and will only be exercised in rare circumstances where the court is satisfied that the plaintiff's case clearly has no real prospects of success.[15]

[14] But those principles are not engaged here. No party seeks an order that will summarily terminate the proceeding. DGR's application is for the court to exercise its discretion under rule 375 of the UCPR to permit DGR to further amend its statement of claim. One factor, among the many factors that are relevant to the exercise of that discretion, is the nature and importance of the amendment to the party applying to amend.

[15] That factor will vary in its influence on the discretion. And, the interaction of that factor with the other discretionary factors will vary in their influence on the discretion. In *Aon Risk*, for example, the amendments sought to introduce new and substantial claims that were so substantial as to require the opposite party, in effect, to defend again, as from the beginning. Those substantial amendments were sought during the time set for the trial of the action and, if granted, would result in the abandonment of the trial. Thus, the combination of factors, comprising the substantial nature of the proposed amendments, and the late stage at which they were sought, made the amendment application an unattractive proposition.

[16] Substantial amendments have better prospects at the commencement of litigation. Conversely, substantial amendments have lesser prospects where the trial is imminent or the amendments pose a risk to the trajectory of the proceeding.

[17] Of course, the court will not grant leave to amend a pleading into a form which is liable to be struck out.[16] And so, for example, leave will not be granted to add a plea which is bad in law or defective due to its non-compliance with the rules of pleading.[17]

[18] Similarly, if there are substantial and bona fide attacks on the form of the proposed pleading it may be appropriate to consider those challenges to the proposed pleading as a factor relevant to whether leave to amend ought to be granted. Alternatively, the court might grant leave to amend subject to hearing the proposed challenges to the pleading.

[19] Importantly though, DGR's reference to the principles in *General Steel* and *Dey* is not helpful in this context. The appropriate approach to the application is to consider the factors derived from *Aon Risk* as summarised above. The nature and form of the proposed amended pleading is one factor relevant to the discretion.

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14 (1949) 78 CLR 62; [1949] HCA 1 at 91.

15 See *Resolution Life Australasia Ltd v AMP Ltd* [2025] NSWCA 21 at [16], citing *General Steel* (supra).

16 ***Menegazzo** v Pricewaterhousecoopers (A Firm)* [2016] QSC 94 at [47]; DGR's Submissions filed 10 June 2026 (**DGR's Submissions**) at [42].

17 *Menegazzo* (supra).

Delay/Stage of Proceedings

[20] It is convenient to, first, consider the extent of the delay and the stage of the litigation at which the amendment was sought.

[21] It is unnecessary, and it would be too time-consuming, to give the entire procedural history of the case. For present purposes it is sufficient to mention some of the significant events:[18]

(a) On 10 November 2023, Armour Energy Ltd was placed into receivership and voluntary administration.

(b) On 8 December 2023, DGR (the largest shareholder and creditor of Armour) commenced this proceeding by originating application.

(c) On 18 and 22 January 2024, DGR filed its **statement of claim**.

(d) On 22 March 2024, DGR filed an application to amend its statement of claim to introduce misleading and deceptive conduct claims, including against new parties: Shunkang (the fifth defendant) and Baker & McKenzie (the sixth defendant).

(e) In early April 2024, the proceeding was set down for a two week trial commencing on 2 December 2024.

(f) On 17 May 2024, Cooper J delivered reasons for judgment on DGR's application for leave to amend and granted leave to amend to add the claims of misleading or deceptive conduct.[19]

(g) On 21 May 2024, DGR filed its amended claim and **amended statement of claim**.

(h) Between 18 to 19 June 2024, the defendants filed their defences.

(i) On 13 and 15 August 2024, DGR served replies to the defendants' defences.

(j) On 29 August 2024, DGR made disclosure.

(k) On 30 August 2024, DGR served an (second) application seeking leave to amend and file a proposed further amended statement of claim which amended the existing causation plea and added tortious conspiracy claims.

(l) On the same day, Hindman J made timetabling orders which included orders that DGR was to file and serve:

(i) material and submissions to support an application for leave to amend by 2 September 2024; and

(ii) its lay evidence by 4 October 2024.

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18 This chronology is largely derived from the Thirteenth Affidavit of Mr Prescott filed 10 June 2026 (**13th Prescott Affidavit**) from paragraph 10 onwards.

19 This decision is published as *DGR Global Ltd v P. T. Limited as trustee of the Armour Energy Security Trust* [2024] QSC 90.

(m) By 5 September 2024, the defendants had notified DGR that they did not object to leave to amend being granted, subject to the supply of particulars of the tortious conspiracy claims.

(n) On 13 September 2024, Hindman J made orders which:

(i) granted DGR leave to further amend the statement of claim (causation) but disallowed the tortious conspiracy claims (at that stage); and

(ii) vacated the orders requiring the delivery of DGR's lay evidence.

