

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2021-404-2354
[2025] NZHC 4006**

UNDER	the Defamation Act 1992
BETWEEN	TALLEY'S GROUP LIMITED First plaintiff (discontinued)
	TALLEY'S LIMITED Second plaintiff
	AFFCO HOLDINGS LIMITED Third plaintiff
	AFFCO NEW ZEALAND LIMITED Fourth plaintiff
	SOUTH PACIFIC MEATS LIMITED Fifth plaintiff (discontinued)
AND	TELEVISION NEW ZEALAND LIMITED First defendant
	THOMAS MEAD Second defendant

Hearing: 15–19 and 22–26 September 2025, 29 September–3 October 2025
and 6–10 and 14–15 October 2025

Appearances: B H Dickey KC, W R Potter, J L Gibson and R M Shasha for
plaintiffs
D M Salmon KC, E D Nilsson, K M Hursthouse (and,
pre-admission, K R Havemann) for defendants

Date of judgment: 17 December 2025

JUDGMENT OF JAGOSE J

*This judgment was delivered by me on 17 December 2025 at 11.00am
pursuant to Rule 11.5 of the High Court Rules 2016.*

.....
Registrar/Deputy Registrar

Contents

Introduction	[1]
Summary of judgment	[4]
Conduct of trial	[5]
Background	[9]
Applicable law	[20]
— <i>publication</i>	[21]
— <i>defamatory meaning</i>	[26]
— <i>rebuttable presumptions of “more than minor” harm and untruth</i>	[35]
— <i>defence of responsible communication on a matter of public interest</i>	[37]
— <i>pecuniary loss</i>	[42]
The impugned publications	
— <i>first cause of action: 1 July 2021 broadcast</i>	[43]
— <i>second cause of action: 1 July 2021 article</i>	[55]
— <i>third cause of action: 2 July 2021 broadcast</i>	[63]
— <i>fourth cause of action: 2 July 2021 article</i>	[73]
— <i>fifth cause of action: 3 July 2021 broadcast</i>	[78]
— <i>sixth cause of action: 3 July 2021 article</i>	[137]
— <i>seventh cause of action: 21 July 2021 broadcast</i>	[143]
— <i>eighth cause of action: 21 July 2021 article</i>	[148]
— <i>ninth cause of action: 21 November 2021 broadcast</i>	[153]
— <i>10th cause of action: 21 November 2021 article</i>	[160]
— <i>11th cause of action: 22 May 2022 broadcast</i>	[166]
— <i>12th cause of action: 22 May 2022 article</i>	[174]
Conclusion on Talley’s causes of action	[181]
Pecuniary loss	[182]
Defence of responsible communication on a matter of public interest	[203]
Result	[214]
Costs	[215]

Introduction

[1] The plaintiffs (Talley’s) seek declaratory and indemnity costs relief under s 24 of the Defamation Act 1992 (the Act) in respect of specified publications by the defendants (TVNZ).

[2] The publications are six television news broadcasts and six associated website articles, each respectively published on 1, 2, 3 and 21 July and 21 November 2021 and 22 May 2022, as part of a series broadly relating to Talley’s compliance with accident compensation, employment, food hygiene and health and safety requirements and standards. As to each of those 12 publications, Talley’s contends for multiple imputations harming its reputation and claims the publications have caused or are or were likely to cause pecuniary loss to it.

[3] TVNZ denies the impugned publications either bear the imputations Talley’s alleges of them or are causative of any pecuniary loss but, if so, says the publications have not harmed Talley’s reputation in a more than minor way (having regard also for Talley’s alleged generally bad reputation in those respects) and the imputations are true or not materially different from the truth or, if not, the publications are TVNZ’s responsible communications on matters of public interest.

Summary of judgment

[4] For the reasons I explain below, I have found TVNZ’s publication of its 3 July 2021 broadcast falsely to mean an insufficiency in emergency stop buttons at Talley’s Ashburton site “was known to, and raised by workers with, Talley’s management but not addressed”,¹ such meaning being not materially different from the relevant imputation pleaded by Talley’s.² I also have found, by “not addressed”, it is a meaning tending to lessen, and giving rise to “‘more than minor’ harm” to, Talley’s reputation among some prospective and then-current Talley’s employees.³ But, because Talley’s has not proved the publication has caused, or is likely to cause,

¹ At [80] below.

² At [83] below.

³ At [136] below.

pecuniary loss to Talley's,⁴ the proceeding fails.⁵ Had Talley's proved any pecuniary loss caused by the publication, I would have found the publication nonetheless was TVNZ's responsible communication on a matter of public interest,⁶ meaning TVNZ still would have succeeded.

Conduct of trial

[5] Trial exceeded its scheduled four weeks, hearing evidence from more than 40 fact and expert opinion witnesses in roughly equal division between the parties. Trial only was accommodated even within that extended period by reading a very substantial volume of witness briefs (and hyperlinked documents to which they referred) in advance and agreeing to address the parties' multiple objections to aspects of the briefs' intended evidence's contended admissibility in the course of this decision.⁷

[6] I have determined the parties' objections to admissibility of evidence to which I have had regard.⁸ Given my finding of defamatory meaning only as contained in the 3 July 2021 broadcast, very many of the objections relate to other evidence. I am not prepared to extend either the time required to deliver, or the length of, this judgment by deciding objections to evidence to which I have not had regard in coming to my decision. (The same explains relegation of my relatively summary determination of evidence objections to footnotes in this judgment, when conventionally they would justify their own more reasoned decision.)

[7] Nonetheless, witnesses' evidence at trial gave rise to more than 2,000 pages of transcript, hyperlinked to more than 3,000 documents in the common bundle. Counsel's opening and closing submissions came to nearly 500 pages. Presentation of trial documentation was provided almost exclusively by electronic means. I am inordinately grateful to the parties' solicitors and counsel for the competence of such presentation in accordance with the Senior Courts Civil Electronic Document Protocol

⁴ At [201] below.

⁵ At [202] below.

⁶ At [213] below.

⁷ *Talley's Group Ltd v Television New Zealand Ltd* HC Auckland CIV-2021-404-2354, 29 September 2025 (Minute of Jagose J).

⁸ At footnotes 74, 79, 82, 83, 85 and 115 below.

2019, particularly given the registry’s lack of anything that might be thought to approach a modern electronic document management system. As the parties will know—from my plaintive post-hearing request of them to identify a particular document in evidence, when multiple searches of the electronic bundle were unable to locate it—while the Protocol hugely aids trial conduct, it contributes relatively little to aid judgment consideration and preparation.

[8] Pending introduction and extension of Te Au Reka’s digital caseflow management system to this Court,⁹ the registry’s only means otherwise of managing electronic documents filed in proceedings is to deploy Microsoft Windows File Explorer’s folders and subfolders. That is an increasingly unacceptable practical constraint on this Court’s due administration of justice, intended “to secure the just, speedy, and inexpensive determination of any proceeding”.¹⁰ The registry’s file management infrastructure is decades behind that deployed in contemporary legal practice. It does not do.

Background

[9] Talley’s Group Limited is the ultimate holding company of a variety of subsidiaries engaged in the preparation and processing of meat, dairy, seafood and vegetable products for ultimate public consumption. Those subsidiaries include the plaintiffs: Talley’s Limited, which prepares and processes seafood and vegetable products including at sites in the South Island’s Ashburton, Blenheim, Havelock and Picton; and AFFCO Holdings Limited and AFFCO New Zealand Limited, which operate meat works at various sites in New Zealand.

[10] As the person conducting those businesses, each Talley’s Limited and AFFCO New Zealand Limited “must ensure, so far as is reasonably practicable, the health and safety” of workers at work in those businesses.¹¹ Talley’s Limited and AFFCO Holdings Limited each also is an accredited employer under the Accident Compensation Corporation’s Accredited Employer Programme (AFFCO Holdings

⁹ “Key Initiatives: Te Au Reka” (1 December 2025) Ministry of Justice website <www.justice.govt.nz>.

¹⁰ High Court Rules 2016, r 1.2.

¹¹ Health and Safety at Work Act 2015, s 36(1).

Limited in that respect acting for AFFCO New Zealand Limited, the employer of those employees), “to provide at their own cost entitlements in relation to work-related personal injuries suffered by their employees during a claim management period”,¹² which the group does through its Injury Management Unit (IMU) based at the group’s head office in Motueka.

[11] TVNZ is a Crown entity responsible for conducting a national television and digital media business to provide high-quality content,¹³ compliantly and consistently with requisite standards.¹⁴ Under the banner “NZ’s most trusted news source”, TVNZ broadcasts a news service (1 NEWS) by regular daily bulletins including at 6 pm (1 NEWS at 6) and publishes associated audiovisual footage, photographs and written articles on its 1 NEWS website. At the time of the impugned broadcasts, the 1 NEWS at 6 bulletin reached some 850,000 daily viewers, some 660,100 of whom on average viewed the entire bulletin. Among others, TVNZ’s employee Thomas Mead, a journalist, prepares and presents news stories broadcast on 1 NEWS bulletins and authors articles published on the 1 NEWS website.

[12] On 1 July 2021, TVNZ broadcast on its 1 NEWS at 6 bulletin a story introduced as an “exclusive investigation into health and safety at Talley’s”, audiovisual footage from which it then embedded into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “Exclusive: Whistleblower shares images of filthy conditions at Talley’s factory”.

[13] On 2 July 2021, TVNZ broadcast on its 1 NEWS at 6 bulletin a story introduced as “a fresh development on [TVNZ’s] exclusive investigation into health and safety concerns at one of New Zealand’s biggest food producers”, audiovisual footage from which it then embedded into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “Exclusive: Former Talley’s employee feared he would die on the job”.

¹² Accident Compensation Act 2001, s 182.

¹³ Television New Zealand Act 2003, ss 3 and 12.

¹⁴ Broadcasting Act 1989, s 4(1). See also Television New Zealand Act, s 28(2)(d).

[14] On 3 July 2021, TVNZ broadcast on its 1 NEWS at 6 bulletin “breaking news” “Food producer, Talley’s, has pledged to open its doors and allow WorkSafe auditors full access to its factories following allegations of severe safety violations”, audiovisual footage from which it then embedded into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “Talley’s launches independent review in response to allegations in 1 NEWS story”.

[15] The 1, 2 and 3 July 2021 publications concerned Talley’s vegetable preparation and processing plant at Ashburton. On 21 July 2021, TVNZ broadcast on its 1 NEWS at 6 bulletin “revelations” of “new concerns [having] emerged about safety [from w]histleblowers[’] ... allegations about the Talley’s plant in Blenheim”, audiovisual footage from which it then embedded into an illustrated article published on the 1 NEWS website, titled “Over 170 Talley’s staff injured at three sites in one year, probe reveals”.

[16] On 21 November 2021, TVNZ broadcast on its 1 NEWS at 6 bulletin a “special report” of “[t]wo whistle-blowers ... warning [Talley’s] has interfered with an injury management programme that cares for vulnerable workers caught up in accidents on their work sites”, audiovisual footage from which it then embedded into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “Talley’s interfered with injury claims, whistle-blowers claim”.

[17] On 22 May 2022, TVNZ broadcast on its 1 NEWS at 6 bulletin an “exclusive report” of “a history of suffering at food manufacturer Talley’s and its meat works division AFFCO”, audiovisual footage including from which it embedded into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “A History of Suffering: Food giant Talley’s Group underpaid injured workers”.

[18] These are the 12 publications on which Talley’s sues. The 1, 2, 3 and 21 July and 21 November 2021 broadcasts led that day’s 1 NEWS at 6 bulletin and were heralded by the newsreader’s prefatory comments. At the time of trial, each article (and its embedded footage) remained accessible on the internet.¹⁵

¹⁵ Thomas Mead “Exclusive: Whistleblower shares images of filthy conditions at Talley’s factory” (1 July 2021) 1 News <www.1news.co.nz>; Thomas Mead “Exclusive: Former Talley’s employee

[19] Not sued on are another 2 July illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “WorkSafe to ‘look into’ Talley’s after whistleblowers come forward to 1 News”, another broadcast on 22 July (“Talley’s and WorkSafe meet over safety concerns”) and other broadcasts and associated website articles on 23 July (“Union rep ‘wouldn’t let’ his children work at Talley’s amid safety concerns”), 30 July (“Mike Bush to lead investigation into Talley’s Ashburton plant”), 11 August (“‘I don’t want these out there’ - an inside look at Talley’s attempts to shut down a 1 NEWS investigation”), 24 October (“Female fishing observer ‘repeatedly sexually harassed’ in nightmare Talley’s voyage”), 25 October (“Bullying, harassment rife in commercial fishing industry”), 22 November (“Exclusive: ACC found ‘critical issues’ in care of injured workers at Talley’s Group in 2019”) and 24 November 2021 (“Exclusive: Minister admits ACC’s AEP programme has ‘flaws’”), all referring in some respect to Talley’s operations. Except for the 23 July 2021 broadcast, which was published on TVNZ’s Morning bulletin, all broadcasts were published in its 1 NEWS at 6 bulletin.

Applicable law

[20] Defamation is a civil wrong, or tort, made out by proof of publication by a defendant of a statement bearing a pleaded defamatory meaning about a plaintiff.¹⁶ In proceedings such as the present—in which Talley’s seeks only declarations of TVNZ’s liability to it in defamation and costs—if I make such declarations, Talley’s is to be awarded solicitor and client costs, unless I order otherwise.¹⁷

—publication

[21] The essence of a defamation claim is the publication be made to a person other than the plaintiff: “[t]hat person must have read or heard the defamatory material;

feared he would die on the job” (2 July 2021) 1News <www.1news.co.nz>; “Talley’s launches independent review in response to allegations in 1 NEWS story” (3 July 2021) 1 News <www.1news.co.nz>; “Over 170 Talley’s staff injured at three sites in one year, probe reveals” (21 July 2021) 1 News <www.1news.co.nz>; Thomas Mead “Talley’s interfered with injury claims, whistle-blowers claim” (21 November 2021) 1 News <www.1news.co.nz>; and Thomas Mead “A History of Suffering: Food giant Talley’s Group underpaid injured workers” (22 November 2022) 1 News <www.1news.co.nz>

¹⁶ Defamation Act, s 37(1).

¹⁷ Section 24.

without proof that someone had read or seen the material, there is no defamation”.¹⁸ However, where publication is “by newspaper, radio or television[,] a plaintiff need not prove publication to any specific person or persons”.¹⁹

[22] The Court of Appeal has observed it is “debatable” if this “mass media principle” extends to availability of such publication online at a designated website,²⁰ leading commentators to suggest proof of publication required “evidence that someone actually took notice; otherwise the claim may be found to be an abuse of process”.²¹ But the Court of Appeal’s observation was made expressly in the context of that “present case”, in which the evidence was the website had “an average of 500 ‘hits’ a month of which approximately seven ‘hits’ a month originate from New Zealand”.²² Hence the Court of Appeal also recommended:²³

[W]here plaintiffs are confronted with the need to demonstrate the existence of a good arguable case, it would of course be helpful to have evidence confirming the fact of downloading by other persons.

[23] Talley’s has not led evidence to prove any of the articles was read by anyone unassociated with Talley’s or without the present proceeding. Talley’s current general counsel, Rachel Kubala, said under cross-examination the 1 NEWS at 6 bulletin was “the news that passionately my family watch and I understand my friends to watch”, but she doubted they looked at the 1 NEWS website. Although she had conducted pre-employment internet searches of Talley’s in which “news articles from 1 News in 2021 were among the first searches that came up for [her]”, she “[couldn’t] be certain” they included any on which Talley’s now sues (although “some of them rung a bell”). She remembered “seeing scenes specifically” and spoke subsequently about “seeing a video” of which people had commented to her on Talley’s reputation from “the whole TVNZ broadcast campaign”. AFFCO New Zealand Limited’s then general manager of sales and marketing, Mark de Lautour, remembered reading the 23 July 2021 article

¹⁸ *R v Standard 304 Ltd* [2008] NZCA 564, [2010] NZAR 194 at [35].

¹⁹ *Nationwide News Pty Ltd v The University of Newlands* CA202/04, 9 December 2005 at [48], referring to *Fullam v Newcastle Chronicle and Journal Limited* (1977) 1 WLR 651.

²⁰ At [48].

