

SUPREME COURT OF QUEENSLAND

CITATION: *NRT v MGN Pty Ltd* [2026] QSC 229

PARTIES: **NRT**
(applicant)
v
MGN PTY LTD
(first respondent)
ACG PTY LTD
(second respondent)

FILE NO/S: [redacted]

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 25 September 2026

DELIVERED AT: Brisbane

HEARING DATE: [redacted]

JUDGE: McCafferty J

- ORDERS:
1. Pursuant to r 223 of the *Uniform Civil Procedure Rules 1999* (Qld), the first defendant is to disclose, in unredacted form, the witness statements of [redacted] and [redacted] relied upon by the first defendant in the [redacted] (ACICA Arbitration) between the first and second defendant (together with any documents referenced in or annexed to them).
 2. Pursuant to r 223 of the *Uniform Civil Procedure Rules 1999* (Qld), the second defendant is to disclose, in unredacted form:
 - (a) all witness statements relied upon by the second defendant in the ACICA Arbitration between the first and second defendant (together with any documents referenced in or annexed to them) which are directly relevant to an allegation in issue in the proceeding; and
 - (b) all expert reports relied upon by the second defendant in the ACICA Arbitration (together with any documents referenced in or annexed to them) which are directly relevant to an allegation in issue in the proceeding.

3. Any person on behalf of the plaintiff who inspects any document produced pursuant to paragraph 1 or paragraph 2 above must provide a written undertaking in the terms annexed to these orders (Confidentiality Undertaking).
4. Until further order, the following documents are to be placed in a sealed envelope and marked 'not to be opened other than by an order of the court':
 - (a) the application [CFI 75];
 - (b) the affidavit of [redacted] sworn on 28 April 2026 [CFI 76 to 77];
 - (c) the affidavit of [redacted] sworn on 12 May 2026 (filed by leave on 19 August 2026);
 - (d) the plaintiff's outline of submissions dated 12 May 2026 (filed by leave on 19 August 2026);
 - (e) the affidavit of [redacted] sworn on 13 August 2026 (filed by leave on 19 August 2026);
 - (f) the plaintiff's outline of submissions in reply dated 13 August 2026 (filed by leave on 19 August 2026);
 - (g) the affidavit of [redacted] sworn on 16 July 2026 (filed by leave on 19 August 2026);
 - (h) the first defendant's outline of submissions dated 16 July 2026 (filed by leave on 19 August 2026);
 - (i) the affidavit of [redacted] sworn on 18 August 2026 (filed by leave on 19 August 2026);
 - (j) the affidavit of [redacted] affirmed on 9 July 2026 (filed by leave on 19 August 2026);
 - (k) the second defendant's outline of submissions dated 9 July 2026 (filed by leave on 19 August 2026).
5. Except by order of the court, or with the written consent of all parties or their solicitors, until further order, the documents identified in order 4 above (including any part of the documents) are not to be:
 - (a) divulged to any person other than:
 - (i) the parties to the proceeding and their employees, solicitors, counsel and professional advisors;

- (ii) **the Court (including any Judge, Judge's Associate, staff member or contractor of the Court;**
 - (b) **used for any purpose other than the purposes of the application.**
- 6. The reasons for judgment and orders on the application:**
- (a) **are not to be published to the public until further order;**
 - (b) **may be provided in an unredacted form to the parties, their legal representatives and to any necessary court officers and the Arbitrator;**
 - (c) **within 28 days, the parties:**
 - (i) **are to confer and provide to the Court a proposed redacted or anonymised version of the reasons for judgment suitable for publication; or**
 - (ii) **are to inform the Court that no redactions or anonymisation is necessary in respect of the reasons for judgment prior to publication.**
- 7. Absent any consent orders as to costs, I direct the parties to make any submissions as to costs within 14 days, limited to two pages.**

CATCHWORDS: PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — DISCOVERY AND INTERROGATORIES — DISCOVERY OF DOCUMENTS — DISCRETION OF THE COURT AND POWER TO ORDER — where the defendants are parties to an arbitration related to the subject matter of the proceeding — where the plaintiff seeks orders requiring the defendants to disclose unredacted copies of documents relied upon in the arbitration and directly relevant to allegations in issue in the proceeding (*arbitral documents*) — where the first defendant has disclosed three arbitral documents in heavily redacted form — where the first defendant contends that the redactions were authorised by the document management plan agreed between it and the plaintiff, from which the plaintiff should not now be permitted to resile — whether, properly construed, the document management plan permits the unilateral redaction of the arbitral documents without challenge — whether the first defendant has discharged its duty of disclosure in respect of the arbitral documents

PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — DISCOVERY AND INTERROGATORIES — PRODUCTION AND INSPECTION OF DOCUMENTS — GROUNDS FOR RESISTING PRODUCTION — IRRELEVANCE — where the defendants apply to be relieved of their duty to disclose the arbitral documents to the plaintiff in unredacted form — where the defendants contend that it is permissible to redact those parts of the arbitral documents that are irrelevant to the proceeding in order to preserve the confidentiality that would otherwise attach to them — where the first defendant has disclosed heavily redacted copies of the arbitral documents and the second defendant proposes to adopt a similar course — whether the history of the redaction process, and the evidence adduced in respect of it, disclose a risk that the redactions will compromise the intelligibility of the balance of the arbitral documents — whether the defendants should be relieved of their duty to disclose the arbitral documents in unredacted form

Commercial Arbitration Act 2013 (Qld), s 2, s 27E, s 27F, s 27F(9), s 27G, s 27H

Supreme Court Act 1991 (Qld), s 8

Uniform Civil Procedure Rules 1999 (Qld), r 211, r 212, r 223, r 223(4), r 223(4)(a), r 224, r 224(2), r 975H, r 975H(2), r 975H(2)(d), r 975H(2)(g), r 975H(3), r 975H(4)

Australian Competition & Consumer Commission v McMahon Services Pty Ltd (2004) ATPR 41-996; [2004] FCA 353, cited

AW v Rayney [2010] WASCA 161, cited

Curlex Manufacturing Pty Ltd v Carlingford Australia

General Insurance Limited [1987] 2 Qd R 335, cited

EBJ21 v EBO21 (2021) 290 FCR 325; [2021] FCA 1406, cited

Egglshaw v Australian Crime Commission (No 2) (2009) 71 ATR 570; [2009] FCA 12, cited