(o) At this point, Mr Prescott (DGR's solicitor) says he believed that DGR's then counterfactual was sufficiently pleaded to bring into issue Armour's ability to repay its debts to DGR.[20]

(p) By early September 2024, the defendants had made initial disclosure, but disclosure continued through October 2024.

(q) On 10 October 2024, Hindman J made orders including an order that the two week trial set down to commence on 2 December 2024 be adjourned to 22 April 2025 for four weeks.

(r) On 23 October 2024, Hindman J made orders which:

(i) granted DGR leave to file the second further amended statement of claim; and

(ii) required DGR to file and serve any lay evidence by 16 December 2024.

(s) On 25 October 2024, DGR filed its further amended claim and **second further amended statement of claim**.

(t) On 15 November 2024, DGR's solicitors sent the defendants' solicitors a letter which advised that "*without admission of the correctness of the Receivers and ADZ's assertions, our client intends to amend the counterfactual in its statement of claim to address complaints made by ADZ and the Receivers*".[21]

(u) On 29 November 2024, DGR's solicitors sent the defendants' solicitors a version of the third further amended statement of claim with an expanded counterfactual and added an allegation that Armour's share price would have increased to $6.30.

(v) On 13 December 2024, the defendants filed security for costs applications.

(w) On 16 December 2024, the further (third) application for leave to amend the statement of claim was heard by Hindman J.

(x) In January 2025:

(i) Hindman J heard the defendants' security for costs applications and ordered DGR to pay $3,460,000 in security for costs;

(ii) Hindman J handed down the leave to amend decision (from the application heard on 16 December 2024) allowing some amendments and disallowing others; and

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20 13th Prescott Affidavit at [28].

21 13th Prescott Affidavit, Exhibit 'LTP-13' at page 28.

(iii) DGR served an affidavit of one of its directors, Mr Mather, which provided details in relation to the projects Armour would have progressed (that is, a counterfactual).

(y) On 6 February 2025, a review hearing was held before Hindman J at which there was some discussion of amendments that had been disallowed and the prospect of a further application to amend.

(z) On 10 February 2025, DGR filed its notice of appeal in relation to the security for costs decision.

(aa) On 14 February 2025, DGR filed its second further amended claim and **third further amended statement of claim**.

(bb) On the same day, Cooper J heard a contested application by DGR to stay the proceedings and on 18 February 2025, Cooper J delivered judgment:

(i) staying the proceedings; and

(ii) vacating the four week April 2025 trial.

(cc) Between 18 February 2025 to 1 July 2025, the proceedings were stayed (by reason of the order of Cooper J and rule 674 of the UCPR).

(dd) On 1 July 2025, the Queensland Court of Appeal allowed an appeal against the security for costs order.[22]

(ee) Between 22 August 2025 and 11 March 2026, DGR brought a separate, ultimately successful proceeding to restrain the solicitors for the first and second defendants (**the Perpetual defendants**), Corrs Chambers Westgarth, from acting in the proceeding.[23]

(ff) On 10 June 2026, DGR made this (fourth) application to amend, that is, for leave to file and serve a third further amended claim and a **fourth further amended statement of claim**.

[22] That chronology shows that this is DGR's fourth application for leave to amend its statement of claim.[24] Looking at the proceeding superficially, it could be said that this application has been brought at the pleading stage of the litigation and that, at present, no trial dates have been allocated. But that is not merely a fleeting sense of déjà vu; the proceeding has been here before.

[23] Important in the above chronology is that:

(a) pleadings initially closed in mid-August 2024 – more than two years ago;

(b) when the pleadings did close in August 2024, that was on the basis of DGR's amended claim and amended statement of claim;

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22 *DGR Global Ltd v PT Ltd* [2025] QCA 122.

23 This battle was heard over seven sitting days and ended with Corrs Chambers Westgarth agreeing to withdraw as the solicitors for the Perpetual defendants.

24 The proposed fourth further amended statement of claim is said to be in its eighth iteration: Outline of Submissions (third and fourth defendants) filed 17 June 2026 at [29(c)].

(c) the parties then made disclosure between August to October 2024;[25] and

(d) two trial dates (with proposed durations of two and then four weeks) were vacated within the span of four months, albeit for different reasons.

[24] An amendment of a statement of claim often causes the interlocutory processes to be 'reset', at least to some extent. Amended defences are required. And amended replies. Disclosure needs to be reviewed in the light of the amendments. If evidence has been prepared, it needs to be re-visited. The more significant the amendments the more pronounced the reset.

[25] Here, a reset was required by DGR's amendments to its pleading. And DGR's amendments appear to have caused a postponement of the court's requirement that DGR file and serve its lay evidence. The vacation of the trial dates no doubt had an impact on the parties in this case, as well as on the court's calendar and other litigants.

[26] As will be explained, the latest amendments proposed by DGR are quite significant. And, as will also be explained, these latest proposed amendments are not likely to be the last. Further resets are in prospect.