²¹ Stephen Todd (ed) *Todd on Torts* (9th ed, Thomson Reuters, Wellington, 2023) at [15.5.2(2)(e)], referring to *Webb v Jones* [2021] EWHC 1618 (QB) at [44]–[50], where the Court considered evidence of “reactions” to seven allegedly defamatory tweets on Twitter (as it was then known) to ascertain “the extent to which anyone took any notice of them”.

²² *Nationwide News Pty Ltd v The University of Newlands*, above n 19, at [28].

²³ At [49].

(“Union rep ‘wouldn’t let’ his children work at Talley’s amid safety concerns”), on which Talley’s has not sued. Talley’s manager of the IMU, Rebecca Plum, agreed on re-examination she had responded in cross-examination she had seen the 21 November 2021 article (but, in fact, under cross-examination she only had agreed with a question if she remembered, on 21 November 2021, “TVNZ published an article in which it said that the IMU was not paying employees all of their entitlements”).

[24] A number of expert witnesses called by each Talley’s and TVNZ had read the articles but only for the purpose of their briefing in the proceeding.²⁴ The evidence included (for the purposes of discovery disputes between the parties) data from TVNZ’s online video service provider, by 30 September 2024, of the number of times a video was loaded in a browser ready for interaction (usually upon a reader’s arrival at an article’s webpage), and the number of times a reader caused the video to begin playing. That evidence also included TVNZ’s sourced analytical data, by 31 May 2024, of the number of times each article webpage was visited. Merged from the two sources, the data was:

Article date	Video loaded	Video played	Article accessed
1 Jul 2021	204,686	35,836	110,820
2 Jul 2021	40,628	4,570	19,973
3 Jul 2021	26,773	2,192	10,440
21 Jul 2021	38,982	1,544	5,960
21 Nov 2021	7,882	1,115	5,101
22 May 2022	19,950	851	148

Those numbers may serve as proxies for publication of the articles, although to how many individual New Zealand readers is unknown. By May 2024, this proceeding was well underway, meaning those numbers likely include publication of the articles to Talley’s and TVNZ’s witnesses and advisors for the purposes of this proceeding. I do not know if the numbers also may include access by third parties for data scraping,²⁵ from which ‘publication’ perhaps should not be inferred.

²⁴ Talley’s organisational psychology expert, Rachel Morrison, said under cross-examination she had “seen ... the things that are in the public domain, so on television”, but agreed—in connection with a question about publications on which Talley’s had not sued—those were things she had read “as a normal consumer of news”. I do not take that a concession Dr Morrison separately had read any website article.

²⁵ The process is discussed in *Re Yodlee, Inc* [2023] NZIPOPAT 4 at [14], n 1, referring to “Web Scraping” (17 November 2025) Wikipedia <en.wikipedia.org>.

[25] Those reservations may afford broader good reason for the Court of Appeal’s “debatable” observation. Conventionally, defamation requires publication to someone, because harm to reputation springs from that presumed ordinary reasonable person’s comprehension of the publication. At least in relation to articles published on evidenced accessed websites, there may be something to acceptance of a rebuttable presumption.²⁶ But, as I have not found any impugned article to have defamatory meaning, I have not needed to consider the point further.

—*defamatory meaning*

[26] At an exceptionally high level of description, a defamatory statement tends to lessen its subject’s reputation; it tends to reflect adversely on its subject. There is any number of formulae, and examples.²⁷ It is the statement’s tendency that matters, as its meaning may be comprehended (on one measure) “in the estimation of right-thinking members of society generally”.²⁸

[27] Such ‘right-thinkers’ are to be attributed neither undue critical function nor undue credulity.²⁹ Rather, at least so far as statements appearing in a publication are concerned, focus is on the broad impression such a person, as representative of those who would read (or view) the publication,³⁰ would take from reading (or viewing) it.³¹

[28] Except where a plaintiff pleads and proves a special meaning to be attributed to the words (an “innuendo”), and then a particularised person or class of people as understanding that special meaning, the statement’s words are to be given their “natural and ordinary meaning”.³²

[29] In *Fourth Estate Holdings (2012) Ltd v Joyce*, the Court of Appeal recently emphasised:³³

²⁶ *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218 at [39].

²⁷ See Todd, above n 21, at [15.3.01] and [15.3.03].

²⁸ *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240. It may be thought such estimation only could occur if the statement was to be understood as blaming the subject for such reduced reputation.

²⁹ *Lewis v Daily Telegraph* [1964] AC 234 (HL) at 259 and 286.

³⁰ *McGrath v Dawkins* [2012] EWHC B3 (QB) at [51].

³¹ *Hayward v Thompson* [1982] QB 47 (CA) at 61.

³² Defamation Act 1992, s 37(2) and (3).

³³ *Fourth Estate Holdings (2012) Ltd v Joyce* [2020] NZCA 479 at [62]–[63] (footnotes omitted).

By pleading a meaning, the plaintiff sets a threshold which it must meet if it is to succeed in its claim:

If the meaning which is alleged, or something not materially dissimilar, is not established, then the plaintiff loses its case. It is only when that meaning is established that the defendant needs to respond to it, but not to some other issue which might have been complained about but has not been the subject of complaint.

Thus ... if a defendant establishes that a publication does not convey the meanings asserted by the plaintiff, that defendant will not be liable. The plaintiff will have failed in their case.

[30] As the Court of Appeal also then endorsed,³⁴ the principles by which such meaning is derived usefully are compiled in *New Zealand Magazines Ltd v Hadlee (No 2)*:³⁵

In determining whether words are capable of bearing an alleged defamatory meaning:

- a) The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?
- b) The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.
- c) The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.
- d) The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.
- e) But the Court will reject those meanings which can only emerge as the product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.
- f) The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared. ...

[31] Distinctly from reading an article in the circumstances in which it is published, context cannot be ascertained only from reading the transcript of a broadcast:³⁶ “the

³⁴ At [69]–[70].

³⁵ *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

³⁶ *Radio 2UE Sydney Pty Ltd v Parker* (1992) 29 NSWLR 448 at 473. Similarly, albeit in a privacy context, *Television New Zealand Ltd v Rogers* [2007] NZSC 9, [2008] 2 NZLR 277 at [101] and [124].

message may be altered from what appears from the transcript by what is heard and seen”,³⁷ having regard for “the structure, theme, words and images in the program”.³⁸ Indeed, the transcript may be an inappropriate reference.³⁹ A broadcast’s meaning instead is to be taken from its “fleeting ... ephemeral and diffuse” one-off aural and/or visual presentation.⁴⁰ From the perspective of the ordinary reasonable viewer, I am to give the words used their natural and ordinary meaning, “taking into account the visual context of a television broadcast”,⁴¹ in which “words and images are melded together in a short, transient and arresting item”.⁴²

[32] In *Hadlee*, Blanchard J continued:⁴³

It is also to be remembered that whilst words which do not convey more than mere suspicion, even strong suspicion, are not capable of bearing a defamatory meaning (*Simmons v Mitchell* (1880) 6 App Cas 156 (PC)), more may be expressly stated or may reasonably be inferred than that there is some suspicion about the conduct of the plaintiff. If a newspaper prints that X is under investigation by the police an ordinary and fair minded reader will not conclude that X is guilty of something but will proceed on the basis that the investigation will reveal no criminal conduct: *Lewis v Daily Telegraph Ltd* [[1964] AC 234]. But the world being what it is, if a newspaper says that there is a rumour to the effect that X has committed a crime and is under investigation, the same reader may reasonably draw the inference that whoever started the rumour believes that X has committed the crime and so does the newspaper. It must be the same with rumours of other unbecoming conduct.

One who publishes any such rumour runs the risk of being found to have published something capable of being defamatory unless a complete refutation is also made.

The following passage from the speech of Lord Hodson in *Lewis* at pp 274–275 is apposite:

Rumour and suspicion do, however, essentially differ from one another. To say that something is rumoured to be the fact is, if the words are defamatory, a republication of the libel. One cannot defend an action for libel by saying that one has been told the libel by someone else, for this might be only to make the libel worse. The

³⁷ *Peters v Television New Zealand* [2008] NZAR 411 (HC) at [13].

³⁸ *Channel 7 Sydney Pty Ltd v Parras* [2002] NSWCA 202 at [10], referring to the judgment on appeal.

³⁹ *Radio 2UE Sydney Pty Ltd v Parker*, above n 36, at 472–473.

⁴⁰ *Australian Broadcasting Corporation v Reading* [2004] NSWCA 411 at [69], [76], [86] and [121].

⁴¹ *Born Brands Pty Ltd v Nine Network Australia Pty Ltd* [2014] NSWCA 369, (2014) 88 NSWLR 421 at [16], referring to *Favell v Queensland Newspapers Pty Ltd* [2005] HCA 52, 79 ALJR 1716 at [9]–[12].

⁴² *Channel 7 Sydney Pty Ltd v Parras*, above n 38, at [17], referring to *Amalgamated Television Services Pty Ltd v Marsden* (1998) 43 NSWLR 158 (CA) at 165–166.

⁴³ *New Zealand Magazines Ltd v Hadlee (No 2)*, above n 35, at [626]–[627].

principle, as stated by Blackburn J in *Watkin v Hall* [(1868) LR 3 QB 396,401], is that a party is not the less entitled to recover damages from a court of law for injurious matter published concerning him because another person previously published it. It is wholly different with suspicion. It may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice, which reasonable persons are supposed to entertain. If one repeats a rumour one adds one's own authority to it and implies that it is well founded, that is to say, that it is true. It is otherwise when one says or implies that a person is under suspicion of guilt. This does not imply that he is in fact guilty, but only that there are reasonable grounds for suspicion, which is a different matter.

And Lord Devlin had this to say at pp 284-285:

If it is said of a man – “I do not believe that he is guilty of fraud but I cannot deny that he has given grounds for suspicion”, it seems to me to be wrong to say that in no circumstances can they be justified except by the speaker proving the truth of that which he has expressly said that he did not believe. It must depend on whether the impression conveyed by the speaker is one of frankness or one of insinuation. Equally in my opinion it is wrong to say that, if in truth the person spoken of never gave any cause for suspicion at all, he has no remedy because he was expressly exonerated of fraud. A man's reputation can suffer if it can truly be said of him that although innocent he behaved in a suspicious way; but it will suffer much more if it is said that he is not innocent.

It is not therefore correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully, if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.

What is involved where someone has repeated a rumour, whilst at the same time saying that it is not so, is a weighing up or comparison of “bane” and “antidote”, to adopt Alderson B's expressions in *Chalmers v Payne* [(1835) 2 Cr M & R 156; 150 ER 67]. It is a question of degree and competing emphasis but it may be easier to arrive at an answer where the publication contains an express disclaimer or “where the antidote consists in a statement of fact destructive of the ingredients from which the bane has been brewed”: *Morosi v Broadcasting Station 2GB Pty Limited* [1980] 2 NSWLR 418n, (CA) at p 420 (Samuels JA).

[33] The Supreme Court has observed:⁴⁴

Building on statements of Lord Reid and Lord Devlin in *Lewis v Daily Telegraph Ltd*, the Court of Appeal for England and Wales in *Chase v News Group Newspapers Ltd* distinguished between what has come to be characterised as “tier one”, “tier two” and “tier three” meanings. A “tier one” meaning imputes to the plaintiff actual misconduct; a “tier two” meaning asserts that there are grounds to believe or suspect the plaintiff is guilty of misconduct; and a “tier three” meaning asserts that there are grounds for investigating whether the plaintiff is guilty of misconduct. This classification is now in widespread use in England. ...

This tripartite classification provides a convenient general description of different forms of meaning. Care must, however, be taken lest classification be allowed to dictate meaning. The crucial first step is to identify the precise meaning of the words in issue, rather than attempting to force that meaning into one of the three “tiers”. Meanings in different tiers may shade into each other, rather than always falling neatly into one compartment or another. The precise meaning of the words in question is crucial to whether truth or honest opinion defences are made out. Furthermore, it does not necessarily follow that a “tier one” meaning is always more serious than a “tier two” meaning, or a “tier two” meaning more serious than a “tier three” meaning. Everything depends on the precise words used, and the context in which they are used. ...

[34] The law assumes the reasonable person will derive only a single meaning from the impugned words.⁴⁵ If a defamatory publication conveys more than one defamatory imputation, the single meaning rule applies in relation to each.⁴⁶

—*rebuttable presumptions of “more than minor” harm and untruth*

[35] If any such meaning is derogatory of its subject, the publication rebuttably is presumed to have given rise to “‘more than minor’ harm” to a plaintiff’s reputation.⁴⁷ If a defendant proves more than minor harm was not occasioned to the plaintiff’s reputation, the defamation claim will fail.

[36] The publication’s untruth also rebuttably is presumed, but:⁴⁸

⁴⁴ *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [15]–[16] (footnotes omitted), referring to *Lewis v Daily Telegraph Ltd*, above n 29, at 258 and 282 and *Chase v News Group Newspapers Ltd* [2003] EMLR 11 (CA) at [45]–[46].

⁴⁵ *Peters v Television New Zealand Ltd* [2011] NZCA 231, [2012] 2 NZLR 466 at [45], referring to *Charleston v News Group Newspapers Limited* [1995] 2 AC 65 (HL) at 71 and *Broadcasting Corporation of New Zealand v Crush* [1988] 2 NZLR 234 (CA) at 238.

⁴⁶ Richard Rampton and others *Duncan and Neill on Defamation* (5th ed, LexisNexis, London, 2020) at [5.13].

⁴⁷ *Television New Zealand Ltd v Talley’s Group Ltd* [2024] NZCA 502 at [26]–[27] and [41], citing *Craig v Slater* [2020] NZCA 305 at [44]–[45].

⁴⁸ Defamation Act, s 8(3).

In proceedings for defamation, a defence of truth shall succeed if—

- (a) the defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or
- (b) where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth.

—*defence of responsible communication on a matter of public interest*

[37] In *Durie v Gardiner*, the Court of Appeal established availability of a further defence—on proof by any defendant publisher in any medium (a) the subject matter of the publication was of public interest; and (b) the communication was responsible—of responsible communication on a matter of public interest (rather than of responsible journalism).⁴⁹

[38] By ‘public interest’ is meant at least subject matter:⁵⁰

... inviting public attention, or about which the public or a segment of the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached.

[39] If then a responsible communication is to be determined “having regard to all the relevant circumstances of the publication”,⁵¹ which may include:⁵²

- (a) The seriousness of the allegation – the more serious the allegation, the greater the degree of diligence to verify it.
- (b) The degree of public importance.
- (c) The urgency of the matter – did the public’s need to know require the defendant to publish when it did, taking into account that news is often a perishable commodity.
- (d) The reliability of any source.
- (e) Whether comment was sought from the plaintiff and accurately reported – this was described in *Torstar* as a core factor because it speaks to the essential sense of fairness the defence is intended to promote. In most cases it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond. Failure to do so also heightens the risk of inaccuracy. The target may well be able to offer relevant information beyond bare denial.

⁴⁹ *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [58]–[59].

⁵⁰ At [65], referring to *Grant v Torstar Corp* 2009 SCC 61, [2009] 3 SCR 640 at [99]–[106].

⁵¹ At [66].

⁵² At [67] (footnotes omitted).

- (f) The tone of the publication.
- (g) The inclusion of defamatory statements which were not necessary to communicate on the matter of public interest.

[40] The Court of Appeal concluded:⁵³

The list of factors is not exhaustive and in some cases the circumstances may be such that not all factors in the list are relevant. In some cases, publishing defamatory allegations from an unidentified source may not be responsible. In other cases it may be responsible if for example the publisher had good reason to consider the source reliable and the article made it clear it was relying on a confidential source or sources. In short, the factors must be applied in a practical and flexible manner with regard to the practical realities and with some deference to the editorial judgment of the publisher, particularly in cases involving professional editors and journalists.

and the majority said:⁵⁴

In the context of a situation where the public interest concerned lies in the fact the allegation was made, rather than the truth of its contents, the publisher may be relieved of the usual responsibility obligation of attempting to verify the contents as distinct from verifying the making of the allegation but that is not the end of the responsibility inquiry. The court will also consider whether, viewing the publication as a whole, the publishers have made it clear they do not subscribe to any belief in the truth of the allegation and have not adopted it as their own. Relevant considerations will include whether the source of the information is disclosed in the publication and the tone of the publication, including whether the allegations have been embellished. Timing may also be relevant. If, for example, the allegation or its context was stale or there was some other ulterior reason for the timing of the publication, then reportage may not be available even if the report was otherwise full, fair and neutral.

and:⁵⁵

The stakes for publishers – mainstream or otherwise – who do not attempt to verify the truth of the defamatory allegation are high. They are likely to do so at their peril and accordingly the incentive to make the attempt remains high.