Esso Australia Pty Ltd v Australian Workers Union (No 3) [2020] FCA 316, approved

Esso Australia Resources Ltd v Plowman (1994) 183 CLR 10; [1995] HCA 19, cited

GE Capital Corporate Finance Group Ltd v Bankers Trust Co [1995] 1 WLR 172, cited

Gunns Limited v Marr [2008] VSC 464, cited

Hearne v Street (2008) 235 CLR 125; [2008] HCA 36, cited

Integrated Medical Technology Pty Ltd v Gilbert (No 2) [2015] QSC 124, cited

JSC Commercial Bank Privatbank v Kolomoisky [2022] EWHC 868 (Ch), cited

Lewis v Lewis (2021) 105 NSWLR 487; [2021] NSWCA 168, followed

Mishpocha Pty Ltd v Tyrepower Marketing (Qld) Limited (No 2) [2021] QSC 234, cited

Mobil Oil Australia Ltd v Guina Developments Pty Ltd [1996] 2 VR 34, cited
Quinlan v Shell Energy Operations Pty Ltd [2026] QSC 115, distinguished
Re Samgris Resources Pty Ltd (in liq) [2022] QSC 126, cited
Recovery Partners GP Limited v Rukhadze [2021] EWHC 1621 (Comm), cited
Seeker Aircraft America Inc v Seabird Aviation Australia Pty Ltd [2013] QSC 121, cited
Tarong Energy Corporation Limited v South Burnett Regional Council [2010] 1 Qd R 575; [\[2009\] QCA 265](#), cited
Telstra Corp v Australis Media Holdings, unreported, Supreme Court of New South Wales, McLelland CJ in Eq, No 3633 of 1996, 10 February 1997, applied
Velocity Frequent Flyer Pty Ltd v BP Australia Pty Ltd [2019] QSC 29, cited
Village/Nine Network Restaurants & Bars Pty Ltd v Mercantile Mutual Custodians Pty Ltd [2001] 1 Qd R 276; [\[1999\] QCA 276](#), cited
Westgate Finance Pty Ltd v May [2012] NSWSC 806, applied
WH Holding Ltd v E20 Stadium LLP [2018] EWHC 2578 (Ch), cited

COUNSEL: A C Stumer KC, with S D McCarthy, for the plaintiff
 B J Kabel for the first defendant
 H E P Clift, with D L Tay, for the second defendant

SOLICITORS: [redacted]

Overview

- [2] The issue raised by this application is whether the defendants, MGN and ACG, who are parties to an arbitration to which the plaintiff, NRT, is not a party, may, in discharging their duty of disclosure in this proceeding, unilaterally redact portions of witness statements and expert reports relied upon in the arbitration on the grounds that they are confidential.
- [3] There is no dispute that these documents are confidential. That confidentiality arises by reason of the arbitral process and is protected by the ***Commercial Arbitration Act 2013*** (Qld). MGN and ACG accept that the witness statements and expert reports are disclosable. Their collective position is that they should be permitted to unilaterally redact irrelevant portions of the documents to maintain confidentiality. NRT takes exception to this process and, by this application, seeks orders under r 223 of the ***Uniform Civil Procedure Rules 1999*** (UCPR) that the documents be disclosed in unredacted form.
- [4] MGN has already disclosed three witness statements in heavily redacted form. These redactions were made unilaterally, a process MGN maintains it was permitted to undertake in accordance with a document management plan agreed with NRT. Its

primary contention is that the document management plan should be honoured, and NRT prevented from challenging the redactions made. Its alternative position is to seek relief from disclosure to permit the unilateral redactions it has undertaken to remain.

- [5] ACG is yet to disclose any witness statements or expert reports. It is not a party to the document management plan. Notwithstanding this, it proposes to unilaterally redact irrelevant material to maintain confidentiality and as part of this application seeks permission to do so.
- [6] I have concluded that the document management plan does not preclude NRT from challenging the redactions. I have also concluded that the confidentiality interest asserted does not justify permitting MGN and ACG to redact material said to be irrelevant from documents that are otherwise disclosable. It is nevertheless appropriate to impose a more onerous protection over the unredacted documents disclosed beyond the implied undertaking. The appropriate protection is the confidentiality undertaking proposed by NRT which will bind any person who inspects the documents in unredacted form.
- [7] These conclusions require some elaboration. It is convenient to begin with the factual background and an explanation as to how the present controversy arose.

Factual background

- [8] Only a brief account of the underlying facts, the parties and the broader dispute is necessary. NRT owns and operates a facility [redacted] that was upgraded some time ago. The facility need not be identified. NRT engaged MGN to deliver the upgrade. Under a separate agreement, to which NRT was not a party, MGN engaged ACG to design the upgrade.
- [9] Disputes arose concerning the upgrade works. This proceeding concerns one aspect of those disputes. NRT commenced the proceeding against MGN in mid-2022. ACG was joined as a defendant in late 2025.
- [10] This proceeding is not the only forum in which disputes arising from the project are being determined. A separate dispute between MGN and ACG is the subject of an arbitration that commenced [redacted], before this proceeding. NRT is not a party to that arbitration. The dispute in the arbitration includes issues that are independent of NRT's claim. Those issues, which are unique to MGN and ACG, are not raised in this proceeding.

Disclosure in this proceeding

- [11] Disclosure in this proceeding is well advanced. As between NRT and MGN, disclosure has proceeded under a document management plan. Relevantly, the plan provides:

“8. To avoid duplication of work and production of the same documents, the parties agree that:

- (a) [MGN] and [ACG] are relieved of their duty to produce in the Proceedings documents which the other disclosed to them in [redacted] to which [MGN] and [ACG] are parties;
- (b) insofar as a document produced on disclosure in the Arbitration is identified that is directly relevant to an allegation in issue in the Proceedings, the Party who originally produced that document in the Arbitration will be responsible for producing it in the Proceedings (i.e., [MGN] is to produce directly relevant '[redacted]' documents and [ACG] is to produce directly relevant '[redacted]' Documents [sic]);
- (c) insofar as a document provided otherwise than on disclosure in the Arbitration is identified that is directly relevant to an allegation in issue in the Proceedings, the Party who originally provided that document (i.e., [MGN] or [ACG]) will be responsible for producing it in the Proceedings (redacted, if appropriate, to limit disclosure of confidential information in the arbitration to only matters which are directly relevant to an allegation in issue in the Proceedings); and
- (d) production of any documents referred to in paragraphs (b) and (c) above is subject to [MGN and ACG] complying with their obligations under section 27F(9) of the [*Commercial Arbitration Act*] and any objections and consequent orders that may be made in respect of such documents."