[27] These are factors against the grant of leave to amend.

Extent and Causes of Delay

[28] DGR seeks to attribute the delay in the proceeding to the conduct of the defendants for these reasons:

(a) *first*, the defendants' conduct obscured the case on liability, which resulted in significant work for the plaintiff to uncover the liability case;

(b) *second*, the defendants forced a change of solicitor by the plaintiff;

(c) *third*, the sheer volume of interlocutory disputes;

(d) *fourth*, the defendants applied very late for security for costs on a misconceived basis; and

(e) *fifth*, (in the case of the Perpetual defendants) seeking to retain Corrs Chambers Westgarth as their solicitors in circumstances where it was clear that Corrs were conflicted and ought never to have acted.[26]

[29] Certainly, it is true that there has been a significant volume of interlocutory disputes. DGR was successful in overturning the security for costs order, and it was also successful in preventing Corrs from acting for the Perpetual defendants. Unfortunately, neither of those battles progressed the proceeding any closer to a trial.

[30] Some disputes have been avoided because, for example, as late as September 2024, the defendants did not object to leave to amend being granted.

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25 Although disclosure is not 'complete'. DGR foreshadows an application for the disclosure of documents in relation to Armour's gas assets from ADZ (the fourth defendant): 13th Prescott Affidavit, [30.4], [34.1] and [48.3].

26 This is based on the submission at paragraph [74] of DGR's submissions.

[31] There is probably little point in trying to attribute blame to one or other of the litigants. For the most part, at least some of the parties have been willing and enthusiastic combatants. The parties have consumed very significant blocks of the court's time in supervision and case management and in resolving interlocutory disputes.

[32] In my view, these proposed amendments come quite late in the proceeding. The court and the parties had been working towards a trial in December 2024, and then another trial date in April 2025. More than a year later, DGR seeks to amend again.

[33] This is a factor against leave to amend.

Opportunity to Amend

[34] It is worth expressly addressing the first reason for delay relied on by DGR that is, factor (a) above. On that point, DGR makes these submissions:

> …whilst it is now clear that the creation and execution of the Enforcement Steps Plan was a variant of a "*loan to own*" transaction, that was by no means clear to the plaintiff early in the proceedings. It was only through disclosure, and the production of documents through September and October 2024, that the true extent of the defendants' conduct became apparent. The defendants also provided numerous tranches of disclosure, which were (on numerous occasions) only responsive to requests for documents by the plaintiff.
>
> Further, for example, the denial by the defendants in their pleadings that ADZ was a related entity or subsidiary of Shunkang was an unreasonable denial in light of what is now known.
>
> The defendants' conduct caused the plaintiff to focus significant resources on **uncovering the case on liability**, which distracted the plaintiff from a full exploration of its case on quantum.[27] [emphasis added]

[35] There are two concerns here.

[36] *First*, it is a concern that, having pleaded its case in 2023, DGR was engaged in an exercise of what is explained as "*uncovering the case on liability*". The litigation was commenced urgently in December 2023 but then was the subject of a successful application to amend in May 2024. Presumably the case when pleaded, at least by May 2024, was based on reasonable grounds.[28]

[37] Litigation is not an investigative procedure. The case as pleaded at the outset should have a proper basis. A party may be entitled to bolster their pleaded case by reference to material that is disclosed. But that does not detract from the need for a party who commences a proceeding to bring to court a cause or causes of action that are properly pleaded. That requirement is reinforced by the ethical obligations of a lawyers who plead their client's case. That lawyer must believe, on reasonable grounds, that the factual material already available provides a proper basis to plead the case filed in

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27 DGR's Submissions at [76]-[78].

28 See *Barristers' Conduct Rules*, r 63. See also *Australian Solicitors Conduct Rules 2023*, r 21.3.

court.[29] As a matter of practice, that factual material will often be recorded in a witness statement or in a proof of evidence. But here it appears that DGR left it until November 2024 to, as it says, "*prepare its lay evidence*".[30]

[38] *Second*, it is surprising that a corporate litigant in commercial litigation, having retained experienced solicitors and senior and junior counsel, would offer as an explanation for delay in the proceeding that it was "*distracted… from a full exploration of its case on quantum*".