[41] In *Manaia Media Ltd v Cato*,⁵⁶ of relevant circumstances to be assessed to determine if communication was responsible, the Court of Appeal recently added:⁵⁷

[T]hese [factors] are to be applied in a practical and flexible manner with regard to the practical realities and with some deference to the editorial judgment of the publisher, particularly in cases involving professional editors and journalists.

⁵³ At [68].

⁵⁴ At [71] (footnotes omitted).

⁵⁵ At [77].

⁵⁶ *Manaia Media Ltd v Cato* [2025] NZCA 233, [2025] 3 NZLR 103.

⁵⁷ At [90].

—*pecuniary loss*

[42] Finally, notwithstanding all of that, s 6 of the Act provides:

Proceedings for defamation brought by body corporate

Proceedings for defamation brought by a body corporate shall fail unless the body corporate alleges and proves that the publication of the matter that is the subject of the proceedings—

- (a) has caused pecuniary loss; or
 - (b) is likely to cause pecuniary loss—
- to that body corporate.

The impugned publications

—*first cause of action: 1 July 2021 broadcast*

[43] On 1 July 2021, TVNZ’s 1 NEWS at 6 bulletin commenced with the newsreader, Simon Dallow, foreshadowing some of the content of the bulletin. Apparently standing in front of a large curved screen displaying still and video images of a worker’s hands sorting through raw potato chips, a worker sorting through peeled potatoes on a conveyor belt and a stained piece of industrial equipment, he said:

Tonight on 1 NEWS, health and safety concerns at one of the country’s biggest food producers: a whistleblower gives 1 NEWS exclusive images and they don’t look good. Reaction from the company involved.

[44] After Mr Dallow highlighted other items to come, the bulletin led with that story:⁵⁸

SIMON DALLOW [*speaking to camera while seated at a desk, backed by a “1 NEWS Exclusive” logo over a still image of an industrial plant*]: Kia ora, good evening. We begin tonight, though, with an exclusive investigation into

⁵⁸ The text of the following transcript of the broadcast (as with those replicated in this judgment of the other broadcasts) is as supplied by Talley’s solicitors. I do not understand there to be material dispute as to its accuracy. Similarly, the text of the articles replicated subsequently in this judgment is extracted from the version in which they presently exist on TVNZ’s 1 NEWS website. I have added their [*contextual narrative*] (the thankless task of drafting which fell to my clerk). Given none of the impugned publications was published in documentary form, I contemplated how best to present them in this judgment. I would have preferred to have presented them in the audiovisual and electronic form in which they were published so that my impression of their meaning could be compared with the original broadcast or article, but ultimately settled on their presentation as outlined in recognition my judgment also must stand separately to be read and understood in explanation of how I arrived at its result, transparently identifying the foundation for my decision: my judgment “must speak for itself” (albeit in a recall context, *Stockman v Health and Disability Commissioner* [2023] NZCA 48 at [3]; *Jones v Stace Hammond Lawyers* [2023] NZCA 34 at [3]).

health and safety at Talley's, one of the country's biggest food producers. A whistleblower tells 1 NEWS the company's frozen food factory in Ashburton, where a woman recently had her hand crushed, is another accident waiting to happen. Reporter Thomas Mead visited the plant today to ask the hard questions.

THOMAS MEAD [*speaking over video of cut potatoes transferring between moving conveyor lines*]: To the public Talley's presents a spotless image; [*speaking over video showing a worker wearing protective apparel, sorting through peeled potatoes as they move past on a conveyor belt and looking up to smile at the camera*] staff producing frozen veggies with a smile on their face. But tonight, 1 NEWS can pull back [*speaking over still images of stained industrial machinery and a piece of industrial plant cordoned off with yellow tape and bearing a warning sign*] the curtain. These leaked photos taken by an anonymous whistleblower show a different side to the Ashburton factory.

UNIDENTIFIED SPEAKER [*speaking in darkness, only his right shoulder dimly lit*]: I'm sorry, but these guys they are lying to them. They are lying to their customers.

THOMAS MEAD: We've chosen to replace his voice for his protection. [*Speaking over a video of a machine harvesting product to a truck, still images of Talley's-branded consumer product, video of unprocessed and processed potatoes, a still image of a wall bearing the "Talley's" brand in metal lettering behind a landscaped garden and video of a large truck and trailer unit bearing Talley's signage backing towards an industrial building*] Talley's is one of our biggest food companies, their produce in supermarkets all over the country. But they've seen several accidents. Across their many operations, one worker has been decapitated at sea, and other paralysed and others injured in preventable incidents, prompting one worker here in Ashburton to come forward.

UNIDENTIFIED SPEAKER [*speaking as previously*]: To me what they are doing, they don't even care because these people are easily replaceable.

THOMAS MEAD: [*speaking over still images of industrial machinery, including that shown at the bulletin's commencement, a worker wearing a high visibility coat standing at the level of the top of a truck's load, reaching across the load with some implement*] Sharing these images of filthy machines, one coated in burnt grease, the other with corn juice, and in another a contractor stands on top of a loaded truck. [*Speaking over a still image of industrial machinery showing a wide vertical metal open grid belt with vegetable matter caught in the grid*] And here a machine has exposed pinch points where people can be trapped.

UNIDENTIFIED SPEAKER [*speaking as previously*]: If your hand is trapped in the machine, your fingers or whatever, the machine keeps running.

THOMAS MEAD: [*speaking over still images of some of the industrial machinery previously shown stained now clean, and machinery previously shown cordoned off now with new or repaired housing and without cordon or signage*] In response today Talley's claim the photos were taken out of context and sent us these, saying they do address issues whenever they arise.

TALLEY'S CEO [*identified by subtitled name and position, speaking to camera outdoors standing in front of a mirror-glass building*]: It is, it is cleaned regularly. You're always going to get some heat stain on there. You're always going to get some build up on there.

UNIDENTIFIED SPEAKER [*speaking as previously*]: What I'm showing you has not been there for one or two days [*speaking over one of the original still images of stained industrial machinery*], it's been there for months.

THOMAS MEAD [*speaking over the previous still image of industrial machinery showing wide vertical metal open grid belt with caught vegetable matter*]: The company saying hazards like those pinch points [*speaking over a still image of that machine's gridded belt covered with a metal panel*] have since been put under a guard as part of their regular audit. [*Speaking over video of Talley's CEO, as previously*] So you would contend that everyone working here is safe?

TALLEY'S CEO: I contend that we have a safe site, yes.

THOMAS MEAD [*Speaking over an image of an email headed "Serious injury" with some redactions*]: Except just three months ago, a woman had her hand stuck in a machine on the Ashburton corn line. A leaked email showing Talley's had to call emergency services to get her out and then told staff to keep quiet, writing [*speaking over highlighting of part of the email*] do not share any information discuss or pass comment about this incident outside the business. [*Speaking over video of Talley's CEO, as previously*] Was she safe?

TALLEY'S CEO: Well, if she had followed the proper procedures, she would be.

THOMAS MEAD [*speaking over still images of a sign directing traffic to Talley's, a large industrial building*]: WorkSafe investigated but didn't take any further action. [*Speaking over split-screen video of each the unidentified speaker and Talley's CEO as previously*] The two sides could not be more opposed, Talley's refuting any suggestion they put profit over their staff.

UNIDENTIFIED SPEAKER [*speaking as previously*]: Everyone can see it. Everyone, managers, supervisors, everyone is there. They know it's there. They just walk away.

TALLEY'S CEO [*speaking as previously*]: I feel that we are definitely doing everything we can to try and make sure that people do go home safely on a daily basis.

THOMAS MEAD [*speaking over video of the Talley's sign shown previously and panning to show a car entering a road to the left of the wall*]: So while the company may feel it's safe, it seems not everyone agrees.

SIMON DALLOW [*speaking to camera on split screen also showing Mr Mead standing outside at night*]: Alright, for more let's go live to Thomas now. Tell us about your visit to the factory, Thomas. How did it go?

THOMAS MEAD [*after transition to Mr Mead alone on screen, after a graphic "Live", speaking directly to camera*]: Well, we had hoped to go inside

that factory. Talley's initially invited us, said come on in [*subtitle reading "Factory concerns: 1 News threatened with legal action"*] and see things for yourself but they changed their mind at the last-minute citing commercial sensitivity. It followed an extraordinary meeting in their boardroom where their chief executive, the head of health and safety, a communications professional and two other members of local site management spoke to us for around 45 minutes, essentially trying to stop us from running this article tonight. They threatened us with legal action, saying that those photographs were taken again out of context and quote, "not an issue of public importance or safety". That was followed soon afterward by an email from their lawyer where they threatened to injunct TVNZ an action which would have seen this head to the High Court but ultimately they chose not to do that. We were able to air the story tonight. It's fair to say that the chief executive did not want these pictures to be aired. He told me that directly in our meeting, but it is also fair to say that they are in the public interest given that these products are in many freezers all over New Zealand. And while it's important to say that there's no indication at this stage, if there's any food hygiene risk, we simply don't know that, ah people, it's important for people to be able to look at the story, see both sides and make their own mind up.

SIMON DALLOW [*speaking off camera*]: Kia ora Thomas. In Ōtautahi, Christchurch, Thomas Mead.

[45] I have heard an enormous amount of evidence about most every aspect of Talley's operations and experience depicted in the 1 July 2021 broadcast, including for example: the separate seasonality of Talley's vegetable supplies; the passage of produce to and through the Ashburton plant, including of waste from it; the identity of TVNZ's then-unidentified source; his role at the Ashburton site; his reason for seeking anonymity; the extent and verification of his contentions respectively to and by Mr Mead and TVNZ; the physical location and operation of various aspects of the Ashburton plant's preparation and processing functions and machinery; the circumstances and aftermath of the worker's hand injury; the scope and operation of Talley's relevant health and safety procedures, including of their formal and informal audits and follow-up of safety concerns as they arose; and the multiple products of Talley's vegetable processing supplied directly and indirectly to end consumers. The same is true of evidence heard also about the subject of subsequent impugned broadcasts and articles, extending to evidence from Talley's workers, managers, executives, contractors and consultants, representatives of workers such as are employed by Talley's, past and present health and safety regulators (WorkSafe, including the then-Minister for Workplace Relations and Safety, Michael Wood) and people involved in injury management (whether as injured or managers or regulators),

as well as from TVNZ employees (including Mr Mead) and various experts for each Talley's and TVNZ.

[46] Little if any of that evidence would be apparent to the ordinary reasonable viewer of any of the broadcasts (or reader of any of the articles), even with ordinary intelligence, general knowledge and experience of worldly affairs. I credit that viewer (and reader) with a general appreciation industrial food processing has inherent consumer food safety and worker health and safety risks, both subject to regulatory controls. I also credit that viewer (and reader) with a similar appreciation New Zealand has a statutory accident compensation scheme, by which people injured by accident may obtain free medical care and possibly some measure of compensation, including by reference to some lost income (but obtaining compensation may be complicated in circumstances).

[47] So far as that audience-representative viewer of the 1 NEWS at 6 bulletin is concerned, TVNZ's executive editor for news and current affairs, Phillip O'Sullivan, said under cross-examination the viewer's nightly watching of the bulletin was "probably ... a fairly habitual exercise". I infer such habit is to rely on the bulletin as a primary source of news, meaning neither critical function nor credulousness has a material role to play in the viewer's comprehension of the broadcast. Rather, that representative viewer would take the broadcast generally at face value and as may be informed by its relevant predecessors.

[48] Artificial as it may be—given the extent of the evidence addressed to me and the multiplicity of occasions on which I have seen each broadcast (in whole, paused and in part, in evidence and submissions at trial and in preparation of this judgment)—I have sought as best I can to set aside all that knowledge and experience to come to a comprehension of the objective meaning or meanings of the broadcast as they should have been taken by an ordinary reasonable person—"as a matter of impression [to] carry away in his or her head"⁵⁹—from a one-time viewing of the first five minutes and 17 seconds of TVNZ's 1 July 2021 1 NEWS at 6 bulletin. For the same reason, in

⁵⁹ See [30] above.

coming to that comprehension, I also have set aside the meanings ascribed to the broadcast by Talley's.

[49] I have endeavoured to do the same in relation to each of the subsequent broadcasts, despite having heard substantial further evidence of the factual detail behind each of them. And I have adopted the same approach in assessing the meanings of the articles. But the artificiality of that approach in the particular circumstances I have outlined illustrates the singular sensibility of determining meaning as a preliminary question in defamation proceedings such as the present.⁶⁰

[50] From the perspective of that ordinary reasonable viewer, the broad impression I carried away in my head was the 1 July 2021 broadcast meant, on the basis of the unidentified source's photographs and the worker's injury, TVNZ questioned the adequacy of food safety and health and safety measures taken at Talley's Ashburton site, to which Talley's responded are or have been (and, in respect of the injured worker, WorkSafe appeared satisfied was) addressed in the particular circumstances, as illustrated in part by Talley's provision of alternative photographs, but would prefer not be the subject of television broadcast news. Except for his reply to Talley's photographs, I was puzzled by the relatively non-specific nature of the rest of the statements attributed to the unidentified source, except to think—prompted by apprehension of other industrial accidents in Talley's group operations—he comprehended he had sustainable food safety and health and safety concerns arising from Talley's Ashburton site's operation, not shared by anyone else working there. TVNZ invited viewers to make up their own minds. Given that invitation—despite Mr Dallow's introductory comments the whistleblower's images “[didn't] look good”, as to which Mr Mead would “[ask] the hard questions” of and “pull back the curtain” on Talley's Ashburton operation, including by affording the whistleblower anonymity “for his protection”—I carried away in my head the broad impression TVNZ was not urging any particular conclusion.

[51] None of that includes any of the broadcast's meanings as pleaded by Talley's:

⁶⁰ See Stephen Mills “More effective management of defamation cases” (2006) 3 *New Zealand Law Review* 525 at 532–535.

In its natural and ordinary meaning, the 1 July Broadcast conveyed the following imputations that are defamatory of the second plaintiff:

- (a) The second plaintiff requires staff at its Ashburton site to use unsafe machinery without adequate guarding at exposed pinch points.
- (b) The second plaintiff disregards safety concerns at its Ashburton site.
- (c) Safety standards at the second plaintiff's Ashburton site are at a low level endangering its employees.
- (d) The second plaintiff is lying to its customers about worker safety at the Ashburton site.

[particularised by w]ords spoken during the 1 July Broadcast:

- (i) A whistleblower tells 1 NEWS the company's frozen food factory in Ashburton, where a woman recently had her hand crushed, is another accident waiting to happen.
- (ii) To the public Talley's presents a spotless image; ... But tonight, 1News can pull back the curtain. These leaked photos taken by an anonymous whistleblower show a different side to the Ashburton factory.
- (iii) I'm sorry, but these guys they are lying to them. They are lying to their customers.
- (iv) We've chosen to replace his voice for his protection.
- (v) But they've seen several accidents. Across their many operations, one worker has been decapitated at sea, [another] paralysed and others injured in preventable incidents, prompting one worker here in Ashburton to come forward.
- (vi) To me what they are doing, they don't even care because these people are easily replaceable.
- (vii) Sharing these images ... here a machine has exposed pinch point[s] where people can be trapped.
- (viii) If your hand is trapped in the machine, your fingers or whatever, the machine keeps running.
- (ix) Except just three months ago, a woman had her hand stuck in a machine on the Ashburton corn line.
- (x) Talley's [is] refuting any suggestion they put profit over their staff.
- (xi) Everyone can see it. Everyone, managers, supervisors, everyone is there. They know it's there. They just walk away.
- (xii) So while the company may feel it's safe, it seems not everyone agrees.

[and i]mages shown during the 1 July Broadcast:

- (xiii) Ashburton site managed by Talley's Limited;
- (xiv) vegetable production line at the Ashburton site managed by Talley's Limited;
- (xv) machinery at the Ashburton site managed by Talley's Limited;
- (xvi) sweetcorn and fries products produced by Talley's Limited;
- (xvii) "Talley's" name on the wall of Ashburton site managed by Talley's Limited;

- (xviii) “Talley’s” branded truck;
- (xix) “Talley’s” sign outside the Ashburton site managed by Talley’s Limited;
and
- (xx) a person referred to as a “whistleblower” obscured by visual effects.