[12] Despite the references to it, ACG did not agree to the plan. It has however undertaken some disclosure, including disclosure of a substantial number of documents arising from and exchanged as part of the arbitration. MGN has also provided disclosure of arbitral documents. NRT does not challenge the adequacy of that disclosure.

The dispute

[13] The controversy concerns the process of unilateral redaction performed by MGN and for which ACG seeks permission to perform.

MGN's disclosure of witness statements from the arbitration

[14] MGN has disclosed three witness statements. The witness statements, which are lengthy, are heavily redacted. No expert reports have been disclosed. MGN's position is that there are no directly relevant expert reports to disclose.

[15] So far as witness statements are concerned, MGN has in fact provided NRT more than one redacted version of the documents. Two of these versions are before the Court. It is necessary to explain how that came about. Before doing so, however, it is convenient to describe the process by which the redactions were undertaken.

[16] [redacted], one of MGN's solicitors, an experienced practitioner, undertook the process. In an affidavit sworn in July 2026, she explains that the process involved her (with the assistance of, and in consultation with, another solicitor working under her supervision) reviewing each witness statement, forming a view as to which parts of

each statement are potentially relevant to the proceedings, and redacting irrelevant material. The redactions were made because it was expressly contemplated by the document management plan, the relevant parts of which are set out above.

- [17] Following the filing in April 2026 of an affidavit by NRT's solicitor, [redacted], which exhibited the first redacted version, [redacted] undertook what she described as an independent review, which I take to mean a further review. Upon completing this process, [redacted] remained satisfied that the redactions were appropriate because they concerned only material not directly relevant to the proceeding and did not obscure or affect the meaning of the unredacted portions.
- [18] NRT's application was then filed and written submissions were exchanged. NRT's reply submissions, provided on 13 August 2026, identified specific concerns about the redactions in the first version. The complaint advanced by NRT was that those concerns demonstrated an appreciable risk that the redactions impaired the documents' comprehensibility and reflected contestable assessments of relevance. It is unnecessary to set out the complaints.
- [19] What is relevant is MGN's response. That response, which was provided on 18 August 2026 promptly after the submissions were received, was to prepare a second version of the three statements, which removed certain redactions. The second version of those documents was exhibited to a further affidavit of [redacted] sworn in August 2026.
- [20] In providing the second version, MGN does not concede that the further unredacted portions are directly relevant to the proceedings. Rather, as the accompanying correspondence explains, the further version was provided in response to specific concerns said to have been raised for the first time in NRT's reply submissions, and with a view to narrowing the scope of this application. For completeness, it should be noted that NRT's solicitors had earlier written, in February 2026, raising complaints of a more general nature about the redactions. Whether the reply submissions were the first occasion on which those particular complaints were articulated is, in my view, a distraction.
- [21] During the hearing, further modifications were made and a third version was provided, or attempted to be provided, to NRT's solicitors in court after the luncheon adjournment. The explanation was that further concerns about the second version had been raised during oral argument earlier that day, and the third version sought to address them. NRT objected to that process. The third version is not in evidence, although it may be accepted that it removes further redactions from the second version.

ACG's proposed disclosure of witness statements and expert reports from the arbitration

- [22] ACG has not yet disclosed any witness statements or expert reports from the arbitration. It intends to disclose both categories of documents to the extent that they are directly relevant and seeks orders that it be permitted to undertake unilateral redactions "provided such redaction will not, or is not likely to, detract from a proper understanding of the meaning and significance of those parts of the document which are directly relevant to an allegation in issue" in the proceeding.

- [23] If permitted, the process of redaction is to be undertaken by one of its solicitors, [redacted], presumably with assistance, in a manner consistent with the approach adopted by MGN. In an affidavit, [redacted] deposes to his experience and his understanding that redactions for relevance should not impair the comprehensibility, meaning or significance of the parts directly relevant to an allegation in issue in the proceeding.

The Application

- [24] It is against that background that NRT's application falls to be determined. It seeks orders under r 223 requiring both defendants to disclose, in unredacted form, all witness statements and expert reports relied upon in the arbitration, together with any documents referred to in or annexed to them, where those documents are directly relevant to an allegation in issue in the proceeding.

General principles: the duty of disclosure

- [25] The duty of disclosure arising under r 211 obliges parties to disclose documents in their possession or control which are directly relevant to an allegation or matter in issue in the proceedings. As r 212 makes plain, the obligation does not apply to certain documents: those in relation to which there is a valid claim to privilege, those relevant only to credit, or additional copies of a document already disclosed, if it is reasonable to suppose the additional copy contains no feature likely to affect the outcome of the proceeding.

- [26] Under r 223, the court may make orders relating to disclosure. It provides:

“223 Court orders relating to disclosure

- (1) The court may order a party to a proceeding to disclose to another party a document or class of documents by—
 - (a) delivering to the other party in accordance with this division a copy of the document, or of each document in the class; or
 - (b) producing for the inspection of the other party in accordance with this division the document, or each document in the class.
- (2) The court may order a party to a proceeding (the first party) to file and serve on another party an affidavit stating—
 - (a) that a specified document or class of documents does not exist or has never existed; or
 - (b) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of the first party.
- (3) The court may order that delivery, production or inspection of a document or class of documents for disclosure—
 - (a) be provided; or
 - (b) not be provided; or
 - (c) be deferred.

- (4) An order mentioned in subrule (1) or (2) may be made only if—
 - (a) there are special circumstances and the interests of justice require it; or
 - (b) it appears there is an objective likelihood—
 - (i) the duty to disclose has not been complied with; or
 - (ii) a specified document or class of documents exists or existed and has passed out of the possession or control of a party.
- (5) If, on an application for an order under this rule, objection is made to the disclosure of a document (whether on the ground of privilege or another ground), the court may inspect the document to decide the objection.”