[39] In his 13th affidavit filed in these proceedings, Mr Prescott says that he does not believe that DGR and its external legal team had a sufficient opportunity to plead (and apply for leave in respect of) the amendments for which DGR now seeks leave.[31] However, at least as regards causation, Mr Prescott's evidence is that the ability of DGR to plead a detailed causation pathway relied on preparing lay evidence and obtaining instructions in relation to the counterfactuals, which:

(a) substantially commenced in the second half of 2024 due to "*unforeseen work streams in the proceeding*"; and

(b) apparently continued whilst the proceeding was stayed and was 'informally stayed' whilst the parties fought about whether Corrs should be the solicitors for the Perpetual defendants.[32]

[40] The expression "*unforeseen work streams in the proceeding*" is a vague explanation of what has apparently kept DGR's legal team from directing its attention to carefully pleading its case. And, it is doubtful that it is accurate to say that the fight over whether Corrs should be the solicitors for the Perpetual defendants operated as an 'informal stay'. The fact that there were no formal steps taken in the proceeding does not mean that a party is prevented from preparing its case and preparing the evidence it needs. The likelihood is that it is more accurate to say that DGR made a decision not to continue preparation of the case whilst it fought about the legal representation issue. That is the tenor of the correspondence from DGR's solicitors.[33]

[41] Importantly, it is not said that the preparation of the case, that is by preparing lay evidence and obtaining instructions in relation to the counterfactuals, could not have occurred before recent times. It is hard to avoid the impression, created by DGR itself, that it has had an opportunity to amend before now but has been "*distracted*".

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29 Ibid.

30 There is no suggestion in Mr Prescott's evidence that the lay evidence had been prepared prior to this or that there were proofs of evidence or witness statements from which DGR's lay evidence was to be prepared pursuant to court orders. Under the court orders on 30 August 2024, DGR's lay evidence was first ordered to be filed and served by 4 October 2024. Then, 14 days later, on 13 September 2024, that order was vacated. On 23 October 2024, a fresh requirement for DGR's lay evidence was set for 16 December 2024.

31 13th Prescott Affidavit at [8].

32 13th Prescott Affidavit at [8.4].

33 See, in particular, the Seventh Affidavit of Mr Smith filed 17 June 2026 (**7th Smith Affidavit**) at [20] which refers to DLA Piper's letter dated 21 August 2025: "*the final amendments have been delayed by the work required to address the Corrs conflict*…".

[42] That is reinforced by Mr Prescott's evidence that, through the preparation of DGR's lay evidence in November 2024, and thereafter, a potential further damages claim involving the lost opportunity of an increase in Armour's share price was identified.[34]

[43] There is, of course, a very significant gap between the preparation of DGR's lay evidence in November 2024 and this application to amend filed in June 2026. Not all of that gap is explained by what is described as the formal and informal stays of the proceeding.

[44] This is a factor against leave to amend.

Explanation

[45] The need for an explanation, and the content required of any such explanation, must vary from case to case.[35]

[46] Here, in reasonably complex commercial litigation, the plaintiff seeks further amendments to its pleading. There is something of an explanation for the proposed amendments and DGR's delay in bringing this application. But, for the reasons explained above, it is not a particularly satisfactory explanation. The explanation hinges on DGR's legal team being 'distracted'.

[47] In *Aon Risk*, the plurality considered that the need for an amendment will often arise because of some error or mistake having been made in the drafting of the existing pleading or in a judgment about what is to be pleaded in it.[36] It may be that being distracted qualifies as an error or mistake but the distraction merely explains why the amendment was not made during the course of the distraction. Left open is why the proceeding was commenced and continued for some time without the amendments now proposed. The likely explanation is that DGR has been engaged in an exercise of what has been explained as "*uncovering the case on liability*" rather than prosecuting causes of action properly grounded in the factual material already available.

[48] The evidence is that DGR has had Armour's documents to plead its counterfactual since October 2023.[37] Indeed, most of the documents relied upon in the proposed amendments are DGR's own documents.

[49] This is a factor against leave to amend.

Nature of the Proposed Amendments

[50] An important factor in the exercise of the discretion is the nature of the proposed amendments. Before considering the proposed amendments, it is worth considering the previous amendments.

Previous Amendments

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34 Mr Prescott's 13th affidavit at [9].

35 *Monto Coal 2 Pty Ltd v Sanrus Pty Ltd* [2014] QCA 267 at [101]-[102] citing *Aon Risk* (supra) at [82] and [103].

36 *Aon Risk* (supra) at [82].

37 Second Affidavit of Ms Wright filed 14 November 2024 at [34].

[51] DGR's previous amendments to its pleading have been significant. As discussed above, in May 2024, Cooper J delivered reasons for judgment on DGR's application for leave to amend and granted DGR leave to amend to add the claims of misleading or deceptive conduct. And, as the third and fourth defendants submit, the subrogation claim, once a significant part of the proceeding, has been abandoned and four of the five original tortious conspiracy claims have also been abandoned.

[52] The previous amendments were not mere tinkering. Nor did they have the character discussed in *Aon Risk*, that is, amendments designed to correct some error or mistake having been made in the drafting of the existing pleading or in the assessment of what should be pleaded in it. The character of the amendments have been renovations rather than mere repair.