[52] I am not sure what to make of those particulars, which are not on their face addressed to any particular pleaded imputation, but rather appear particulars of the broadcast itself. I accordingly have addressed myself to the broad impression of the meaning to be taken from the broadcast as a whole by its ordinary reasonable viewer, that being the publication the subject of Talley’s claimed imputations. I adopt the same approach to the meaning of the other broadcasts and articles, notwithstanding their detailed particularisation also by Talley’s, which I do not replicate with Talley’s claimed imputations from them below.

[53] As to those contended imputations from the 1 July 2021 broadcast, my broad impression included, while Mr Mead described the particular equipment as having “exposed pinch points where people can be trapped”, by inclusion of Talley’s photographs of the equipment, the broadcast meant Talley’s had guarded the equipment after its audit identified a safety concern. I obtained no impression of any particular requirement by Talley’s of its Ashburton site workers, including if of any safety standards, except an expectation of their compliance with them. And my impression was the broadcast meant the unidentified speaker referred to Talley’s “lying” to customers about its “spotless” food hygiene.

[54] Accordingly, Talley’s first cause of action fails.

—*second cause of action: 1 July 2021 article*

[55] TVNZ embedded audiovisual footage from its 1 July 2021 broadcast into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “Exclusive: Whistleblower shares images of filthy conditions at Talley’s factory”.⁶¹

⁶¹ At the time of trial, the 1 July 2021 article available online included audiovisual footage from the 1 July 2021 broadcast. I assume the article at the time of its original publication also embedded that footage although, given the constraints in replicating an electronic article in the form of a physical document (albeit presented electronically in evidence), it is not discernible beyond the illustrated video thumbnail in the evidenced document. I make the same assumption of the other articles as at the time of their original publication.

[56] Accompanying two still images of stained industrial machinery, captioned “Filthy conditions in Talley’s Ashburton factory. (Source: Supplied)”, the article stated:

An anonymous whistleblower at Talley’s frozen food factory in Ashburton has come forward with images of filthy machines, and says it’s “just a matter of time” until there’s another accident at the factory.

To the public, the company presents a spotless image of staff producing frozen vegetables with a smile on their face, but 1 NEWS can now pull back the curtain of a different side to its Ashburton factory.

“I’m sorry but these guys, they are lying to them - they are lying to their customers,” the whistleblower said.

[Four minutes and 38 seconds of embedded audiovisual footage from the 1 July 2021 broadcast accessible through video thumbnail depicting stained industrial machinery, titled “Whistleblower reveals filthy conditions at Talley’s Ashburton factory” and captioned “Talley’s is one of New Zealand’s largest food producers. (Source: Other)”]

1 NEWS has chosen not to identify the man for his protection.

Talley’s is one of our biggest food companies, with their produce stocked in supermarkets all over the country—but they have seen several accidents.

Across their many operations, one worker has been decapitated at sea, while another was paralysed. Others, meanwhile, have been injured in preventable accidents.

[Still image—of a piece of industrial plant cordoned off with yellow tape and bearing a warning sign, printed on what appears to be a landscape format A4 piece of paper, reading “Warning! Do not touch pipework! It is hot!”—captioned “Hot pipework at the Talley’s factory in Ashburton. (Source: Supplied)”]

“To me, what they are doing, they don’t even care because these people are easily replaceable,” he said.

The images show filthy machines, with one coated in burnt grease and another with corn juice.

If you have any information of interest further to this story email: Thomas.Mead@tvnz.co.nz

[Still image of a worker wearing a high visibility coat standing at the level of the top of a truck’s load, reaching across the load with some implement, captioned “Worker stands on pile of corn husks on the back of a truck at Talley’s Ashburton factory. (Source: Supplied)”]

In another, a contractor can be seen standing on top of a loaded truck, while another image shows a machine with exposed “pinch points” where people can become trapped.

“If your hand is trapped in the machine - your fingers or whatever - the machine keeps running - the machine doesn't recognise people's fingers,” he said.

Talley's told 1 NEWS the photos were taken out of context.

Talley's CEO Tony Hazlett says the machines are cleaned regularly.

“You're always going to get some heat stain on there, you're always going to get some buildup on there,” he said. The whistleblower, however, says his images have “not been there for one or two days - it's been there for months”.

[Still image of stained industrial machinery, captioned “Grease deposits on machinery. (Source: Supplied)”]

The company says hazards such as the “pinch points” have since been put under a guard as part of their regular audits.

“I contend that we have a safe site,” Hazlett said.

However, just three months ago, a woman says she had her hand stuck in a machine on the Ashburton corn line.

[Still image of industrial machinery showing a wide vertical metal open grid belt with vegetable matter caught in the grid, captioned “Corn husking machine at Talley's Ashburton factory. (Source: Supplied)”]

A leaked email shows Talley's had to call emergency services to get her out, before asking staff to keep quiet.

“Do not share any information, discuss or pass comment about the incident outside the business,” part of the email read.

Hazlett said the woman would have been safe if she “had followed the proper procedures”.

WorkSafe investigated the incident but did not take any further action.

Talley's is refuting any suggestion they put profit over their staff.

“Everyone can see it, everyone - managers, supervisors - everyone is there, they know it's there; they just walk away,” the whistleblower said.

“I feel that we are definitely doing everything we can to try and make sure people do go home safely on a daily basis,” Hazlett said.

- additional reporting by Georgie Hanafin

[57] So far as the embedded content is concerned, it may be regarded as a repetition of the original publication (at least if incorporating its whole, which none of the articles

in fact do), affording Talley's a new cause of action.⁶² But that is not what Talley's pleads.⁶³ Instead, it pleads:

In its natural and ordinary meaning, the 1 July Web Article conveyed the following imputations that are defamatory of the second plaintiff:

- (a) The second plaintiff requires staff at its Ashburton site to use unsafe machinery with exposed pinch points.
- (b) The second plaintiff disregards safety concerns at its Ashburton site.
- (c) Safety standards at the second plaintiff's Ashburton site are at a low level endangering its employees.
- (d) The second plaintiff is lying to its customers about worker safety at the Ashburton site.

Those are the identical imputations Talley's pleaded of the 1 July 2021 broadcast, except the first then was phrased "The second plaintiff requires staff at its Ashburton site to use unsafe machinery without adequate guarding at exposed pinch points" (difference emphasised). The particulars of each broadcast and article differ at the margins.

[58] I do not know if the ordinary reasonable reader of the 1 July 2021 article should be taken also to have viewed the embedded footage, or then in what order: if the embedded footage should be viewed first and the article then read for detail; or vice versa. My approach has been to read the article first as having the retention and substance of the written word, then to view its embedded footage and thereafter to read any other linked articles. (But for my judicial obligation to give due consideration to all the evidence, my personal approach would have been only to read the article, unless it established any reason separately to have regard for the footage.)

[59] From that perspective, my broad impression was the article meant the same as I have taken from the broadcast.⁶⁴ My broad impression of both together was the article omitted the broadcast's initial "promo", the unidentified speaker's connection to the Ashburton site and motivation for commentary and anonymity, references to Talley's provision of alternative photographs and preference not to be the subject of television

⁶² *Craig v Slater*, above n 47, at [40], citing *Jennings v Buchanan* [2004] UKPC 36, [2005] 2 NZLR 577 at [12].

⁶³ Talley's baldly pleaded each article republished "a recording of" that day's broadcast, both further republished on TVNZ's and Mr Mead's Twitter accounts, but not as separate causes of action.

⁶⁴ At [50] above.

broadcast news and the broadcast's final denial of any indication of food hygiene risk and invitation to readers to come to their own conclusions.

[60] In those respects, my broad impression was the article standing alone had marginally more serious meaning than the broadcast, particularly without illustration of Talley's contentions as to the Ashburton site's plant cleanliness and guarding. Disregarding the embedded footage, my broad impression from reading the article alone was it meant, from the unidentified source's photographs and the worker's injury, TVNZ had cause to question the adequacy of food safety and health and safety measures taken at Talley's Ashburton site, which Talley's considered were or had been (and, in respect of the injured worker, WorkSafe appeared satisfied was) addressed in the particular circumstances. I was puzzled by the relatively non-specific nature of statements attributed to the unidentified source, except to think he comprehended he had sustainable food safety and health and safety concerns arising from Talley's Ashburton site's operation, not shared by anyone else working there. I obtained no impression of any particular requirement by Talley's of its Ashburton site workers, including if of any safety standards, except an expectation of their compliance with them. My impression was the unidentified speaker referred to Talley's "lying" to customers about its "spotless" food hygiene. Distinctly from the embedded footage, my broad impression from the article alone was it meant TVNZ had cause for concern about—rather than merely a foundation to question—the adequacy of food safety and health and safety measures taken at Talley's Ashburton site. My impression from the article alone was TVNZ credited the unidentified speaker as having reliable insight into Talley's Ashburton site operations.

[61] All the same, for the same reasons as I explained at [53] above none of Talley's pleaded imputations is made out.

[62] Talley's second cause of action fails.

—third cause of action: 2 July 2021 broadcast

[63] TVNZ's 1 NEWS at 6 bulletin on 2 July 2021 commenced with Simon Dallow foreshadowing some of the bulletin's content. Standing in front of the large curved screen displaying a still image of a worker's hands sorting through raw potato chips,

and video images of a large truck and trailer unit bearing Talley's signage backing towards an industrial building, raw potato chips falling from above onto an oven tray, and a worker sorting through peeled potatoes on a conveyor belt, he said:

Tonight on 1 News, more allegations of dangerous practices at major food producer, Talley's: how a former employee feared he'd die on the job. Our exclusive investigation continues.

[64] After Mr Dallow highlighted other items to come, the bulletin again led with that story:

SIMON DALLOW [*speaking to camera while seated at a desk, backed by a "1 NEWS Exclusive" logo over a still image of an industrial plant*]: Kia ora, good evening. We begin tonight though with breaking news: [*subtitle reading "Breaking news: Worksafe to take a closer look at Talley's"*] a fresh development on our exclusive investigation into health and safety concerns at one of New Zealand's biggest food producers. Just a short time ago 1News has been told Talley's will come under closer scrutiny. Our reporter [*Mr Mead appearing on camera on split screen standing outside at night*] Thomas Mead broke the story yesterday. He joins us now for the very latest. Kia ora Thomas what's going on now?

THOMAS MEAD [*after transition to Mr Mead alone on screen, speaking directly to camera*]: Well, this is just in from the Government's health and safety watchdog known as WorkSafe. They told us just half an hour ago that they will be [*subtitle "Thomas Mead" substituted with "Breaking news: Worksafe to take closer look at Talley's"*] taking a closer look at whether Talley's Group are meeting their health and safety obligations under law. WorkSafe Chief Executive Phil Parkes issuing a strongly worded statement confirming that Talley's has a history of poor health and safety performance, saying they've taken a number of enforcement actions over a number of years. And I quote, "We are concerned that where health and safety issues continue to arise in a company or a group of companies, this might indicate there are systemic issues that need to be addressed in the boardroom". Tonight we can continue our investigation on those issues. Former workers speaking to 1News about how they were fearing for the life while they were working at a cold store in their Ashburton factory. [*Speaking over still images of fallen crates in front of others stacked high in the background, some with peas or raw potato chips spilled over the ground, one with three crates fallen from a stack of four*] It's scenes like this that had two Talley's forklift drivers living in fear. Leaked photos showing massive storage containers holding hundreds of kilos of frozen peas and potato, fallen down from a height and shattered on the ground at their Ashburton factory.

EMPLOYEE 1 [*speaking in darkness, shown as a silhouette with his face, but not shoulders, blurred*]: I didn't want to go to work. I wondered each day if I can come home in one piece.

THOMAS MEAD [*speaking over still images of crushed wooden crates with peas spilled from the bottom, a road leading towards industrial buildings in the distance and flanked by a wall bearing the "Talley's" brand behind a*

landscaped garden, the lettering on the wall then close up, and a video of a large truck and trailer unit bearing Talley's signage backing towards an industrial building]: The newly obtained images follows a 1 News investigation where last night a whistleblower also with their Ashburton plant warned a serious accident was just a matter of time.

UNIDENTIFIED SPEAKER [*speaking in darkness, only his right shoulder dimly lit*]: And they are lying to them. They are lying to their customers.

THOMAS MEAD [*speaking over still images of the previous wall from a distance, and then close up*]: Today the Minister of Workplace Relations and Safety, putting the company on notice.

MICHAEL WOOD [*speaking to an interviewer off-camera, subtitle reading "Michael Wood: Workplace Relations & Safety Minister"*]: The message needs to be very clear Talley's and other companies that they have a fundamental responsibility and that goes right to the top of any company.

THOMAS MEAD [*speaking over still images of a large industrial building, and cars and Talley's-branded trailer units with tall hedges and a large industrial building in the background*]: Supporting WorkSafe's deeper dive into their operations.

MICHAEL WOOD: I do know that WorkSafe does take these allegations seriously. And are going to be having a look at whether Talley's is performing in accordance with the expectations we have on them.

THOMAS MEAD [*speaking over video of a man wearing an "E tū" branded t-shirt, sitting at a boardroom table paging through a document*]: The union following suit.

UNION REP [*speaking over the same video, but close up*]: We would love to talk with the person that you interviewed to see [*speaking to an interviewer off camera*] how we can support [*subtitle reading "Ross Heslop: Etū team leader"*] that site. But effectively that means that we have to get access to the site.

THOMAS MEAD [*speaking over still images of fields of green grass with industrial plant in the background*]: And allegations from the factory floor continue to mount. We spoke anonymously to two former employees [*speaking over video of the wall bearing the "Talley's" lettering and a truck and trailer unit moving across the screen in the foreground*] who left within the last 18 months, [*speaking over a still image of crushed wooden crates with peas spilled from the bottom, and crate fallen on the ground from a row of stacked crates*] both claiming that coldstore carries a serious crush risk as the wood on their storage containers becomes brittle when it's in the freezer.

FORMER EMPLOYEE 1 [*speaking as previously*]: So they break easily and they fall and collapse and you can be [*speaking over a still image of a crate fallen on the ground from a row of stacked crates*] working in there and you've got suddenly a stack of [*speaking over a still image of a wall of three rows of three crates, the most central crate with buckled wooden framing*] bins falling straight towards you.

FORMER EMPLOYEE 2 [*speaking over a still image of three crates fallen from a stack of four with raw potato chips spilled on the floor*]: You get three or four tonnes of french fries come down on top of your head. There's [*speaking in darkness, shown as a silhouette with his face, but not shoulders, blurred*] no two ways about it, you're dead.

THOMAS MEAD [*speaking over a still image shown previously of a wall of three rows of three crates, the most central crate with buckled wooden framing*]: Again both say there were several [*speaking over a still images of stacked crates, one column of crates with its bottom crate collapsed sideways, and a previously shown image of crushed crates and peas spilled on the floor*] near misses in their time on the job and management were repeatedly told about the risk.

FORMER EMPLOYEE 1 [*speaking as previously*]: Yeah, these issues were raised time and time and time again.

FORMER EMPLOYEE 2 [*speaking as previously*]: I raised concerns all the time.

THOMAS MEAD [*speaking over an image of a statement on Talley's letterhead blurred in the background, with some parts of the statement emphasised in a different colour*]:⁶⁵ In response today, Talley's sent a brief statement confirming some of the incidents pictured happened 15 months ago. The company claiming health and safety was of paramount importance to the company saying they will continually review our processes. But their employee's experiences continue to suggest otherwise.

FORMER EMPLOYEE 1 [*speaking as previously*]: All you can think of is, you know, look up at the top of them make sure none of them are moving and are any of these going to come down on me?

THOMAS MEAD [*speaking over a still images of a road and sign directing traffic to Talley's, the wall with "Talley's" in lettering, and the road leading towards large industrial buildings shown previously*]: Speaking out in fear that one day someone will be seriously hurt.

NEWS READER [*after a graphic, "Live", speaking directly to camera as previously, but with Mr Mead on a split screen to the right*]: Alright, let's go back to Thomas now. Your investigation sparked huge reaction across the country Thomas.