[27] Rule 223(4) contemplates that an order for disclosure may only be made, for documents which exist, if there are “special circumstances and the interests of justice require it” or “if it appears there is an objective likelihood [that] the duty to disclose has not been complied with”. It permits a court to order a party to disclose a document even “though the duty to disclose might not strictly apply to the document ... in question.”¹

[28] In considering the application of r 223(4), the purpose of the UCPR is important. That purpose, which is hornbook law, is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. The UCPR is to be applied consistent with this purpose and with the objective of avoiding undue delay, expense and technicality. Rule 223 is no exception. Consistent with this, there is a degree of flexibility in applications for discovery (or further discovery), a point Pincus JA explained in *Village/Nine Network Restaurants & Bars Pty Ltd v Mercantile Mutual Custodians Pty Ltd* in this way:²

“The former inflexible approach to applications for further discovery (see *Permanent Finance Corporation Limited v. Europacific (Plant Hire) Pty Ltd (No. 2)* [1971] Qd.R. 302 at 315) is no longer necessarily appropriate, under the current disclosure system, and because of the notions expressed in r. 5 of the *Uniform Civil Procedure Rules*. If it appeared, for example, that an order for further disclosure would be likely to ‘facilitate the just and expeditious resolution of the real issues’, that would enable and perhaps require the making of such an order. But there must, at least in the ordinary case, be something more than mere suspicion, to justify granting relief to a party complaining of incomplete disclosure.”

[29] Under r 224 the court may relieve a party from their duty of disclosure in certain circumstances. The discretion conferred by this rule is broad. Rule 224(2) identifies a number of matters to which the Court may have regard. They include (a) the time,

¹ *Mishpocha Pty Ltd v Tyrepower Marketing (Qld) Limited (No 2)* [2021] QSC 234 at [7]. See also *Company Solutions (Aust) Pty Limited v Keppel Cairncross Shipyard Limited (In Liquidation) and Others* [2004] QSC 379 at [10] (Douglas J).

² [2001] 1 Qd R 276; [1999] QCA 276 at [10]. See also *Integrated Medical Technology Pty Ltd v Gilbert (No 2)* [2015] QSC 124 at [4]-[5].

cost and inconvenience compared with the amount involved in the proceeding; (b) the relative importance of the question to which the documents or class of documents relate; (c) the probable effect on the outcome of the proceeding of disclosure or non-disclosure; and (d) other relevant considerations.

General principles: redacting documents for relevance

- [30] The UCPR does not expressly authorise a party to redact part of a document on the basis that the redacted information is irrelevant to any issue in the proceeding or is confidential.
- [31] The ordinary position is that, where any part of a document is directly relevant, the whole document must be disclosed.³ Consistent with this, a party required to disclose a document may not exclude, by redaction or concealment, parts of it because they are irrelevant. Authorities which recognise a right to withhold part of a document solely on the ground of irrelevance do not, in my view, represent modern practice in this jurisdiction, and should not be followed.⁴
- [32] A party may however, as a matter of practice, be permitted to redact or mask parts of a document which are irrelevant to the proceeding “in order to avoid infringement, for no legitimate purpose, of interests of privacy and confidentiality, and thus to avoid injustice”⁵. Irrelevance alone is insufficient: there must be a legitimate basis beyond mere irrelevance.
- [33] Redactions to documents which are otherwise required to be disclosed should not be undertaken unilaterally. The proper course is to obtain the consent of the party entitled to disclosure or, failing agreement, to seek appropriate relief from the Court.⁶ The party resisting production must prove that there is a proper basis to make the redactions.⁷ In considering an application by a party seeking permission to redact parts of a document, the Court will consider the following matters:⁸

³ *Australian Competition & Consumer Commission v McMahon Services Pty Ltd* (2004) ATPR 41-996 at [12] and *Lewis v Lewis* (2021) 105 NSWLR 487 at [95]. The exception to this is a document which is privileged. It is the established practice that a document may be disclosed in a form which conceals privileged parts of it: *Tarong Energy Corporation Limited v South Burnett Regional Council* [2010] 1 Qd R 575 at [35] (Fraser JA, Muir JA and White J agreeing). Necessarily the process of concealment may occur unilaterally and the claim must otherwise be made in accordance with the procedure set out in UCPR r 213.

⁴ I agree with the observations of Wheelahan J in *Esso Australia Pty Ltd v Australian Workers Union (No 3)* [2020] FCA 316 at [13] to [16] which are consistent with the New South Wales Court of Appeal in *Lewis v Lewis* (2021) 105 NSWLR 487 at [95]. The practice in the United Kingdom is reflected in their procedural rules: see paragraph 16 of *Practice Direction 57AD – Disclosure in the Business and Property Courts*. The history of the traditional approach in Chancery was essayed in the reasons of McPherson J (as he then was) in *Curlex Manufacturing Pty Ltd v Carlingford Australia General Insurance Limited* [1987] 2 Qd R 335 at 337-338 and Hoffmann LJ (as he then was) in *GE Capital Corporate Finance Group Ltd v Bankers Trust Co* [1995] 1 WLR 172 at 176.

⁵ Cited with apparent approval in *Tarong Energy Corporation Limited v South Burnett Regional Council* [2010] 1 Qd R 575 at [35] (Fraser JA, Muir JA and White J agreeing).

⁶ *Lewis v Lewis* (2021) 105 NSWLR 487 at [95], citing *Telstra Corp v Australis Media Holdings* (unreported, Supreme Court of New South Wales, McLelland CJ in Eq, No 3633 of 1996, 10 February 1997).

⁷ *AW v Rayney* [2010] WASCA 161 at [143].

⁸ *Telstra Corp v Australis Media Holdings* (unreported, Supreme Court of New South Wales, McLelland CJ in Eq, No 3633 of 1996, 10 February 1997).

- (a) **First**, whether the part of the document sought to be excluded from production contains material which contributes to the document satisfying the criterion that makes it disclosable (in other words, to which the duty of disclosure under UCPR r 211 applies);
- (b) **Second**, whether the exclusion of that part will, or is likely to, detract from a proper understanding of the meaning and significance of those parts of the document which render it discoverable (as required by r 211); and
- (c) **Third**, whether it is apparent that there are, or may be, substantial privacy or confidentiality interests which ought to be given protection.