Paragraphs 60A and 60B

[53] Turning to the proposed amendments, DGR propose to add paragraphs 60A and 60B. Those paragraphs simply plead that the first defendant (P.T. Limited) called a beneficiaries' meeting and that the notice of meeting proposed six alternative resolutions for consideration by the beneficiaries. Those paragraphs are background facts, that is, they plead evidence rather than material facts. Thus, the pleading of those two paragraphs is pointless.

The Further Counterfactuals – Paragraph 299

[54] Paragraph 299 pleads a counterfactual, namely what DGR says would have occurred but for the breaches of section 18 of the *Australian Consumer Law* by the fourth (**Shunkang**) and fifth (**ADZ**) defendants. Two types of changes are proposed to paragraph 299.

[55] The *first* change, a relatively minor change, is to make these changes (with the additions underlined):

> 299. Had Shunkang and, further or alternatively ADZ, not contravened section 18 of the ACL as pleaded in paragraphs 277 and 287:
>
> *"Pathway 1":*
>
> (a) Armour Limited would have requested DGR to make, or alternatively lend sufficient funds to Armour Limited to enable Armour Limited to make, the September Payment;
>
> (b) DGR would have paid, or alternatively lent sufficient funds to Armour Limited to enable Armour Limited to pay, the September Payment to Perpetual;
>
> (c) the Armour Group would have ceased to be in default under the Note Trust Deed;

[56] These changes add an alternative allegation that DGR would have loaned the money to Armour. It is hard to see that there is a dramatic change here.

[57] The *second* proposed change to paragraph 299 is more significant. The existing counterfactual becomes one of four counterfactuals or 'pathways'. The four pathways are as follows:

(a) Pathway 1 would involve Armour Limited paying the September Payment (a payment due on 29 September 2023) by request or loan from DGR and the Armour Group then ceasing to be in default under the Note Trust Deed;

(b) Pathway 2 would involve Armour or DGR taking urgent steps to obtain and obtaining an injunction to prevent ADZ from acquiring the notes; and DGR would not have sold its notes; and DGR would have itself acquired notes to prevent ADZ from acquiring the required 75 per cent;

(c) Pathway 3 involved persuading the FIIG/Perpetual defendants not to take steps towards enforcement action; and

(d) Pathway 4 would involve Armour Limited obtaining an injunction to prevent enforcement action.

[58] This expansion of the counterfactuals is a significant change to the pleading. Each involves significant new lines of inquiry, and lines of inquiry involving different defendants. Pathway 2, for example, may well involve an inquiry into whether, at the relevant time, Armour limited would have had reasonable prospects of obtaining an injunction and whether they could have provided a worthwhile undertaking as to damages. At the least a new front would be added to the battle.

[59] Counsel for the first four defendants criticised the fact that there are a number of counterfactuals and that they are inconsistent. I have some doubt that that is a powerful criticism in this context. A party is entitled to plead alternative cases.[38] The more serious problem for DGR is that it has decided to expand its case relatively late in the proceeding – after having already pleaded a case (presumably on careful instructions) with the more conventional approach of one counterfactual.

[60] Similarly, there are some further particulars that are likely to be required, such as: What were the "*steps*" towards enforcement referred to in paragraph 299(cb)? That problem, and a number of similar problems, are not major difficulties because they could be cured with an order for particulars.

[61] There is also the problem that each of the four counterfactual pathways is said to have an aggregate likelihood of at least 90%. That gives this part of the pleading the look of an ambit claim, rather than a careful, thought-through pleading of different scenarios with presumably different prospects. Again, that is not a fatal problem that could not be remedied, but it leaves the impression that the pleading is a work-in-progress – a topic I will return to shortly.

[62] However, the real difficulty is that if the discretion is exercised in favour of permitting the amendments, the scope of the dispute is larger. And it is a larger scope with no satisfactory explanation for the absence of these scenarios from previous versions of the pleading.

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[38] If there is more than one causation hypothesis, then each causation hypothesis should not be characterised by imprecision and ambiguity and should, at least arguably, establish the requisite causal connection: *Sanrus Pty Ltd v Monto Coal 2 Pty Ltd (No 7)* [2019] QSC 241 at [18].

The Wider Scope – Paragraphs 299A to 299R

[63] The proposed amendments to add paragraphs 299A to 299R raise two significant concerns. *First*, the terms of these proposed amendments suggest that the pleading is still a work-in-progress. *Second*, these proposed amendments have a very wide scope. They would expand considerably the scope of the litigation.