THOMAS MEAD [*after transition to Mr Mead alone on screen, speaking directly to camera, subtitle reading "Safety concerns: 1 News Talley's investigation sparks huge response"*]: Yeah, well, look today our phone line and our email line has been running hot with people who have allegations against Talley's Group. The company replied today to tell us if we have any more concerns that we should take it directly to WorkSafe. We contacted WorkSafe and they helpfully have compiled a list on their own of health and safety violations at the Group. I'll just read a few of them to you now. They've released data saying there was 144 notifications to Talley's Group between 2018 and 2021, that's WorkSafe notifications, including one worksite fatality, more than two dozen notifications of concern, 34 notifiable incidents, 83

⁶⁵ See [93] below.

notifiable injuries or illnesses. They say that this at the moment is not an investigation, describing it more as a close look. But we'll have to keep a close eye on it to see what comes out here.

SIMON DALLOW [*speaking off camera*]: Ngā mihi, thank you for that Thomas and we will have more developments in the coming days.

[65] Again from the perspective of the ordinary reasonable viewer, my broad impression was the five-and-a-half minute 2 July 2021 broadcast meant TVNZ had good cause to question the adequacy of health and safety measures at Talley's Ashburton site, reinforced by regulatory, Ministerial, union and "huge" public attention springing from its 1 July 2021 broadcast. My impression was TVNZ's original cause to question was amplified by:

- (a) WorkSafe's confirmation of Talley's poor health and safety history, extending to multiple enforcement actions and very numerous notifications to Talley's in the last few years of concerns about its health and safety standards; and
- (b) further anonymous illustrated allegations of serious risks from insecure stacks of cartons of frozen vegetables faced by former forklift drivers in Talley's Ashburton coldstore not then addressed by Talley's, acknowledged by Talley's as historic but subject to its continuous review.

[66] My impression was, in referring TVNZ to WorkSafe, the 2 July 2021 broadcast meant Talley's was dismissive of the new allegations and WorkSafe's measured response indicated Talley's history was less relevant than WorkSafe's concern to ensure Talley's highest-level commitment to continued workplace health and safety. I gained the impression—notwithstanding WorkSafe's denial of any investigation, and presumed satisfaction as to the efficacy of its previous notifications—TVNZ favoured its sources' contentions Talley's was not responsive to health and safety concerns brought to its attention, its reference to "employees' experiences" suggesting its sources' experience was more recent than Talley's review and WorkSafe's notifications (even if those sources since had ceased employment with Talley's).

[67] If from the perspective of an ordinary reasonable *habitual* viewer of the 1 NEWS at 6 bulletin, as part of the overall context of the 2 July 2021 broadcast, my impression included I had misconstrued the seriousness of the issues raised by the previous night's broadcast. In particular, from the 2 July 2021 broadcast, I had the impression the broadcast meant the previous night's unidentified source then was alleging Talley's lied to its customers about health and safety standards at its Ashburton site. That reinforced my impression the 2 July 2021 broadcast meant TVNZ had good cause to question the adequacy of health and safety measures at Talley's Ashburton site.

[68] Again, however, that is not what Talley's pleads as the imputations conveyed by the 2 July 2021 broadcast. Instead, Talley's pleads:

In its natural and ordinary meaning, the 2 July Broadcast conveyed the following imputations that are defamatory of the second plaintiff:

- (a) The second plaintiff is lying to its customers about worker safety at the Ashburton site.
- (b) The second plaintiff has been repeatedly told, but has ignored, that the conditions are unsafe for workers at the Ashburton site cold store.
- (c) The second plaintiff requires its staff at the Ashburton cold store to operate in unsafe conditions without adequate systems to guard against collapse.

[69] As to those imputations, I have addressed my impression of the previous night's unidentified source's allegation of Talley's "lying to its customers",⁶⁶ in the context only of my impression TVNZ favoured its sources' contentions Talley's was not responsive to health and safety concerns brought to its attention.⁶⁷ My impression was not TVNZ adopted the previous night's unidentified source's allegation but—by its repetition in the 2 July 2021 broadcast, in express connection with health and safety concerns—favoured that allegation also, all offering foundation for TVNZ's good cause to question the adequacy of health and safety measures at Talley's Ashburton site.

[70] My impression additionally was—by reason of Mr Mead's unquestioning citation of WorkSafe's notification data, on which no comment was sought of

⁶⁶ At [67] above.

⁶⁷ At [66] above.

Talley's—the 2 July 2021 broadcast meant Talley's repeatedly had been told its workplace conditions were unsafe for workers.⁶⁸

[71] Such an imputation was false, because the notifications were *by* Talley's *to* WorkSafe in performance of Talley's duty to notify the regulator of particular events arising from work.⁶⁹ But that was data expressly applicable to the Talley's group of companies rather than to its Ashburton site's cold store, as pleaded. None of the data was attributed directly to conditions at the Ashburton site's cold store. And I obtained no impression from the 2 July 2021 broadcast of any requirement Talley's made of its Ashburton cold store workers.

[72] Talley's third cause of action also fails.

—fourth cause of action: 2 July 2021 article

[73] TVNZ embedded audiovisual footage from its 2 July 2021 broadcast into an illustrated article published under Mr Mead's byline on the 1 NEWS website, titled "Exclusive: Former Talley's employee feared he would die on the job".

[74] Accompanying an image also shown in the 2 July 2021 broadcast of three crates fallen from a stack of four with raw potato chips spilled on the floor, captioned "Boxes of frozen food on the floor of a Talley's factory. (Source: Supplied)", the article stated:

Allegations of dangerous health and safety breaches at Talley's, one of New Zealand's biggest employers, continue to mount following a 1 NEWS investigation which aired last night.

Former employees have since contacted 1 NEWS, with one even quitting out of fear they would die on the job while working in a cold store at the company's Ashburton factory.

Leaked photos show massive storage containers holding hundreds of kilos in frozen peas and potatoes fallen from a height and shattered on the ground at their Ashburton factory.

[Two still images—of crushed wooden crates with peas spilled from the bottom onto the ground, one showing stacked crates high on either side and the other

⁶⁸ At [65](a) above.

⁶⁹ Health and Safety at Work Act, s 56. The notifiable events are defined at ss 23–25.

a close up of the same—captioned “Frozen peas spilled on the floor of a Talley’s factory. (Source: Supplied)”]

“I didn’t want to go to work. I wondered each day if I’d come home in one piece,” one whistleblower told 1 NEWS.

[Four minutes and 45 seconds of embedded audiovisual footage from the 2 July 2021 broadcast, accessible through video thumbnail of three crates fallen from a stack of four with raw potato chips spilled on the floor titled “More whistleblowers share images of incident at Talley’s Ashburton factory” and captioned “One employee feared for their life while working there (Source: Other)”]

The newly-obtained images follow a 1 NEWS investigation which aired last night where a whistleblower at the Ashburton plant warned a serious incident was “just a matter of time”.

I’m sorry but these guys, they are lying to them, they are lying to their customers,” the whistleblower yesterday told 1 NEWS.

1 NEWS has chosen not to identify the whistleblowers involved for their protection.

Today, the Minister for Workplace Relations and Safety, Michael Wood, put the company on notice.

“The message needs to be very clear to Talley’s and other companies, that they have a fundamental responsibility and that goes right to the top of any company,” he said.

[Four minutes and 38 seconds of embedded audiovisual footage from the 1 July 2021 broadcast, accessible through video thumbnail depicting stained industrial machinery titled “Whistleblower reveals filthy conditions at Talley’s Ashburton factory” and captioned “Talley’s is one of New Zealand’s largest food producers. (Source: Other)”]

Wood also expressed support for WorkSafe’s deeper dive into Talley’s operations.

“I do know that WorkSafe does take these allegations seriously and are going to be having a look at whether Talley’s is performing in accordance with the expectations we have on them,” he said.

The trade union, E tū, is now following suit.

“We would love to talk with the person that you interviewed to see how we can support that site, but effectively that means that we have to get access to the site,” an E tū team leader Ross Heslop said.

As allegations from the factory floor continue to mount, 1 NEWS spoke anonymously to two former employees who left within the last 18 months.

Both claim that cold stores carry a serious crush risk as the wood on their storage containers become brittle when it’s in the freezer.

“They break easily and they fall and collapse, and you can be working in there and you’ve got, suddenly, a stack of bins falling straight towards you,” one whistleblower claimed.

“You get three or four tonnes of french fries come down on your head, there’s no two ways about it - you’re dead!” the other added.

[Two still images of stained industrial machinery captioned “Filthy conditions in Talley’s Ashburton factory. (Source: Supplied)”]

Both say there were several near misses in their time on the job, and management were repeatedly told about the risk.

“These issues, we raised time and time and time again,” one whistleblower said.

“I raised concerns all the time,” another whistleblower added.

In response today, Talley’s sent 1 NEWS a brief statement confirming some of the incidents pictured happened 15 months ago.

The company claimed health and safety was of “paramount importance” to the company, saying they will “continually review our processes”.

[Headed “MORE ON THIS TOPIC”, two hyperlinks to other articles: one titled “Exclusive: Whistleblower shares images of filthy conditions at Talley’s factory”, datelined “July 1, 2021”, with thumbnail depicting two images of stained industrial machinery; the other titled “Worksafe to ‘look into’ Talley’s after whistleblowers come forward to 1 News”, datelined “July 2, 2021”, with thumbnail depicting industrial machinery showing wide vertical metal open grid belt with caught vegetable matter]

However, their employees’ experiences continue to suggest otherwise.

“All you can think of is, ‘look up at the top of them’, ‘make sure none of them are moving’, and ‘are any of these going to come down on me?’”

[75] Taking the sued-on 2 July 2021 article together with its embedded footage and hyperlinked articles, my broad impression from the perspective of the ordinary reasonable reader (and viewer) of their meaning was much the same as I derived from the 2 July 2021 broadcast.⁷⁰ My impression was the article and embedded footage had slightly different emphases, the article focusing on the new allegations of health and safety risk at Talley’s Ashburton site’s cold store as further substantiating TVNZ’s cause for concern, illustrated by the Minister’s support for some unspecified WorkSafe review of Talley’s operations and union desire for engagement. That emphasis was my broad impression of the meaning of the article standing alone. But the effect of the

⁷⁰ At [65]–[67] above.

article's expansion also by hyperlink to the 1 July 2021 article and the not sued-on 2 July 2021 article meant overall my impression of the sued-on 2 July 2021 article was much as I take the 2 July 2021 broadcast to have meant, including of increasing substantiation of TVNZ's cause for concern, if arrived at in slightly more disjointed fashion.

[76] Talley's identical pleaded imputations of the 2 July 2021 article therefore also are not made out, for the same reasons.⁷¹

[77] Talley's fourth cause of action fails.

—fifth cause of action: 3 July 2021 broadcast

[78] TVNZ's 1 NEWS at 6 bulletin on 3 July 2021 commenced with the newsreader, Melissa Stokes, foreshadowing some of the bulletin's content. Standing in front of the large curved screen displaying a still image of three crates fallen from a stack of four in a warehouse with raw potato chips spilled on the floor and video images of a worker sorting through peeled potatoes on a conveyor belt and a close-up shot of a worker's hands moving over peeled potatoes on a conveyor belt, she said "Tonight on 1 News, another whistleblower raises safety concerns at a Talley's food processing plant and why it was fined hundreds of thousands of dollars".

[79] After Ms Stokes highlighted other items to come, the bulletin again led with that story:

MELISSA STOKES [*speaking to camera while seated at a desk, backed by a "1 NEWS Exclusive" logo over a still image of an industrial plant*]: Nau mai, haere mai, welcome to 1 NEWS. [*Subtitle "Melissa Stokes"*] Food producer Talley's has pledged to open its doors and allow WorkSafe auditors full access to its factories following allegations of severe safety violations. The company told 1 News late this afternoon, it's concerned at complaints made about its Ashburton plant. Thomas Mead joins us now [*speaking off camera, after transition to Mr Mead alone on screen, after a graphic "Live"*] with more breaking news in his exclusive investigation. Kia ora Thomas.

THOMAS MEAD [*speaking directly to camera*]: Well, at a big development [*subtitle "Breaking News: Talley's now launching its own investigation"*] Talley's has announced that an independent investigation into its practices at its Ashburton plant following stories aired on 1 News. This comes after two

⁷¹ At [68]–[69] above.

days of standing by their health and safety practices. The Chief Executive Tony Hazlett releasing a statement a short time ago saying the company's obviously concerned and the complaints that have surfaced in the past 48 hours. And tonight they keep on rolling in as yet another whistleblower speaking to 1 News this time with deep concerns about the conveyor system at that Ashburton plant. [*Speaking over videos of workers wearing protective apparel; showing a worker sorting through peeled potatoes as they move past on a conveyor belt and looking up to smile at the camera; showing two workers sorting through chopped potato chunks on a conveyor belt; and showing a worker's hand sorting through peeled potatoes on a conveyor belt*] With cameras having been allowed inside Talley's Ashburton plant, happy workers can be seen along the conveyor belt, but now an anonymous whistleblower has a warning.

UNIDENTIFIED SPEAKER [*speaking off camera, after transition to Mr Mead on screen apparently listening to the speaker*]: It's only a matter of time before someone gets hurt or killed.

THOMAS MEAD [*speaking over video of potatoes being transferred between conveyor belts*]: The company was last night placed under review [*speaking over still images of a wall bearing the "Talley's" brand in metal lettering behind a landscaped garden and video of a car approaching boom barriers, a utility vehicle exiting under the barriers and a large truck bearing "Talley's" signage seemingly stationary in front of an industrial building*] by WorkSafe following a 1 News investigation into their practices. [*Speaking over still images of a finger pressing down on a red button with the letters "STOP" underneath, a red button under signage "EMERGENCY STOP", and another hand pressing down on another red button*] Now a former worker has come forward alleging a lack of a crucial line of defense in any factory - emergency stop buttons. [*Speaking over an illustrated video simulation showing an industrial process with bottles—capped and uncapped—moving on conveyors through to various machine stations and posts with a red button positioned near the conveyors and machine stations, then focusing on the posts with red buttons revealing signage "EMERGENCY STOP" above the button, and then showing a split screen with a programmatic logic controller on one side and, on the other side, a white hand graphic pressing one of the red buttons on a post resulting in yellow circles flowing down the post from the button*] Contraptions designed as shown in this illustration to allow anyone to easily stop a conveyor if a worker gets trapped in the machine.

UNIDENTIFIED SPEAKER [*speaking as previously*]: It's pretty sad that I have to think hard about where I have seen any. They are around. There would probably be either 10 or 15 that I know of and I would have to look for them to find those.

THOMAS MEAD [*speaking over a still image of industrial machinery showing a wide vertical metal open grid belt with vegetable matter caught in the grid*]: Talley's has repeatedly come under fire for dangerous machines and operations. [*Speaking over a still image of three crates fallen from a stack of four in a warehouse with raw potato chips spilled on the floor; then blurred and a Talley's logo and the words "Talley's fined \$300,000" superimposed*] Late last year they were fined more than \$300,000 over two separate incidents [*words "2 workers caught in nip points on conveyor belts" also superimposed*] where migrant workers were caught in exposed nip points on conveyor belts. [*The words previously superimposed substituted with "Judge:*

'hazard obvious' 'dangers well-known' 'long recognised and fundamental breach''"] A judge noting the hazard was obvious and dangers were well known. While the failure to guard against them constituted a long recognised and fundamental breach. [*Speaking over a still image of crushed wooden crates with peas spilled from the bottom and superimposition of "2018 – 2021" and—below that—the words "Formal enforcement 43 times", "22 Health and Safety Improvement Notices", and "1 prosecution recommended", and Worksafe's logo*] WorkSafe has released data showing Talley's Group face formal enforcement action 43 times between 2018 and 2021, including 22 Health and Safety Improvement notices and the recommendation for prosecution. [*Speaking over video panning to a close up of a man's face and of him sitting at a desk looking at two computer screens*] Experts say the key to improving safety is to simply listen to employees.

GREG DEARSLY [*speaking to an interviewer off-camera, subtitle reading "Greg Dearsly: First 4 Safety"*]: They are the ones that do the jobs every day. They know better than the supervisors and the leadership team about what actually happens day to day.

THOMAS MEAD [*speaking over a still image of a road flanked by a wall bearing the "Talley's" brand in meal lettering behind a landscaped garden; video images of green fields with an industrial plant and steam rising from the top of it in the background, and a utility vehicle approaching an industrial building and going under a boom barrier; and a still image of a large industrial building*]: But at Talley's it's claimed the opposite happened. Concerns about emergency stops ignored.

UNIDENTIFIED SPEAKER [*speaking as previously*]: It was brought up at different times along the whole duration of my time there. It all gets mentioned and talked about, it doesn't get actioned in the manner it should.