[34] As to the second of these considerations, there is a need for caution in condoning redactions. The reason is best explained by the following observations of McLelland CJ in Eq from his reasons in the unreported, but influential, decision in *Telstra Corp v Australis Media Holdings*:⁹

“There is a serious risk that too assiduous a masking of documents on the grounds of irrelevance will create gaps affecting the ready comprehensibility of the remaining portions of the document and of the context in which those portions appear. If for this, or any other, reason, masking on the ground of alleged irrelevance would detract from a proper understanding of the meaning and significance of the admittedly relevant parts of the document, then such masking is not justified.”

Are the requirements under UCPR r 223(4) satisfied?

- [35] The primary submission advanced by MGN and ACG is that the requirements of r 223(4) are not satisfied because there are no special circumstances, nor is there an objective likelihood that the duty of disclosure has not been complied with.
- [36] I disagree. In my view there is no proper basis to contend that, at the very least, r 223(4)(a) is not engaged. What is in issue here is whether documents that indisputably contain material directly relevant to an allegation in issue in the proceedings should be unilaterally redacted. In the case of MGN, relevant documents have been disclosed in a form that conceals substantial portions of their contents. In the case of ACG, a similar process is proposed.
- [37] In either case, at the heart of the controversy is whether the defendants should be permitted to undertake a process of redaction which is not, as I have explained, in the ordinary course permitted. MGN does of course maintain an entitlement to do so in accordance with an agreed document management plan. Both defendants also seek relief from disclosure to permit them to undertake unilateral redactions. But subject to either of these contentions being accepted, it is, in my view, difficult to deny that the situation presented by the unusual facts of this case constitutes special circumstances. In my view, the interests of justice require such an order to be made to facilitate the just and expeditious resolution of the real issues in the proceedings.
- [38] I do not accept that the document management plan precludes NRT’s application and that the redactions should be permitted in this case. The consequence of this is that it

⁹ Unreported, Supreme Court of New South Wales, McLelland CJ in Eq, No 3633 of 1996, 10 February 1997.

is appropriate that orders under r 223 be made. It is however necessary to explain why I do not accept the defendants' contentions.

The defendants' contentions as to why redactions should be permitted

- [39] The defendants' contentions as to why NRT is not entitled to the unredacted documents, or why they should be relieved from producing them to NRT in that form, substantially overlap.
- [40] The only distinction is that MGN relies upon the document management plan, to which ACG is not a party. It is convenient to address that contention first.

The document management plan does not preclude the application

- [41] MGN's position is that it and NRT agreed that disclosure would be conducted in accordance with the document management plan. Agreements of that kind are encouraged;¹⁰ indeed, often they are required. Their underlying purpose is to encourage the efficient and cost-effective management of documents at all stages of litigation. It is not uncommon for the agreed plans to be given express effect by formal orders of the Court, although that did not, expressly at least, occur here.
- [42] Nevertheless, the plan bound NRT and MGN. It contemplated that documents disclosed from the arbitration might, where appropriate, be redacted. As the plan prescribed no alternative procedure, that exercise would necessarily have been undertaken unilaterally. MGN says that its redactions were undertaken in accordance with and in reliance upon the plan. Its solicitors depose that the redactions do not affect the meaning of the unredacted portions and concern only material not directly relevant to this proceeding.
- [43] In these circumstances, MGN's position is that the plan should be adhered to and that NRT's application should be dismissed, not least because it has failed to explain why it should be permitted to depart from the agreed plan.
- [44] I disagree.
- [45] The starting point is that, properly construed, the plan does not preclude a challenge to the redactions. It contemplates that a document from the arbitration identified by MGN as directly relevant to an allegation in issue might be redacted, but only "if appropriate" and only to conceal confidential information not directly relevant to such an allegation. Although the exercise necessarily had to be undertaken unilaterally in the first instance, it does not follow that NRT is precluded from challenging whether a redaction was appropriate. Nothing in the plan has that effect.
- [46] That conclusion does not undermine the plan or invite a wholesale review of disclosure. It merely preserves the ability, where justified, to challenge the manner in which the plan has been implemented.
- [47] If there is any doubt about this, it is dispelled by subparagraph 8(d), which expressly preserves the ability of a party to the agreement to object. This paragraph contemplates that the production of any document in redacted form is "subject to"

¹⁰ See *Practice Direction Number 10 of 2011* at, for example, [2.1], [2.2] and [4.4].

two matters. The first is compliance with s 27F(9) of the *Commercial Arbitration Act*, which requires a party proposing to disclose confidential information, as authorised or required by law, to notify the other parties to the arbitration. The second is “any objections and consequent orders that may be made in respect of such documents.” Those words are not confined to objections advanced by a party to the arbitration. They also encompass an objection by NRT.

- [48] The reliance MGN places on the evidence provided by its solicitors is a matter which also requires careful consideration.
- [49] Traditionally, affidavits provided by the party making disclosure were conclusive, unless what was said on oath appeared to be in conflict with an admission or a discovered document or where the circumstances of the case indicated otherwise.¹¹ That is no longer the accepted position.
- [50] The move away from placing conclusive weight on affidavits provided by the party making disclosure is not founded in an unaffected distrust of human abilities or lack of honesty or *bona fides*. It is founded upon a realistic recognition that reasonable minds may differ when assessing matters of relevance. As McDougall J put it in *Westgate Finance v May*¹² it is “notorious that different people, looking at documents from different perspectives and for different purposes, may have legitimate disagreements about relevance and irrelevance.” It also recognises the possibility of erroneous redactions of material that provides context to the portions left visible¹³ which may unintentionally be lost on a person who otherwise has intimate knowledge of the matter.
- [51] A not dissimilar approach is adopted in England. Unlike the UCPR, English procedure rules contain a specific regime which permits redactions to be made to parts of documents on the grounds that they are “irrelevant to any issue in the proceedings, and confidential.”¹⁴ In accordance with this regime, any redaction must “be accompanied by an explanation of the basis on which it has been undertaken and confirmation, where a legal representative has conduct of litigation for the redacting party, that the redaction has been reviewed by a legal representative with control of the disclosure process.”¹⁵ It also contemplates that a party may challenge the redaction of material.¹⁶
- [52] In this context of a challenge to the redaction of material, it has been said that a court “will normally be satisfied by a statement from a solicitor with responsibility for the disclosure process that the redaction has been properly made”.¹⁷ There is, however, a

¹¹ *Gunns Limited v Marr* [2008] VSC 464 at [32].