[64] Paragraphs 299A to 299D are illustrative of those two problems. It is necessary to quote those paragraphs in full:

> 299A. The market value of Armour Limited's shares on the Australian Securities Exchange as at 9 November 2023 was 10.5c AUD per share and would have been the same on the next day, 10 November 2023.
>
> 299B. The true value of Armour Limited's shares as at 10 November 2023 was more than 10.5c AUD per share because of gas resources not yet taken into account, either alone or in conjunction with the increased price payable for that gas under the Shell MSA.
>
> Particulars
>
> (a) The gas resources not yet taken into account are those the subject of the reprocessing and reinterpretation work being conducted by Schlumberger referred to in the particulars to paragraph 299G below and well output results since 10 November 2023.
>
> (b) **Particulars of the true value of Armour Limited's share price will be provided following the completion of interlocutory steps including disclosure, non-party disclosure and expert evidence**.
>
> 299C. The true value of Armour Limited's shares as at the date of anticipated trial would likely have been at least $3.97 AUD per share because of the matters in paragraphs 299D, 299E and 299F below, leading to the probability of the matters pleaded in paragraphs 299G to 299O occurring by that date.
>
> Particulars
>
> The true value of Armour Limited's shares as at the date of anticipated trial will include a consideration of the following:
>
> (a) a discounted cash flow analysis at the anticipated date of trial, taking into account Armour projected profit earnings of:
>
> (i) $11,107,288.71 in the calendar year 2024, as set out in document for 2024 [DGR.001.002.5736];
>
> (ii) $38,179,727.83 in the calendar year 2025, as document for 2025 [DGR.001.002.5735];

(b) that the application of a price/earnings multiple of 12 to Armour Limited's earnings results in an implied value of:

(i) $133,287,464.52 in the calendar year 2024;

(ii) $458,156,733.96 in the calendar year 2025;

(c) that the following asset value can be attributed to Armour Limited's operations at the anticipated date of trial, **subject to the completion of expert reports, but the best particulars that DGR is presently able to provide** are as follows:

(i) Surat Basin (based on a production increase to 20TJ per day) - $130,000,000, as recorded in Armour's projected growth document document "Pathway to Sustainable Growth" document dated 17 August 2023 [DGR.501.013.3166];

(ii) Newstead Gas Storage and Trading Facility - $35,000,000, as recorded in Armour's projected growth document "Pathway to Sustainable Growth" document dated 17 August 2023 [DGR.501.013.3166];

(iii) Otway Basin - $125,000,000;

(iv) McArthur Basin - $120,000,000. Opinion of value in the document prepared Moyes & Co entitled 'Fairness Opinion re transaction vending interests into McArthur Oil & Gas' which attributed a most likely value of $120 million to the McArthur Basin assets [DGR.501.008.2322].

(d) In the premises, the DGR Shares were worth at least:

(i) approximately $90,669,217.65, being 19.79% of the value of Armour Limited (expressed at (b)(ii) above);

(ii) alternatively, approximately $81,139,000, being 19.79% of the value of Armour Limited's assets (the sum of the amounts expressed at (c)(i)-(iv) above);

(iii) alternatively, **a further value to be particularised following completion of expert evidence**.

299D. By June 2022, DGR and Armour Limited had agreed upon a five point plan to repair Armour Limited's balance sheet and cash flow, as follows:

(a) the appointment of a new CEO and CFO;

(b) the undertaking of an equity capital raising;

(c) the negotiation of new gas sales contracts beyond November 2023 with an increased gas price with a potential forward payment element;

(d) the further investigation of, and a well remediation programme so as to increase gas supplies and reserves; and

(e) the restructure of Armour Group's bond holder debt.

Particulars

The five pillars are set out in the letter dated 1 June 2022 from DGR to Armour Limited [DGR.003.001.0138].

[emphasis added]

[65] As explained, there are two problems here.

[66] The *first problem* is that the three emphasised parts of those paragraphs strongly suggest that, yet another pleading is to come after further disclosure, non-party disclosure and expert evidence. Indeed, the proposed pleading contains 12 references to expert evidence that is to be sought with likely amendments or at least particulars to be added.[39]

[67] The idea seems to be that DGR is entitled to gradually investigate and accumulate its evidence through the interlocutory steps, incrementally modifying and moulding its case as the case itself progresses. In the course of his argument, counsel for DGR referred to the 'circle of death':

> Now, it may be that the wells have been producing twice that or it may be they're producing half that. We don't know. But – we can just work on the projections. But as and when we get that disclosure, **then that will feed in**. Now, the difficulty is the defendant – the ADZ defendants at the moment are opposing disclosure on the basis of saying, well, you haven't raised the issue for us to – to make the – the future gas points directly in issue. That's – that's the problem. So we do end up in a – in **a circle of death**.[40] [emphasis added]

[68] At the core of this problem is the approach of using the litigation process as if it were an investigation or a Royal Commission with wide terms of reference. As explained, a proper pleading is the start of the process. Lawyers who plead their client's case must believe, on reasonable grounds, that the factual material already available provides a proper basis to plead. Counsel for DGR's 'circle of death' is a circle because disclosure is being used to reset or re-frame DGR's case, with the result that further disclosure is required, leading to a further re-framing (etc).

[69] To state the obvious, a significant amendment to a pleading carries with it a risk that the proceeding will be delayed and that additional costs will be incurred.