THOMAS MEAD [*speaking over a still image of Talley's-branded consumer product and videos of unprocessed and processed potatoes*]: Talley's refusing to respond to us on those specific questions today as their investigation begins.

MELISSA STOKES [*speaking to camera on split screen also showing Mr Mead standing outside at night*]: Okay, Thomas, you've mentioned Talley's own investigation but it's also coming under scrutiny from others.

THOMAS MEAD [*after transition to Mr Mead alone on the screen, speaking directly to the camera*]: Yes, well, they'll also have to deal with WorkSafe who last night said they'd be taking a close look at the company out of concern that there were systemic issues at Talley's running all the way to [*subtitle "Breaking news: Talley's giving safety officials full access"*] the boardroom. The Chief Executive of Talley's responding today, offering WorkSafe auditors full access to any of their sites in any of their staff whether they be current or former saying they have confidence in the existing practices and quote, "if it's found that we can do better we will embrace and enact those changes". As for their own independent review in Ashburton, that will get underway immediately as soon as they can get hold of the right health and safety professional who's independent can come through there. It's a huge about turn for a company that just 48 hours ago was threatening to injunct, to take legal action against TVNZ to stop some of those images being aired.

MELISSA STOKES [*speaking off camera*]: Ngā mihi nui, thanks, Thomas Mead in Christchurch.

[80] From the perspective of an ordinary reasonable viewer, my broad impression was the four-minute and 51-second 3 July 2021 broadcast meant Talley’s would co-operate with any WorkSafe review of its operations while commissioning an independent investigation into health and safety allegations earlier reported by TVNZ at Talley’s Ashburton site, thus recanting to some degree on its prior defences of the adequacy of its health and safety practices there and committing to making any desirable improvements to them. To those allegations was added an unidentified source’s allegations of insufficient emergency stop buttons for the Ashburton site’s conveyors, accepting they existed by reference to the 10 or 15 of which he knew—adequate provision of which the broadcast meant was obvious mitigation of the risk of workers becoming caught in conveyor machinery, for which risk Talley’s recently had been fined a substantial sum with the judge’s criticism of Talley’s failure to guard against such risk—the broadcast meaning such insufficiency was known to, and raised by workers with, Talley’s management but not addressed.

[81] Mr Mead’s assertion was, instead of listening to workers, “concerns about emergency stops were ignored”. But the unidentified source only was of the opinion “it doesn’t get actioned in the manner it should”. That Talley’s was open to review provided no antidote for the broadcast’s meaning. My broad impression of the 3 July 2021 broadcast, from the perspective of the ordinary reasonable *habitual* viewer of 1 NEWS at 6 bulletins, was not materially different from my broad impression of the broadcast from the perspective of the ordinary reasonable viewer, except I then had the impression the broadcast additionally meant TVNZ’s previously-established good cause for concern about Talley’s health and safety measures at its Ashburton site now would be investigated.

[82] Of the 3 July 2021 broadcast, Talley’s pleaded:

In its natural and ordinary meaning, the 3 July Broadcast conveyed the following imputations that are defamatory of the second plaintiff:

- (a) There are only 10 or 15 emergency stop buttons installed at the second plaintiff’s Ashburton site, which is insufficient for the safety of workers.
- (b) The second plaintiff is aware of, but has ignored, workers’ concerns about insufficient emergency stop buttons at its Ashburton site.

[83] My impression of the 3 July 2021 broadcast did not include any meaning of the actual number of emergency stop buttons at Talley’s Ashburton site. But, in my assessment, Talley’s second pleaded imputation to be taken from the 3 July 2021 broadcast—that Talley’s “is aware of, but has ignored, workers’ concerns about insufficient emergency stop buttons at its Ashburton site”—is not materially different from my broad impression the broadcast meant “such insufficiency was known to, and raised by workers with, Talley’s management but not addressed”.⁷²

[84] Mr Mead’s evidence was the allegation of “a lack of adequate emergency stop buttons to stop machinery if someone or something got caught” was made by his confidential source, Luca Milani—a mechanical fitter with considerable experience on industrial sites, including some for food processing—employed by a contractor engaged by Talley’s to work at its Ashburton site. Mr Milani, who separately gave evidence at trial remotely from Italy, then waived his anonymity (as he initially had been afforded) as no longer required to protect his then-employer.

[85] Following up on a previous discussion between them, now on audiovisual record, Mr Mead asked Mr Milani, having “worked there for some months now”, “Is it safe there? What are you seeing, on the daily?”. Mr Milani responded:

Unfortunately it’s not safe. A lot of those machines are conveyors and part of the plant, they are not, they are not done properly. They don’t have guards, they don’t have like a safety switch, there’s no emergency stop, they are not absolutely designed to be safe. They’re also—so they can actually, if they want, they can make it safe. It doesn’t look like they want to do it, because it probably cost too much money, and also you have to stop plant to do all this kind of job, all this kind of, you know, but they don’t really want to do it because anytime you stop the production line, they lose money. So, yeah, that’s what they’re actually doing. There is definitely—they can actually improve them, if they want, but they don’t wanna do it. That’s what’s going on.

[86] Mr Mead asked “Why do you think they’re doing that? What is their motives for keeping these machines in an unsafe condition like this?”, and Mr Milani responded:

As I said before, it’s just because—they can do it if they want, but it require a stop. Stop the production. Unfortunately they don’t stop the production there, they just stop once a year I think, but this plant running 24 hour 7, you know.

⁷² At [80] above.

So to stop and install all these machine, they completely have to stop everything and it won't happen. It will never happen. So it's about time and money and nothing else, because to installing the guards, to install emergency stop, to install the safety switch, anything, you can't just drop it there and then that's it, you need installation, so the machine can't run, so that's what they have—they just need a bit of time, and they need to stop production, and probably spend the money as well.

[87] Mr Mead then asked Mr Milani “Can you describe ... how the emergency stop buttons should work, and what's happening here. That's one of the main, core health and safety things for any machine right?”, and Mr Milani answered:

An emergency stop is—anytime anything can happen, anyone can actually just press the emergency stop and the entire machine, the entire line stop. A lot of them they don't have an emergency stop or they're far away, so maybe on an entire line there are like—there's just one—but especially if you are near, like a, like a moving machine, anything chain, it can be belts or whatever, it's supposed to have an e-stop with people working through, because if you got your hands trap in, on the machine and you have to walk like 10, 20 metres or whatever before you stop the e-stop, it can be too late. And so a lot of also those—they call them like a switch—so you shouldn't be allowed to open doors on a machine while it's turning, and the machine is still turning. It's supposed to have a switch, so as soon as you open the door, the machine should stop. Straight away. But these kinds of things don't really exist there, you can open the machine, and machine running, open the doors and see the machines running and nothing happen. Yeah, exactly, anyone can stick their hands in there, everyone. So that's, that's really, really bad, really bad.

[88] Mr Mead followed up, asking “what do they actually have there? So do, do – basically, do none of the machines have emergency stops?”, to which Mr Milani replied:

No, some of them they have, but compared to the amount of machine they have and the distance they go from one to another, it's not enough, absolutely not enough. As I say, it's supposed to have much more, many, many more of them, all around the plant, you can stop from any position. I mean it's not just. And also like from what I've seen the people working on, they don't even show them where the e-stop are, they just run and say, even for me when I started working there, I kind of didn't know where the e-stop are, when you're walking on the, and I just imagine something happen, you probably spend more time looking for one, you know, than just like getting there. Like it takes ages to find something. So as I say, before you get one and press and then, what you actually, the person is already involved in the accident.

[89] For TVNZ, Mr Milani gave evidence at trial along similar lines. After explaining the function of emergency stop buttons, his evidence was:

I didn't see many of these e-stop buttons on site either, and I had serious concerns that there were not enough. Sometimes the e-stops were far away from where workers were. Some machines only had one button at either end of a line. If a worker was injured or became trapped, they would not be able to reach the button, unless they were the one at the end of the line, and maybe not even then. Another worker would have to run to hit the e-stop. You've then got their reaction time and, if you've got your hand stuck in there, the machine will keep running.

I was very worried about this because if something happened, for example is someone got trapped, and a machine cannot be stopped immediately, the consequences are obvious – they might be seriously hurt, or killed.

Noting Talley's evidence of the number and adequacy of emergency stop buttons and workers' knowledge of them, Mr Milani added, from what he saw:

[M]any of the Talley's staff also did not know where e-stops were and how they work. They did not have good enough access to, or knowledge of, e-stops to keep themselves and others safe.

[90] Under cross-examination, Mr Milani conceded he was not aware of work being done by Talley's on the emergency stop buttons at its Ashburton site during May and June 2021, including a full audit of the buttons at the plant during a planned maintenance shutdown from 30 May to 7 June 2021. Neither was he aware such work was a "precursor" for an external review of emergency stop buttons across the Ashburton plant or of the completion of that technical review "including corrective actions and faults identified", described as "active review and consultancy work being done in terms of the e-stops at the Ashburton site prior to [his] departure". He accepted he should defer to Talley's witnesses' accounts of that work from February 2021.

[91] Mr Mead also interviewed a confidential source D, a recent former employee of Talley's, who volunteered "information about safety issues at Ashburton" to TVNZ on 2 July 2021.⁷³ Mr Mead's evidence was that person told him "[m]anagement at the Ashburton factory was slow to act on safety concerns. Issues were often raised repeatedly and left for long periods of time before being addressed".⁷⁴ Mr Mead said:

⁷³ Mr Mead and TVNZ withheld the records of the interview in reliance on s 68 of the Evidence Act 1996, such withholding being upheld by *Talley's Group Ltd v Television New Zealand Ltd* [2025] NZHC 576 at [139].

⁷⁴ Talley's objects to the admissibility of Mr Mead's evidence in these respects as hearsay, any probative value outweighed by the risk the evidence will have an unfairly prejudicial effect on or needlessly prolong the proceeding (Evidence Act 2006, ss 8 and 17). However, the corollary of the basis for TVNZ's upheld withholding of the interview records, being s 68's "exemption from compellability" of an informant's identity (*Talley's Group Ltd v Television New Zealand Ltd*, above n 73, at [31], referring to *Slater v Blomfield* [2014] NZHC 2221, [2014] 3 NZLR 835 at [32], citing

Their main concern was around E-stops, which they described as anything like a switch or a lever that could be used to stop a machine in the case of an emergency. They were concerned that there were not enough of them, and whether there was sufficient training on where they were located and how they worked. Source D said there had been a lot of discussion about that issue, but it had not been addressed.

D was the source of the 3 July 2021 broadcast's distorted expression of "10 or 15" emergency stop buttons. Evidence at trial included entries in Talley's incident register of workers' notification of issues relating to emergency stop buttons.

[92] At midday on 30 June 2021, Mr Mead commenced his contact with Talley's in relation to TVNZ's intended publication of a story regarding "safety and hygiene practice at [Talley's] Ashburton factory" raised by a "concerned individual", including "emergency stop buttons are few and far between, meaning employees cannot quickly stop the line if an accident takes place", and seeking Talley's response to camera by 9 am or in writing by midday the following day. Mr Mead interviewed Talley's chief executive officer, Tony Hazlett, on camera before noon on 1 July 2021. Emergency stop buttons generally were discussed in the context of the adequacy of advice to workers of their locations: Mr Mead asked "So you're confident everyone in there right now understand your health and safety procedures, knows where the E-stop buttons are[?]" and Mr Hazlett answered "In the areas of which they're trained? Yes I am". None of that particular exchange was broadcast on the 1 July 2021 or subsequent 1 NEWS at 6 bulletins.

[93] At about 1 pm on 2 July 2021, Mr Mead advised Talley's, among other things:

Another worker we have spoken to claims that there are only 15 or fewer emergency stop buttons in the Ashburton factory. In particular, on the corn line, there are none that are obvious to general staff, local management have been aware of this for some time as a directly highlighted risk and have taken no action.

Police v Campbell [2010] 1 NZLR 483 (HC) at [83]), must be the informant is unavailable as a witness ("is not compellable to give evidence": s 16(2)(e)). As the circumstances of Mr Mead's interview of D also provide reasonable assurance the statement is reliable as an expression of D's perspective, the hearsay statement is admissible: s 18. In the context of the more than four-week proceeding, in which every fact behind each alleged imputation comprehensively has been run to ground for my assessment, Mr Mead's account of D's perspective as expressed to him cannot sensibly be thought either unfairly prejudicial in or needlessly prolonging the proceeding. The objection is dismissed.

Mr Mead sought any reply on camera by 2.30 pm or in writing by 3.30 pm that day. Just before 2 pm, Talley's advised TVNZ it would issue a statement. At 3.10 pm, Talley's responded:

Talley's CEO Tony Hazlett reiterates that *the Health and Safety of the company's employees and contractors is of paramount importance* to the company.

In the time given to respond, *we recognise some of the incidents pictured happened approximately 15 months ago and have been investigated*. We will continue looking at the others to ensure they were also dealt with.

Ensuring that our people get home safely each day and have a clear line to report issues within the company will always be prioritised, and *we will continually review our processes* to ensure that this happens.

If Television New Zealand has any further concerns, we encourage them to give them to the appropriate authority being WorkSafe and we will gladly engage with them.

which response briefly was displayed on the 2 July 2021 1 NEWS at 6 bulletin, then emphasising the italicised passages above, the second passage first, and obscuring the others.⁷⁵

[94] At about 1.15 pm on 3 July 2021, Mr Mead raised with Talley's TVNZ's intention to run a further story on that evening's 1 NEWS at 6 bulletin, for which he sought Talley's response (by 2 pm if on camera or 3.30 pm in writing) to issues including:

- There are only between 10 to 15 emergency stop buttons on the entire site;
- One line, the corn line, does not have a single emergency stop button that is obvious to general staff;
- There are failings in your training and ongoing communication issues, meaning staff often do not know where to find these e-stops;
- That Talley's management has been directly alerted to this risk on multiple occasions but has chosen not to adequately address it.
- Safety risks in general at the plant were not rectified quickly, due to a poor attitude from management.

[95] In addition to Talley's 2.15 pm media release generally welcoming WorkSafe's review, Mr Hazlett responded directly to Mr Mead at 3.45 pm, relevantly to say:

⁷⁵ See [64] above.

As regards Ashburton, we are obviously concerned at the complaints that have surfaced over the past 48 hours in relation to the Ashburton site. As a result, in addition to the WorkSafe review, we will be commencing an independent investigation by a suitably qualified health and safety expert to look specifically at the practises and allegations made regarding the Ashburton plant. The company is in the process of appointing an appropriate reviewer who has the skills and availability to commence that immediately. Part of that review will be setting up a channel where current and former employees can put any safety concerns to the reviewer candidly and anonymously if they would like. We believe an independent and expert review is the best way of addressing these recent allegations.

Again, whilst having confidence in the existing health and safety programmes, any failings or shortcomings are identified or if there's something our team has missed or can do better, we will act on it immediately.

[96] Mr Mead's evidence was he corroborated the number of emergency stop buttons with a background source, mechanical engineer Wayne Hefford (also a witness called by TVNZ at trial), who worked alongside Mr Milani at the Ashburton site for the same contractor for some ten months during 2021. Mr Mead asked Mr Hefford by text message at about 11.15 am on the day of the 3 July 2021 broadcast for his perspective on "another former worker who [told him he or she had] only ever seen 10–15 [emergency stop buttons] in the whole plant". At 1.10 pm, Mr Hefford responded "That's about right", adding "I have also made the comment of that and the lack of signage or even shown where they are while doing induction".

[97] Mr Hefford's evidence was he was "particularly concerned about production lines, which did not usually have an E-stop on every machine or within easy reach for every worker". He said:

Many of the E-stop buttons that were there were also not labelled properly. There was one particular E-stop in the middle of a wall that had no label and no one seemed to know what it did. I had an induction as a contractor when I started at the factory, but I was never told which E-stops did what. With my experience, I could figure this out with most of the machines, but I was concerned for the workers who did not have the same mechanical knowledge.

But Mr Hefford said he "didn't feel it was [his] place to raise those types of concerns. It is not what [he] was contracted to be there for", and Talley's "had their own workshop management staff: there was an electrical manager, mechanical manager and service manager who oversaw and made plans for what needed to be done or serviced".