¹² [2012] NSWSC 806 at [27].

¹³ *Egglshaw v Australian Crime Commission (No 2)* [2009] FCA 12 at [25].

¹⁴ See *Practice Direction 57AD – Disclosure in the Business and Property Courts*, at 16.1.

¹⁵ *Ibid*, at 16.2.

¹⁶ There is also authority in the context of challenges to redactions in which courts have made orders that the unredacted documents be provided on a confidential basis to the legal representatives of the inspecting party, a practice which has obvious utility. It enables the parties to engage in meaningful discussion, unconstrained by the redactions, with a view to reaching sensible agreement as to the appropriateness, or otherwise, of redactions and to avoid unnecessary, potentially wasteful, disputation in interlocutory disputes: see *JSC Commercial Bank Privatbank v Kolomoisky* [2022] EWHC 868 (Ch) at [5], [10] and *Recovery Partners GP Limited v Rukhadze* [2021] EWHC 1621 (Comm) at [65]-[67].

¹⁷ *JSC Commercial Bank Privatbank v Kolomoisky* [2022] EWHC 868 (Ch) at [9] and *WH Holding Ltd v E20 Stadium LLP* [2018] EWHC 2578 (Ch) at [37]

qualification to this: “where there has been heavy redaction of many documents, the court is justified in adopting greater vigilance to ensure that the right to redact is not being abused or too liberally interpreted, recognising all the while that the burden is on the applicant to make out a case for inspection.”¹⁸

- [53] This qualification is significant, as too are McDougall J’s words of caution. They recognise two difficulties in the process of inviting the court to rely upon affidavit evidence, without inspecting documents, in determining the permissibility of redactions which have been heavily applied. The first is that, unlike claims of privilege, assessments of relevance are often capable of attracting legitimate differences of opinion. The second is that extensive redactions may impair the intelligibility or proper comprehension of a document, a matter that may escape the attention of the person undertaking the redaction exercise notwithstanding their having done so carefully and in good faith.¹⁹
- [54] Consistent with this, there is, in my view, no obligation to act upon an affidavit produced by the party providing disclosure. That is the case regardless of whether the affidavit is the subject of challenge. In this case the affidavit was challenged. That challenge was not to the propriety of what occurred, but rather to the weight that should be attached to the reliability of the redaction process in circumstances where more than one version of the documents has been produced. It did not require NRT to cross-examine [redacted].
- [55] In the momentum of this challenge, NRT submitted that there was reason to believe the redaction process may have miscarried. I accept that submission. That possibility may readily be inferred from the production of three versions of the redacted documents, even accepting that each successive version responded to concerns raised incrementally by NRT’s solicitors. This is not a criticism of [redacted] for raising concerns incrementally, or of [redacted] and those assisting her in responding. Rather, it illustrates the limitations of unilateral redaction. The successive versions demonstrate the inherent difficulty of assessing relevance unilaterally and the scope for reasonable disagreement about where the line should be drawn. Explaining why the second and third versions were produced does not answer that difficulty.
- [56] For these reasons, and consistent with my findings in relation to UCPR r 223(4) above, NRT has established a prima facie entitlement to witness statements and expert reports from the arbitration, if they contain directly relevant material, in unredacted form.

As a matter of discretion, should the redactions be permitted?

- [57] The next issue for determination is whether MGN and ACG should be relieved of their duty of disclosure and permitted to redact the documents.²⁰ Relief from disclosure is discretionary. The burden is on the party seeking relief to demonstrate that the discretion should be exercised in its favour.

¹⁸ *JSC Commercial Bank Privatbank v Kolomoisky* [2022] EWHC 868 (Ch) at [9].

¹⁹ Cf the approach of Cooper J in *Quinlan v Shell Energy Operations Pty Ltd* [2026] QSC 115 at [71], [72], [76] and [77] where his Honour was dealing with discrete pieces of confidential information, the salary and contact details of other employees.

²⁰ During the hearing MGN made an oral application consistent with its written submissions. That ACG is seeking this relief is consistent with its written submissions and proposed draft order.

- [58] There was no dispute about the applicable principles. The matters to which the Court may have regard to under UCPR r 224(2) have been set out above. There were no arguments advanced by reference to these. The focus was upon the second and third considerations relevant for applications by a party seeking permission to redact parts of a document.
- [59] As to the second consideration, it is relevant to observe that where there is a dispute as to the entitlement of a party to redact parts of a discovered document, the court may examine the document, in its unredacted form, to determine the propriety of the redactions. The parties discouraged this from occurring. The practical consequence is that the question as to whether relief should be granted falls to be determined without the benefit of the unredacted documents.
- [60] With this in mind, the comments I have made above in relation to MGN's affidavit material, and affidavits generally, apply equally here. ACG has not provided any affidavit material as to the form in which it proposes to provide documents. Its solicitor has provided an affidavit deposing to his experience and his understanding that redactions for relevance should not detract from the comprehensibility or the meaning and significance of the parts of the documents which are directly relevant to an allegation in issue in the proceedings. While this solicitor is of unquestionable experience, this evidence is not persuasive. It is evidence of an understanding of something that is to occur, not of a process which has in fact been completed.
- [61] In these circumstances, I am not satisfied that the redactions performed in the case of MGN, and proposed to be performed by ACG, have not, and will not, detract from a proper understanding of the meaning and significance of the parts of the documents accepted to be relevant.
- [62] As to the third consideration, it was contended that the interest which ought to be given protection was confidentiality. The nature of the confidentiality was described in this way. The witness statements and expert reports came into existence for the purpose of the arbitration. The confidentiality arises by reason of the confidential nature of the arbitral process. This process imposes confidentiality obligations and creates legal rights to maintain confidentiality. Those rights are of such a quality as to constitute substantial interests which ought to be protected by redaction and, in this sense, kept immune from disclosure.
- [63] It is not controversial between the parties that the witness statements and expert reports produced for the arbitration are confidential. The sources of the confidentiality obligations are also not the subject of controversy between the parties.
- [64] The sources emanate from statute and contract. Section 2 of the *Commercial Arbitration Act* defines "confidential information" broadly. The definition includes information supplied by one party to another in compliance with a direction of the arbitral tribunal and evidence, documentary or otherwise, supplied to the tribunal. The witness statements and expert reports fall within that definition. Section 27E prohibits a party to an arbitral proceeding from disclosing confidential information except as permitted by specified provisions, including s 27F. Section 27F contemplates that confidential arbitral information may have to be disclosed in discharge of another legal obligation, including where disclosure is authorised or required by a relevant law, a definition that encompasses the UCPR. There is

therefore no statutory impediment to disclosure of a document directly relevant to an allegation in issue in this proceeding.