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39 Some of those references are in the existing pleading (8) and some are in the proposed new sections of the pleading (4).

40 Transcript (17 August 2026) T1-65 at line 10 (a more prosaic analogy may be a hamster wheel).

[70] Counsel for DGR made the point that there would be no costs thrown away if leave were to be granted because the defendants have not yet filed and served defences to the third further amended statement of claim filed in February 2025 and the parties are yet to produce their expert evidence.[41] The implication seemed to be that there was some recalcitrance in the defendants' failure to plead to the previous version of the statement of claim. But the defendants have pleaded to the first amended version. If they had pleaded to the original and three subsequent versions of the pleading a sizeable proportion of the costs of those pleadings would have been wasted. The court is required to be sensitive to the additional costs burden that an amendment, let alone multiple amendments, imposes on the other parties.[42] Here, that problem is acute because of the likelihood of yet another pleading in the future, and because, despite great expense and volume of court resources consumed, the proceeding is back where it started – at the pleading stage.

[71] The *second problem* raised by these paragraphs is the scope of the proposed amendments. It can be seen from paragraphs 299A to 299D (quoted above) that the pleading has a very expansive scope including from a geographical and a conceptual perspective. For example, the defendants would be required to plead to Armour Limited's plans for the future, its implementation of its plans,[43] and the likely success of those plans.[44]

[72] Paragraphs 299E to 299R (which are not quoted above) contain further allegations of fact and particulars stretching over roughly five pages. They include allegations that, after 10 November 2023, Armour Limited would have continued to develop its Victorian assets, including the Otway and Gippsland Basins, and its assets in the McArthur Basin, and it would have raised a further $15 million by way of convertible notes, and that, therefore, the true or market value of the DGR Shares would have increased significantly between 10 November 2023 and the anticipated date of trial.

[73] The valuation aspects of the case appear to have been expanded by the proposed pleading. As Mr Smith explains:

> From reading the proposed 4FASOC, in my view, the case being sought to be advanced is not based simply upon Armour possessing a valuable asset and ascertaining what that value might be (i.e. the value of the gas in the ground). The pleading requires consideration of development and optimisation of the various assets (formerly owned by Armour) including how those assets would be developed and to what extent they would be optimised.[45]

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41 Transcript (17 August 2026) T1-29 at lines 1 to 35 (see, for example, "*We haven't yet got a defence*" at line 12).

42 For example, the third and fourth defendants consider the proposed fourth further amended statement of claim may require an additional eight expert disciplines and that they will need at least two months to obtain instructions and seek expert guidance on responding to the proposed counterfactuals: Outline of Submissions (third and fourth defendants) filed 17 June 2026 at [29(f)]; 7th Smith Affidavit at [31], [40]; Fourth Affidavit of Mr Smith filed 11 December 2024 (**4th Smith Affidavit**) at [13]-[17].

43 Paragraph 299E goes on to plead the implementation of the five-point plan.

44 It may be that some of the 'particulars' may not need to be pleaded to. Indeed, it is a little unclear what facts are properly material facts and what are particulars or even evidence. However, the detail of the pleading does give an indication of the likely breadth of the issues.

45 7th Smith Affidavit at [25].

[74] The issues created by the proposed pleading are likely to be very wide in scope – even in the context of complex commercial litigation.

[75] The result is the litigation equivalent of mission creep and the danger of further mission creep.

[76] The nature and importance of the proposed amendments, and the potential for yet further amendments, are factors against leave to amend.

Prejudice and Other Discretionary Matters

[77] In many cases the court will permit an amendment to a pleading, even a substantive amendment to a pleading, where the trial is some distance away. That is because the exercise of the discretion takes into account that it is desirable to enable parties to have their day in court and to, within bounds, run their case in the way they wish. But the problem here is that the case appears to be marking time and is likely to continue to do so for so long as the state of the pleadings are dynamic rather than static.

[78] This is complex commercial litigation. The parties have legal teams conducting the litigation. DGR's legal team has comprised:

(a) (as at January 2025) a partner of DLA Piper, two special counsels, one senior associate, two solicitors and one graduate; and

(b) three silks and two junior counsel.

[79] Of course, not all of that legal team are likely to be deployed at any one time. The likelihood is that the other defendants have similar legal teams. The deployment of legal teams means that there is a degree of flexibility, but the legal costs to the parties is likely to be very significant.

[80] For example, every time DGR pleads that further expert evidence is to be obtained, there is a likelihood that the pleading will be further amended and that the defendants will be required to have recourse to their own experts.

[81] Oddly, DGR does not appear to have already engaged its proposed experts; it seems to be likely that those experts will be engaged sometime in the future. I say that because:

(a) DGR do not expressly say that they have engaged experts; and

(b) as Mr Smith points out for the third and fourth defendants, the regime adopted by Hindman J in her case management of the proceeding required a party who briefed an expert to furnish a copy of the instructions to the other parties; no such instructions have been circulated.[46]

[82] Mr Prescott's affidavit identifies the steps likely in the proceeding if the amendments are allowed as against those likely if the amendments are not allowed. His opinion is that, if the amendments are allowed, a trial can be expected in June 2027.[47]

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46 7th Smith Affidavit at [35].