[98] Under cross-examination, Mr Hefford could not recall discussion in a Talley's witness' brief of Talley's review of emergency stop buttons and he was not aware of the review itself. His confirmation to Mr Mead of "10 or 15" emergency stop buttons:

... was more to say that I, the ones I see are not—yeah, weren't where I would expect to see them, they weren't where I felt was, they weren't in the right places, there wasn't adequate number of them in the correct places. Therefore to me it seemed there was, yeah, not as many as I would've expected. So probably a figure of speech, 10 to 15, I wasn't saying there was exactly 10 to 15. What I was trying to say is there wasn't you know, I expected there to be more.

[99] Mr Hefford thought "if [Mr Mead was] going to investigate, he would actually investigate the exact numbers, not just [go] off a figure of speech". He said of Talley's review "Well if ... they were working on a project, nothing at that time had been done, so I guess it was a work in progress, correct?". The safety concerns he spoke of in his evidence, including emergency stop buttons, was the subject of "quite daily conversation between majority of engineering workers, staff, yeah". Health and safety issues were talked about:

... in toolbox meetings every day but you can only talk about it, you know, it gets written up and you hope that someone listens or someone does something about it but you can't – I'm not there to bleat on about it every day until it's done, that's not my job. If I've raised it once or twice, then what more am I expected to do?

[100] Under cross-examination, in response to a question if he maintained there were 10 to 15 emergency stop buttons at the Ashburton factory, Mr Mead said:

I maintain that the source knew of 10 to 15 emergency stop buttons themselves which is what the source said in the story and that there were not a sufficient number of emergency stop buttons to keep people safe at Ashburton.

[101] However, as I have said,⁷⁶ my impression was the broadcast meant "such insufficiency was known to, and raised by workers with, Talley's management but not addressed". The bite of the meaning was not that Talley's management knew of emergency stop buttons' insufficiency, whether as "obvious" or raised by workers, but that it was not addressed. My impression was that was not a meaning published as relying on any allegation made by any source but conclusory. To that extent only,

⁷⁶ At [80] above.

Talley's pleaded meaning of the 3 July 2021 broadcast is made out. That meaning is presumed false, for TVNZ to rebut if it can.

[102] TVNZ contends for the truth of that meaning by reference to: "hazardous features such as accessible moving parts that could injure operators and others working with the machines in their close proximity"; "[a] lack of sufficient, functional, or appropriately placed and reasonably usable, E-Stops in important areas, including the corn kernel cutting deck"; "[a] lack of proper training of staff to ensure awareness of the location and appropriate use of E-Stops"; "[a] lack of enforcement of health and safety protocols, including in respect of the use of safety equipment such as hard hats, the use of E-Stops, and the 'working at heights' rule"; and "[w]orkers have, at relevant times, reported issues relating to missing safety equipment, including working and reasonably usable E-Stops and guarding on machinery".⁷⁷ Each is a particular of Talley's contended reputation in relation to imputations pleaded of the first broadcast (and article), as to Talley's requirement of staff to use unsafe machinery and its disregard for safety concerns at its Ashburton site, cross-referenced to the present imputation an insufficiency of emergency stop buttons at Talley's Ashburton site "was known to, and raised by workers with, Talley's management but not addressed". None of those particulars directly engages with the "bite" of the meaning I have found,⁷⁸ that such insufficiency was "not addressed". The contended truth of those particulars does not establish the truth or even substantial truth of the imputation I have found.

[103] Talley's led evidence from John Read, an industrial electrician and automation engineer employed by a contractor to Talley's. Mr Read's evidence was, in the wake of the worker's March 2021 hand injury, he "was engaged by Talley's to work independently and take a lead in improving site safety". His observation was:

Talley's were very proactive regarding safety, particularly with the Electrical Lead, Michael (Mike) Hawke's, mining background. My experience was that the company was driving safety a lot over 2021 in particular, with constant reviews and assessments for various parts of the plant.

⁷⁷ The last particular includes specific such reports in January, February (x 2) and September 2019.
⁷⁸ At [101] above.

[104] Mr Read was instructed “to conduct an initial risk assessment” of the machine at which the worker suffered her hand injury. His subsequent hazard and operability study explored the safety system associated with the machine, by which he meant:

... the physical (i.e. mechanical and electrical) systems in place to protect humans from harm caused by a hazardous situation. In basic terms, electrical safety systems usually use safety controllers to monitor emergency stop buttons (E-Stops) and guard switches and enable and disable motor safety contactors based on the state of those inputs. Safety systems come in many forms. For example, some have locking guards while a machine is operating, or cause machines to stop when a guard is opened.

His evidence was:

Throughout this time I had been working closely with Mike Hawke. Together we determined that an audit of E-Stops at the plant was required, to see what each E-Stop did and where it was located.

He said they had decided to investigate the emergency stop buttons in early April 2021, because he “wanted to look at the status of the E-Stops throughout the plant after the incident” by which the worker injured her hand. Mr Read mapped more than 70 emergency stop buttons which operated to stop whole systems and areas at the Ashburton site, in addition to those integral to a specific machine.

[105] Subsequently, he explained, during a planned maintenance shutdown from 30 May 2021 to 7 June 2021, an external contractor, Laser Electrical:

... carried out a full E-Stop audit of the plant. This assessment was the first step in a review of the E-Stops across the Ashburton plant, and it was essentially to identify where the E-Stops were, what condition they were in and what they actually did when activated.

On 9 June 2021, Laser Electrical emailed its technical review to Mr Read, indicating corrective actions taken and faults identified.

[106] Mr Read said his own experience at Talley’s Ashburton site was:

... if issues were found around staff safety that could be made better, they were improved. Mike Hawke always made sure that if something was identified as not working, it was fixed.

As far as he was aware, everything he raised in various hazard and operability studies was “attended to in some fashion ... it was part of the sign off process that these works had been completed”. To his knowledge, other recommendations on ways to improve

safety “were largely implemented. Funding was always made available to make recommended changes”.⁷⁹

[107] Under cross-examination, Mr Read explained emergency stop buttons were effectively a last line of defence,⁸⁰ for use when machines required to be stopped despite their integral operational and safety features. Their particular location and operation required to keep up with changes in the site’s seasonal plant, as machinery was relocated or updated.

[108] Talley’s electrical lead, Mike Hawke, also gave evidence at trial for Talley’s, principally in relation to other electrical safety work at the Ashburton site. But, under cross-examination, he explained the emergency stop button audit was initiated for reliability rather than safety reasons:

The E-stops were all integrated, there was multiple production lines ... and the site expanded greatly over the years. No one – it made it quite hard to do maintenance on a particular line because if you shut that down, you ended up shutting down the adjacent line, so from a reliability perspective, we needed to understand that a bit further so then we can do reliability maintenance.

[109] Mr Hawke said the initial audit was conducted by Laser Electrical in February 2021 to locate all the emergency stop buttons, for “more intrusive testing” during the May–June 2021 annual maintenance shutdown. He said the exercise was “very valuable” including from a safety perspective, and gave rise to ongoing work that continued to the present day to keep up with the site’s continuous evolution, “changing factories around a bit” and “procurement of new assets”. In summary:

[Talley’s] started the E-stop mapping in February [2021], that was from a reliability perspective initially, so – and then once [Mr Read] reviewed it in June [2021] after the annual shut[down], then it kept on progressing. So yeah, a work in progress.

Talley’s health and safety coordinator at the time, Mike Kerr, described that ‘progress’ as part of Talley’s continuing health and safety “journey” of “continuous

⁷⁹ TVNZ objects to the admissibility of the first part of each of these latter two quotes as hearsay. I do not understand the objection. In both cases Mr Read is express these perceptions were to the extent only of his own awareness and knowledge. The objection is dismissed.

⁸⁰ “Last line of defence” was the description used by Talley’s health and safety coordinator at the time, Mike Kerr, in response to a question in cross-examination about emergency stop buttons’ function.

improvement”, agreeing under cross-examination it was “carried out by Mr Read to a significant extent, in conjunction with Mr Hawke”.

[110] Under the Health and Safety at Work Act, Talley’s mandatory “primary duty of care” is to “ensure, so far as is reasonably practicable, the health and safety” of workers at its Ashburton site.⁸¹ TVNZ called evidence from workplace health and safety expert and former regulator, Mike Cosman, to express his “professional opinion on the standard of Talley’s health and safety practices”—including in respect of “[t]he adequacy of machinery guarding, including ‘E-stops’”, “based on the documents available to the Court, and the parties’ briefs of evidence, to the extent relevant”.⁸²

[111] Based on Mr Read’s brief of evidence, Mr Cosman understood, as at May 2021, “plant management at Ashburton did not know which E-stops did what, and whether they were effective in ensuring worker safety”. He assessed the ongoing work referred to by Mr Read “only really started after the March 2021 accident and, given the size of the plant, was a significant piece of work”. But, in any event, he was of the opinion Talley’s approach to workplace health and safety issues failed to minimise risks to worker safety, in part because “[t]here was limited worker engagement in risk management” and “[t]he approach was reactive rather than proactive”. He explained Talley’s compliance with its statutory primary duty of care “is assessed by reference to the risk and the extent to which it is reasonably practicable to eliminate or minimise it”.

[112] Of the emergency stop buttons, in reliance on Mr Read’s work (including that commissioned of Laser Electrical), Mr Cosman was of the opinion:

⁸¹ Health and Safety at Work Act, s 36.

⁸² Talley’s objects to admissibility of aspects of Mr Cosman’s evidence outlining workplace health and safety’s legal and regulatory framework as not substantially helpful in terms of the Evidence Act’s s 25. I disagree. Mr Cosman’s opinion is of substantial help in understanding how health and safety practitioners and regulators may be thought to comprehend the framework’s application, informing my understanding of their factual evidence in those respects in the proceeding. The objection is dismissed. (Talley’s also appears to object to Mr Cosman’s quotation of its Health & Safety Manual’s reference to “guarding of equipment”, without stipulating any ground for the objection. Given no objection appears taken to either any other aspect of the quotation or Mr Cosman’s many other references to machine guarding, I view its nomination for objection (if that is what its highlighting connotes) as an error and disregard it.)

[T]here appeared to be an evidential base for suggesting there were gaps in the emergency response controls to mitigate the consequences of an incident by being able to rapidly remove the energy source from machines.

Mr Cosman's final conclusion was, "around the time of [TVNZ's] reporting, there were insufficient, suitable, easily accessible and demonstrably effective E Stops at various parts of the Ashburton plant" to meet industry requirements.

[113] Under cross-examination, Mr Cosman agreed, through 2021, there was a lot of focus on emergency stop buttons at Talley's Ashburton site from both production and safety perspectives. He agreed he would defer to Mr Read and Mr Hawke on the detail and nature of that work. In response to the suggestion "the E-stop situation at the plant, as at mid-2021 was good and safe and subject to an overhaul and an improvement for a detailed process", Mr Cosman said:

I will accept that it was subject to a lot of review and an improvement plan. What I don't know as I've said previously, is I don't know to what extent in terms of the outcome, had those deficiencies that were identified been rectified.

Mr Cosman also agreed, at the time of TVNZ's publications, the emergency stop buttons "situation" at Talley's Ashburton plant was "subject to substantial work in reviewing it, mostly from a production perspective but also including any improvements that became apparent for safety reasons", which suggested "a strong, good approach to workplace health and safety".

[114] Accordingly, TVNZ has not proved the truth or substantial truth of the imputation Talley's knew of but did not address emergency stop buttons' insufficiency.

[115] It should be trite publication of a statement that insufficiency of emergency stop buttons at Talley's Ashburton site "was known to, and raised by workers with, Talley's management but not addressed" is damaging to Talley's reputation, being an adverse reflection on Talley's compliance with its core legal obligations for worker health and safety.

[116] It may also be trite such an adverse reflection on compliance with core legal obligations carries with it more than minor harm to its subject's reputation (and such rebuttably is implied by the defamatory meaning). But to avoid doubt, Talley's led

evidence from Rachel Morrison, an associate professor at the Auckland University of Technology's Faculty of Business, Economics and Law, with expertise in organisational psychology. Dr Morrison was instructed generally to provide her opinion on the impact of the impugned publications on Talley's "recruitment efforts, ... employees' work-related attitudes, and ... performance".⁸³

[117] Within that general advice—from a starting point the pleaded imputations collectively "were objectively negative. In essence, they suggested that Talley's [is] socially and organisationally irresponsible"—Dr Morrison explained:

[S]tudies of the impact of negative online reviews on organisational reputation have demonstrated that negative reviews directly impact perceptions of an organisation's attractiveness. In the face of a single negative review, organisational actions to deny or remedy it have little effect.

...

Corporate reputation is based on an organisation's position relative to its competitors. People generally have incomplete knowledge of organisations, and therefore, organisational reputation can be negatively influenced by media scrutiny and positively influenced by demonstrating social concern.

An important factor for observers considering an organisation's reputation are institutional signals indicating conformity to social norms. To a member of the public viewing the Publications, the imputations would signal that Talley's fall below the standard of social norms expected of organisations in their position, particularly in relation to social norms around physical and psychological safety and organisational support.

[118] Dr Morrison considered, among others, the specific imputation the 3 July 2021 broadcast meant Talley's "is aware of, but has ignored, workers' concerns about insufficient emergency stop buttons at its Ashburton site" suggested "Talley's fails to conform to social norms of psychological safety".⁸⁴ In her opinion, such imputation and suggestion "lower[ed] the attractiveness of Talley's in the estimation of

⁸³ TVNZ objects to admissibility of Dr Morrison's evidence as to the impact of TVNZ's impugned reporting on Talley's recruitment and productivity as not substantially helpful in terms of the Evidence Act's s 25. I disagree. Dr Morrison's opinion is of substantial help in understanding the operation of social norms of physical and psychological safety, informing my understanding of Talley's workers' and contractors' and TVNZ's sources' factual evidence in those respects in the proceeding. The objection is dismissed.

⁸⁴ Dr Morrison defined "psychological safety" as relating to feeling free to act "without fear of negative consequences to self-image, status, or career", with potential relevance also to "perceived organisational support because the constructs of psychological safety and organisational support overlap". By "perceived organisational support", Dr Morrison meant "workers' general beliefs concerning how much the organisation cares for employees' welfare and values their contributions".

prospective candidates for recruitment relative to their assessment of other potential employers”.

[119] Dr Morrison drew support for her conclusion from a brief of evidence filed for Talley’s human resources manager, Nathan Howes, which included advice from a recruiter:⁸⁵

Two candidates admitted having read and heard bad things about the Ashburton site and recalled bad press about the company around the safety and cleanliness of the plant and were hesitant to proceed. These candidates agreed to apply for the role once [the recruiter] explained Talley’s was fighting TVNZ’s claims in court.

[120] Dr Morrison said such advice was “consistent” with her opinion “those who read or viewed the [p]ublications would lower their assessment of Talley’s as potential employers and be less likely to seek employment with them”. In her opinion:

Reputation is a critical consideration for job seekers in determining whether or not to pursue a particular employment opportunity. ...

The reputation of an organisation impacts its desirability as an employer. Job seekers’ decisions to pursue jobs with a particular organisation are based largely on their overall perceptions of organisational reputation. People use reputation as a signal about the attributes of a job and the pride they expect to experience as a result of becoming a member of an organisation.

She expected the impugned publications thus also likely would lead “Talley’s employees to form negative workplace evaluations ... about their psychological safety at work”.

[121] Under cross-examination, Dr Morrison said her opinion was “on the balance of probabilities”. She accepted production line workers in a factory may have their own view of its health and safety standards, and said “[their] personal experiences ... would be more salient than what [they] see on the news”. But she was “drawing on academic literature in general ... [to] expect people to respond in a particular way to particular stimuli”. She agreed, by mid-2021, “there had been a substantial change in the dynamics of confidence and trust in media taking place in populations around the

⁸⁵ TVNZ objects to that portion of Mr Howes’ evidence as inadmissible hearsay (Evidence Act, ss 17–19). Regardless of the truth (if any) of its content, or the availability of the recruiter to give evidence, or if to be construed “a business record”, it is what the recruiter advised and on which Dr Morrison relied. The objection is dismissed.

world” but said, while “there are individual differences in terms of what and where people obtain their information”, TVNZ “is the source most likely to be believed by most people”:

[I]f people are getting the information from the news, regardless if you’ve seen the news source or not, if people are talking about it and believe it within that community, that’s going to be quite an impactful piece of information.