- [65] The defendants also placed emphasis on s 27H. This provision, which is unnecessary to reproduce, empowers a court to prohibit a party from disclosing confidential information in relation to the arbitral proceedings. The submission advanced was that this provision represents Parliament's intention of the "primacy" to be given to confidential information in arbitral proceedings and provides reason why the confidentiality interests should be protected from disclosure. Although rhetorically attractive, what s 27H in fact provides is a means by which a party can challenge an order made by the arbitral tribunal under s 27G permitting a party to the arbitral proceeding to disclose confidential information. That does not, in my view, equate with the broader legislative intention for which the defendants contend.
- [66] The other sources of confidentiality need only be briefly mentioned. They include the relevant contract between MGN and ACG which contains an arbitration clause. [redacted] The ACICA Rules also provide for the confidentiality of the process. They include, for example, r 22, which provides that hearings will, unless otherwise agreed, occur in private and the parties are to treat as confidential and not disclose to a third party, without prior written consent, all matters "relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain". There are exceptions to the prohibition against disclosure. They include if the disclosure is "required by the law of any State which is binding on the party making the disclosure." The final source of confidentiality is a procedural order made in the arbitration [redacted]. It is unnecessary to set out this order in full. It is sufficient to record that it contains a further confidentiality provision.
- [67] I accept that interests of confidentiality are a relevant consideration in determining whether it is appropriate to permit redaction of material from disclosed documents. the fact that documents are confidential will not, ordinarily, be a sufficient reason to deny inspection by the opposite party.²¹
- [68] The public interest in maintaining confidentiality in arbitrations is also a relevant consideration. As Stewart J observed in *EBJ21 v EBO21*:²²

"The rationale for protecting the confidentiality of arbitral proceedings is varied. It generally includes respect for party autonomy and the encouragement of parties to resolve their disputes by arbitration. Confidential arbitration can be attractive to parties wishing not to have their dirty laundry aired in public, or wishing to maintain an ongoing commercial relationship with each other by excluding interference or pressure that might come from their dispute being aired publicly. Of course, it may not only be unsavoury conduct that they have an interest in keeping out of the public eye, but also commercially confidential or sensitive information including trade secrets and practices, customer information, and so on. In short, there are legitimate interests to be protected by the confidentiality of arbitral proceedings."

²¹ *Seeker Aircraft America Inc v Seabird Aviation Australia Pty Ltd* [2013] QSC 121 at [24] and *Mobil Oil Australia Ltd v Guina Developments Pty Ltd* [1996] 2 VR 34 at 38 (Hayne JA).

²² *EBJ21 v EBO21* (2021) 290 FCR 325 at [68], and see [61], [70].

- [69] Against that background, and presumably with the intention of grappling with the proposition that confidentiality will ordinarily not be a reason to withhold disclosure, the defendants submitted that NRT's inspection of the unredacted documents might cause prejudice. By way of example, [redacted]. Although eloquently expressed, this submission is too abstract to carry any weight. There is no evidence of any information within the redacted portions of the documents that may be misused in such a way as to cause prejudice. I am not, in the circumstances, persuaded that it provides a compelling reason to withhold the unredacted documents.
- [70] It cannot be disputed that the confidentiality interests arising from the arbitration exist and that they, and the public interest in maintaining the confidentiality of the arbitral process, are relevant. The question, however, is whether those interests justify the unilateral redaction of portions of documents that are otherwise discoverable. There are other considerations which bear upon that question.
- [71] Those considerations include the competing public interest in securing justice between the parties to this proceeding and the potential for an injustice to NRT by its being denied full and unrestricted access to documents which, at least in part, contain directly relevant material. That interest requires a balance to be struck between the legitimate concerns of the party disclosing the documents and the needs of the other party to the litigation.
- [72] In striking that balance it is important that the information sought to be redacted is not said to be inherently confidential. It was not suggested that the redacted material discloses trade secrets or commercially sensitive information. The asserted interest arises solely because the information forms part of a confidential arbitral process. There is some artificiality in distinguishing, for this purpose, between relevant and irrelevant parts of the same documents. The defendants accept that the relevant parts must be disclosed, although those parts possess the same quality of arbitral confidentiality as the portions they seek to withhold. The distinction therefore does little, in my view, to advance the confidentiality interest relied upon. It cannot in these circumstances be said that the provision of the unredacted documents undermines the public interest in preserving the confidentiality of arbitrations.
- [73] It is also important, for the reasons I have identified, that there is a serious risk that the heavy redaction of lengthy documents, as has occurred in MGN's disclosure, risks compromising their comprehensibility. The affidavits provided do not, in the circumstances, satisfy me that the redactions performed by MGN have not affected comprehensibility. Nor am I satisfied, in ACG's case, that a sworn understanding as to how the process is to be performed will not suffer from the same problems. These difficulties are only compounded in circumstances where the parties have not invited me to inspect the documents. That conclusion is not a criticism of the deponents of either of the affidavits. It is simply a reflection of the realities I have outlined at paragraphs [50] and [53] above.

Conclusion on NRT's application for unredacted documents

- [74] I am not persuaded that MGN and ACG should be relieved from disclosure and permitted to redact the documents for irrelevance on grounds of confidentiality. The appropriate outcome is for the documents to be provided in unredacted form. So far as MGN is concerned, those orders should be limited to the three witness statements it has provided. The reason why is that there is, in my view, presently no basis to

contend that there are expert reports or additional witness statements which contain relevant material. There should be no such limitation on the orders for ACG by reason that it is yet to disclose any documents in either category.