47 Mr Prescott does not venture a view as to the likely commencement of the trial if the amendments are not allowed but the submissions were to the effect that the trial date would not be that different. Mr Smith adapts this timetable and suggests a trial in July 2027 as being realistic.

[83] Even appreciating that estimating the course of litigation is a fraught exercise, especially in this particular proceeding, I have some difficulty accepting that allowing the amendments will mean that the trial will be likely to commence in the middle of 2027. Mr Prescott's proposed timetable does not factor in further particulars that are likely to be required by the defendants, or the further amendments to DGR's pleading which have already been foreshadowed by the proposed pleading, or the consequences that those proposed amendments might have on disclosure, or the likelihood of further interlocutory skirmishes arising from those events, or the time additional time that may be necessary for hearing and judgment. Neither parties' proposed timetable includes any contingency for the reset that is at least a possibility given that the proposed pleading itself has twelve separate provisions to the effect that further particulars are to be provided following the completion of interlocutory steps including disclosure, non-party disclosure or expert evidence.

[84] And Mr Prescott's proposed timetable assumes that both DGR and the defendants' expert reports would be delivered at the same time (on 11 December 2026). It is difficult to imagine that the defendants would be content with the contemporaneous exchange of expert reports, or that such an exchange would be ordered given DGR's heavy reliance on its proposed experts.[48]

[85] I am not persuaded that the course of the proceeding would be little affected by the proposed amendments. In my view the course of the proceeding would be likely to be delayed by the proposed amendments. They would provide further battlegrounds in hard-fought litigation.

[86] Further delay is undesirable given that this case has already had a two week and four week trial vacated and the case has consumed significant public and private resources. There is always some dislocation, and an effect on other litigants, involved in vacating trial dates for reasonably lengthy trials. That dislocation and effect is really 'water under the bridge' but the concern is that the case will continue to consume judicial resources without any substantial progress towards a trial.

[87] These are factors against leave to amend.

Costs, Interest and Strain of Litigation

[88] There is a substantial sum at stake. The legal costs to the parties are likely to be considerable.[49] But the longer the litigation continues without real progress towards trial the greater the costs and the greater the strain on the litigants. Mr Smith attributes a large sum to the addition of the issues in the proposed amended pleading.[50]

[89] It is difficult to accept that a future costs order will be a panacea for the delay caused by the proposed amendments. Some employees of the defendants who will be key

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48 The third and fourth defendants indicate that they will require DGR's expert reports before the defendants finalise their own. And that the expert reports will need to be staged due to the reliance of experts on others' reports: 4th Smith Affidavit at [16]-[17].

49 At the time of the defendants' security for costs application in January 2025 (13 months into the proceeding), the parties' estimated past costs on the *standard basis* totalled $2.42 million: *DGR Global Ltd v P.T. Limited as trustee of the Armour Energy Security Trust* [2025] QSC 5 at [67]. That is likely to have significantly increased in the last 20 months.

50 Mr Smith estimates the additional costs to the third and fourth defendants arising from the proposed amendments will exceed $1.24 million: 7th Smith Affidavit at [43], [44].

witnesses at trial have moved on to other organisations.[51] The delay will cause non-compensable strain and inconvenience to the people involved.

[90] It is also relevant to note that the litigation involves a publicly listed company and six different defendants, five of whom are business entities. Delay will prolong the financial, resourcing and reputational pressures imposed by the litigation on those business operations.[52]

Summary

[91] The exercise of the discretion to permit a party to amend involves a number of different considerations. The relevant considerations largely favour exercising the discretion against permitting the proposed amendments because:

(a) these proposed amendments come quite late in the proceeding. Two previous trial dates have been vacated – in December 2024, and in April 2025. More than a year later, DGR seeks to amend again;

(b) DGR has had an opportunity to amend before now but has been "*distracted*";

(c) DGR has not offered a particularly satisfactory explanation for its delay and having failed to amend before now;

(d) the expansion of the counterfactuals is a significant change to the pleading;

(e) the nature of the proposed amendments are that they have a wide scope, and they suggest that the pleading is still a work-in-progress, and there is a danger of the litigation equivalent of mission creep;

(f) the course of the proceeding would likely be delayed by the proposed amendments and are likely to provide further battlegrounds in hard-fought litigation; and

(g) the delay will cause strain and inconvenience to the people involved.

[92] Leave to amend is refused. I will hear the parties on the form of orders, costs and scheduling further steps to trial.

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51 See, for example, the five employees identified in the 7th Smith Affidavit at [38].

52 *Aon Risk* (supra) at [101].