- [75] In coming to this conclusion, it must also be recognised that orders for disclosure can be made on conditions. These include conditions which impose a more onerous obligation beyond the obligation not to use documents compelled to be disclosed for a purpose unrelated to the conduct of the proceeding in which they were obtained.²³
- [76] In this case, NRT contends that it is open to the Court to impose a more onerous obligation in the form of requiring any person who inspects a document produced to provide a written confidentiality undertaking to the Court. That proposed undertaking contemplates that any witness statement or expert report provided in unredacted form will not be disclosed in open court and will only be used or reproduced as part of a confidential exhibit or annexure or in a confidential section of any court document.
- [77] This proposed measure, which is beneficial to MGN and ACG, is, in my view, appropriate in the circumstances of the case. The provision of that confidentiality undertaking is a matter I have considered in ordering the disclosure of the unredacted documents. It is appropriate in order to strike a fair balance between the confidentiality of the arbitral process and the needs of NRT to have access to the documents concerned.

One further matter: the further confidentiality orders sought

- [78] At the commencement of the hearing, I was invited by ACG and MGN to make several orders, each designed to protect the confidentiality associated with this application. They included that the application be heard in closed court. It is not necessary to deal with this aspect of the application in detail. After hearing argument, I decided that some portions of the hearing would be conducted in closed court. That course was not opposed.
- [79] What remains to be dealt with are two categories of orders. The first is that the materials filed in respect of this application be sealed and their disclosure limited. The second category are consequential orders restricting the publication of these reasons to allow the parties to agree upon redactions or otherwise to anonymise the parties.
- [80] The business of this court is to be conducted in open court. This extends to documents filed in the proceeding. There are some restrictions within the UCPR which limit the ability of strangers to the litigation to access documents filed in proceedings, but those restrictions do not apply to affidavits or written submissions which have been read or relied upon in open court.²⁴ Non-parties may inspect or obtain copies of these documents upon request, provided the prescribed fee is paid.
- [81] The extent to which the business of the court is open to the public may however be limited if the public interest or the interests of justice require it.²⁵ The limitations that may be imposed are not confined to the business conducted in open court. They may

²³ *Hearne v Street* (2008) 235 CLR 125 at [96], [105]-[108].

²⁴ UCPR r 975H(2)(d), (g) and (3).

²⁵ *Supreme Court Act 1991* (Qld), s 8.

extend to imposing access restrictions on the reasons for judgment and documents that are received onto and kept on the court's file.²⁶ If an order is made, the documents may not be inspected or copied by a non-party.²⁷

- [82] Whether the public interest or the interests of justice require non-publication orders or an order restricting access to documents will depend upon the circumstances of the case.
- [83] In this case, MGN and ACG submit that it is in the public interest and the interests of justice that the orders sought be made to maintain the private and confidential nature of the arbitration. This submission is consistent with authority.²⁸ What is sought does not of course seek to restrict NRT in any way. NRT does however oppose, in part, the proposed orders, having submitted that they are overbroad.
- [84] I disagree.
- [85] The arbitral process is confidential. The materials sought to be restricted from public access are littered, albeit not exclusively, with information concerning the arbitration. While it may be accepted that complete confidentiality of arbitral proceedings cannot be achieved,²⁹ I am satisfied that it is in the public interest and the interests of justice to prevent information concerning the arbitration from being disclosed beyond the court and the parties to this proceeding for this application. That interest outweighs the public interest in open justice. In coming to this conclusion, it is, in my view, of significance that NRT is not restricted in its access. There is no prejudice caused to it by limiting access by strangers to the litigation to filed documents.
- [86] Consistent with this, it is also in my view appropriate that the parties be afforded the opportunity to confer and provide to the Court a proposed redacted or anonymised version of the judgment suitable for publication. Failing agreement, the matter can be relisted.
- [87] I make orders in the terms set out in the coversheet to this judgment. I invite the parties to provide a draft order to chambers in those terms. Absent any consent orders as to costs, I will direct the parties to make any submissions as to costs within 14 days, limited to two pages.

²⁶ *Velocity Frequent Flyer Pty Ltd v BP Australia Pty Ltd* [2019] QSC 29 at [14] and *Re Samgris Resources Pty Ltd (in liq)* [2022] QSC 126 at [76].

²⁷ UCPR r 975H(4).

²⁸ *Velocity Frequent Flyer Pty Ltd v BP Australia Pty Ltd* [2019] QSC 29 at [14] and *Re Samgris Resources Pty Ltd (in liq)* [2022] QSC 126 at [76].

²⁹ *Esso Australia Resources Ltd v Plowman* (1994) 183 CLR 10 at 28.

ANNEXURE A

CONFIDENTIALITY UNDERTAKING

I hereby undertake in relation to any documents disclosed pursuant to the orders of the Supreme Court of Queensland dated 25 September 2026 (**Confidential Documents**) that, until such time as this undertaking should be varied, amended or otherwise discharged by the Court:

1. I will keep the Confidential Documents and any information contained in them (**Confidential Information**) confidential at all times, subject to the terms of this confidentiality undertaking.
2. I will only use the Confidential Documents and Confidential Information for the conduct of this proceeding.
3. I will not provide or disclose the Confidential Documents or any Confidential Information to any other person other than to any legal representative of the parties, to the Court, or as required by law.
4. If I am required by law to disclose any Confidential Document or Confidential Information then, to the extent legally permissible and reasonably practicable, I will give the parties at least 5 business days' written notice before the disclosure. Such notice will specify:
 - a. the document or information to be disclosed; and
 - b. to whom disclosure is to be made; and
 - c. the law or obligation requiring that such disclosure be made.
5. If a Confidential Document or any Confidential Information is to be referred to or otherwise used for a purpose of the Proceedings, I will take all reasonable steps to ensure that such Confidential Document or Confidential Information is not disclosed in open court and is only used or reproduced:
 - a. as part of a confidential exhibit or annexure: or
 - b. in a confidential section of any court document.
6. I will promptly notify the solicitors for all parties if I become aware of any unauthorised use or disclosure of Confidential Documents.

Signed by:

on

(Name)

(Date)