[122] Dr Morrison resisted the proposition later publications with “resonance” for viewers would “trump” the negative impact of the 3 July 2021 broadcast, among others, because “the way that we kind of have strongly held beliefs and form our attitudes is quite cumulative”. She explained:

[W]e’re much more likely to believe and remember things that fit into our existing framework or confirm our beliefs, so this is confirmation bias, but also we experience disconfirmation bias. So if you have people who work at Talley’s who love Talley’s and who feel really committed and engaged with their work, then for those individuals seeing this is probably going to have almost no effect ...

Thus she accepted the impugned publications had most effect on people who were “undecided” about the subject matter of the publication, and she could not quantify that number among the relevant audience. But, she said, “there are general theories of attitude change and there are general theories of how negative perceptions impact behaviour in terms of things like recruitment and job seeking” of which she had no reason to believe would not hold true. She agreed those theories were “only possibilities in specific circumstances”, subject to quantitative research, which she had not done. But, she said, “as an organisational psychologist, [her] job would be pointless if [she] couldn’t take [general] theories and reasonably apply them into an organisation or to a person’s response”. Nevertheless, she agreed they were “general observations”, requiring “a lot more data ... to apply it to this particular organisation”.

[123] When re-examined, Dr Morrison revised her opinion the impugned publications likely would lead “Talley’s employees to form negative workplace evaluations” to “may have caused” such. (I infer such revision also would apply to her opinion of their impact on jobseekers.)⁸⁶ But, in answer to a subsequent question from me, Dr Morrison said:

⁸⁶ At [120] above.

... would have caused some employees or may have caused all employees. But yeah, it's human behaviour, so you can't really predict at an individual level what will definitely happen when people have a particular piece of information or, you know, new stimulus that they've kind of processed. So I think that they would have caused some employees to have a negative evaluation, and then those flow-on effects are pretty robust in terms of what's likely to happen.

Dr Morrison's opinion is borne out to some degree by evidence of recruiters as well as a Talley's senior leadership team-directed AskYourTeam February 2022 survey identifying some negative staff perceptions of Talley's progress on health and safety matters.

[124] While still not specifically to address the 3 July 2021 broadcast, Mr Howes assessed "at least 30 employees personally spoke to [him], describing how they were struggling with the effect the negative publicity from the [TVNZ publications] was having on them". Under cross-examination, Mr Howes acknowledged Talley's witnesses were all senior staff, none factory floor workers (although Mr Kerr had commenced his employment with Talley's as a forklift driver). Mr Howes said "our company fosters a huge amount of loyalty within the majority of its staff, everyone feels like family, they were peeved off by the [TVNZ publications]".

[125] Mr Howes' evidence in chief was—in his "multiple interviews with multiple applicants" for various key management roles, in which he "would have interviewed well over 50 people"—he could not "recall a time during the application processes that [he] did not have to address the [TVNZ publications] in some way". He could not "say how many potential staff Talley's lost (or at least lost the chance to employ) because of the [TVNZ publications]", but the "feedback" he received was applicants "reasonably often" chose not to maintain their applications on understanding the role was with Talley's:

[W]hat I experienced was that every time the topic of health and safety came up in interviews after 1 July 2021, there was a direct reference to the [TVNZ publications] by the job applicants. This had never happened before. Prior to the [TVNZ publications], whenever applicants raised questions about negative press, it was only about the historical industrial disputes between our sister company AFFCO and the unions and this was very infrequent.

However, as illustrated at [118] above, on the one evidenced occasion candidates “recalled bad press about the company around the safety and cleanliness of the [Ashburton] plant”, any hesitancy to proceed with their applications was overcome.

[126] As best I can from the generic evidence, I find TVNZ’s 3 July 2021 broadcast caused more than minor harm to Talley’s reputation among some prospective and then-current Talley’s employees.

[127] I do not accept, for the purposes of maintaining a defamation claim, “‘more than minor’ harm” to reputation of bodies corporate only is measurable in pecuniary loss. TVNZ’s submission to that end impermissibly is to elide separate concepts of defamation’s actionable threshold with its effect on bodies corporate in New Zealand law.

[128] The distinction is obvious from s 6, which provides only “[p]roceedings for defamation brought by a body corporate shall fail” without proof of pecuniary loss (emphasis added). Section 7 illustrates such a ‘proceeding’ is constituted by its causes of action.

[129] Had the Act meant proof of pecuniary loss was to be considered an element of any cause of action brought by a corporate plaintiff in defamation, it would have needed to have said so in specific terms. Conversely, in adopting the “‘more than minor’ harm” requirement—“For a meaning to be defamatory, it must tend to affect the claimant’s reputation adversely. And it must do so in more than a minor way”—for corporate plaintiffs, the Court of Appeal was express such effect nonetheless is of “damage to reputation” and “damage to reputational credit”,⁸⁷ echoing earlier observations “[i]f a company has a good commercial reputation any false attribution of responsibility for something that has a tendency to damage that reputation is capable of being defamatory”,⁸⁸ of “injury to reputation in the way of the plaintiff’s trade or business”.⁸⁹

⁸⁷ *Craig v Slater*, above n 47, at [44]–[45].

⁸⁸ *Mount Cook Group Ltd v Johnstone Motors Ltd* [1990] 2 NZLR 488 (HC) at 497.

⁸⁹ *Tairāwhiti District Health Board v Perks* [2002] NZAR 533 (HC) at [25].

[130] Although the Court of Appeal went on to say “for a corporate plaintiff the only relevant harm is pecuniary loss as a consequence of s 6”, I comprehend that only was to make the point, compared to the presumption of “more than minor” harm arising from a defamatory publication, “[p]ecuniary loss is not presumed to arise from the meaning of the publication”.⁹⁰ Irrespective of more than minor harm suffered by a body corporate from a defamatory publication, it only is *relevant* if accompanied by pecuniary loss, because s 6 otherwise requires the proceeding “shall fail”. The Court of Appeal clarified:⁹¹

A defendant is also entitled to say at trial that the apparently defamatory publication had only a minor impact on the plaintiff’s existing reputation as a matter of fact, and/or that no likely pecuniary loss was caused.

By “and/or”, it meant the question of pecuniary loss is distinct from “more than minor” harm to reputation. It reinforced the point:⁹²

[I]t is not inconceivable that a jury could conclude that the Talley’s Group’s general reputation in this area was such that any harm from the harmful publication was not more than minor. This conclusion is also supported by the requirement that a corporate plaintiff prove financial loss.

I address the question of pecuniary loss separately at [182] below.

[131] TVNZ contends Talley’s alleged pre-existing poor reputation rendered any harm suffered from the 3 July 2021 broadcast’s meaning not more than minor. In support of that contention it essays some 27 incidents arising between 1999 and 2020, predominantly in Talley’s meatworks and fishing operations, publicised in media reporting. Many infer the inadequacy of health and safety measures taken by particular members of the Talley’s group in circumstances of injury to workers. Three contend directly for incidents establishing Talley’s reputation for not addressing health and safety concerns brought to its attention, resulting in court findings in 2008, 2011 and 2019 Talley’s was on notice of a particular hazard respectively at its Blenheim, Horotiu and Rangiuru plants and failed then to take steps to ensure safety in relation to it,⁹³

⁹⁰ *Television New Zealand Ltd v Talley’s Group Ltd*, above n 47, at [41].

⁹¹ At [42].

⁹² At [44].

⁹³ *Talley’s Frozen Foods Ltd v Department of Labour* (2008) 6 NZELR 267 (HC); and *WorkSafe New Zealand v Affco New Zealand Ltd* [2019] DCR 201 (DC).

subject to extensive media reporting and claimed by TVNZ to be “well known within communities in which [Talley’s] operate[s]”.

[132] As the Court of Appeal allowed, TVNZ “is able to put in issue whether the publication did in fact harm [Talley’s] reputation to the requisite level, and call evidence on that issue at trial”.⁹⁴ At trial, however, while court decisions and associated reporting were produced in opening, no evidence was led of any knowledge of those three incidents. The pleaded assertion the incidents were “well known within communities” disappeared from counsel’s opening. Instead, TVNZ relied on “general evidence of [Talley’s] pre-existing reputation” from each the National Secretary of the Meat Workers’ Union, Daryl Carran, and WorkSafe’s then chief executive officer, Philip Parkes.

[133] While Mr Carran identified a number of health and safety prosecutions brought against Talley’s (and his evidence in relation to them is challenged by Talley’s as “largely hearsay”), none appears to be any of the three relevant incidents identified by TVNZ. Mr Carran’s evidence as to knowledge was non-specific: “knowledge of these issues run deeper. Injuries are discussed in smoko rooms and in communities”.

[134] Mr Parkes’ evidence was still less specific as to any general reputation on the part of Talley’s it did not address health and safety concerns brought to its attention. His evidence instead was it had “long-standing poor record of [health and safety] breaches and convictions” which had not improved over a decade of engagement with WorkSafe, leading to WorkSafe’s July 2021 decision to engage with unprecedented intervention measures (the result of which was “no major issues” across the nine Talley’s sites inspected by 38 WorkSafe inspectors, but a series of improvement notices and other compliance correspondence). Under cross-examination, Mr Parkes contended for circumstances “when we have tried to resolve issues through enforcement action and enforcement action has had to be repeated”, but could not establish that other than by reference to “the non-compliance history”, by which he explained on re-examination he meant a disputed improvement notice. In any event,

⁹⁴ At [41].

regulatory comprehension of Talley's reputation is not the issue, but rather that among some prospective and then-current Talley's employees as Dr Morrison opined.

[135] Regardless—particularly given Mr Cosman's acceptance, at the time of TVNZ's publications, the emergency stop buttons "situation" at Talley's Ashburton plant was "subject to substantial work in reviewing it, mostly from a production perspective but also including any improvements that became apparent for safety reasons", which suggested "a strong, good approach to workplace health and safety"—Talley's was entitled have any harm to its reputation incurred by the 3 July 2021 broadcast's defamatory meaning assessed from the contemporaneity of its responsiveness rather than to be mired in its history of health and safety breaches. That is because the harm to reputation here is in connection with Talley's alleged non-compliance with legal obligations: to ensure, so far as is reasonably practicable, the health and safety of workers at work, by being responsive to contended insufficiencies.

[136] I find, as a false imputation, the 3 July 2021 broadcast's meaning an insufficiency in emergency stop buttons at Talley's Ashburton site "was known to, and raised by workers with, Talley's management but not addressed" thus tended to lessen, and gave rise to "'more than minor' harm" to, Talley's reputation among some prospective and then-current Talley's employees. TVNZ has not rebutted the point.

—sixth cause of action: 3 July 2021 article

[137] TVNZ published a 3 July 2021 article on the 1 NEWS website titled "Talley's launches independent review in response to allegations in 1 NEWS story".

[138] Under the dateline, the article embedded four minutes and 12 seconds of audiovisual footage from its 3 July 2021 broadcast accessible through a video thumbnail depicting industrial machinery showing wide vertical metal open grid belt with caught vegetable matter, titled "Talley's announces independent health and safety investigation" and captioned "It comes in response to a 1 NEWS investigation into alleged health and safety breaches at the Ashburton factory. (Source: Other)". The article then stated:

Talley's has commissioned an independent review in response to allegations resulting from a 1 NEWS investigation.

Talley's CEO Tony Hazlett confirmed the review after a number of 1 NEWS stories in recent days.

A whistleblower from the company shared images of filthy conditions at the company's Ashburton factory, while also alleging there were a number of health and safety breaches.

"We will be commencing an independent investigation by a suitably qualified health and safety expert to look specifically at the practices and allegations made regarding the Ashburton plant," he said.

"The company is in the process of appointing an appropriate reviewer who has the skills and availability to commence that immediately. Part of that review will be setting up a channel where current and former employees can put any safety concerns to the reviewer candidly and anonymously if they would like.

[Four minutes and 38 seconds of embedded audiovisual footage from the 1 July 2021 broadcast titled "Whistleblower reveals filthy conditions at Talley's Ashburton factory" accessible through a video thumbnail depicting stained industrial machinery and captioned "Talley's is one of New Zealand's largest food producers. (Source: Other)"]

"We believe an independent and expert review is the best way of addressing these recent allegations."

Hazlett also welcomed an additional review by WorkSafe, who yesterday said they would take a "close look" at the company's operations.

He offered "the company's full cooperation into their review of Talley's health and safety practices across all sites".

The confirmation of the independent review comes as another whistleblower told 1 NEWS of their deep concerns over the conveyer system that runs through the Talley's Ashburton factory.

A former worker has come forward alleging a lack of a crucial line of defence in any conveyer system - emergency stop buttons.

"It's only a matter of time before someone else gets hurt or killed," the whistleblower, who will be kept anonymous, said.

The emergency stop buttons allow anyone to easily stop a conveyor, if a worker gets trapped in the machine.

"It's pretty sad that I have to think pretty hard to where I've seen any. They're around, there would probably be only 10 or 15 that I know of, and I would have to look for them to find those," the whistleblower said.

Talley's has repeatedly come under fire for dangerous machines and operations.

Late last year, Talley's were fined more than \$300,000 dollars over two separate incidents where migrant workers were caught in exposed nip points on conveyer belts.

A judge noted the hazard was obvious and dangers were "well known", with the failure to guard against them constituting a "long-recognised and fundamental breach".

WorkSafe has released data showing Talley's Group faced formal enforcement action 43 times between 2018 and 2021, including 22 health and safety improvement notices and a recommendation for prosecution.

Experts say the key to improving safety is to simply listen to your employees.

"They're the ones who the job every day, they know better than the supervisors and the leadership team about what actually happens day to day," Greg Dearsly of First 4 Safety said.

At Talley's, it's claimed the opposite happened with concerns about emergency stops ignored.

"It's been brought up at different times along the whole duration of my time there," the whistleblower said.

[Headed "MORE ON THIS TOPIC", two hyperlinks to other articles: one titled "Exclusive: Former Talley's employee feared he would die on the job", datelined "July 2, 2021", with thumbnail depicting three crates fallen from a stack of four in a warehouse with raw potato chips spilled on the floor; the other titled "Exclusive: Whistleblower shares images of filthy conditions at Talley's factory", datelined "July 1, 2021", with thumbnail depicting two images of stained industrial machinery]⁹⁵

"It all gets mentioned and talked about, and really doesn't get actioned in the manner it should."

Talley's refused to respond to us on those specific questions today as their investigation begins.

[139] From the perspective of the ordinary reasonable reader, my broad impression of the 3 July 2021 article read alone meant Talley's was commissioning an independent investigation into health and safety allegations earlier reported by TVNZ at its Ashburton site, preferring to rely on that review's outcome to responding to TVNZ, and would co-operate with WorkSafe's review of Talley's overall operations. To those allegations TVNZ added an unidentified source's allegations of insufficient emergency stop buttons for the Ashburton site's conveyors, accepting they existed by

⁹⁵ For convenience, I also assume the article to have been in that form (as it appears at the time of trial) on 3 July 2021 despite the evidenced article in the common bundle locating the links at the position of the embedded 1 July 2021 broadcast, not including thumbnails and having the links in reverse order.

reference to the 10 or 15 of which he knew. My impression included the article meant emergency stop buttons were a defence against an obvious risk of death or injury arising from workers becoming caught in conveyor machinery, for failing to guard against which risk Talley's recently had been fined a substantial sum, one of numerous enforcement actions taken against Talley's by WorkSafe in recent years. I also obtained the impression the article meant an unidentified source alleged Talley's ignored workers' expression of concerns with emergency stop buttons, workers' views being a more reliable identification of health and safety concerns than from management comprehension alone.

[140] My broad impression from reading the 3 July 2021 article is not swayed by viewing also its embedded footage from the 3 July 2021 broadcast. Distinctly from the impression I obtained from the broadcast alone, when viewed in conjunction with the article, I was clear the embedded footage's allegation Talley's ignored concerns about emergency stops was a characterisation of what was attributed to the unidentified source.⁹⁶ My reading of the 3 July 2021 article also incorporated my reading of its hyperlinked 1 and 2 July 2021 articles on which Talley's sued, together from which I obtained the impression the article additionally meant TVNZ's previously-established good cause for concern about Talley's health and safety measures at its Ashburton site now would be investigated.

[141] Talley's pleads the 3 July 2021 article to give rise to the same imputations as it pleaded of the 3 July 2021 broadcast.⁹⁷ Given my broad impression of the 3 July 2021 article as I have explained, neither of those imputations is made out.

[142] Talley's sixth cause of action fails.

—*seventh cause of action: 21 July 2021 broadcast*

[143] On 21 July 2021, after a "1 news at six" graphic, Mr Dallow introduced the first story of the 1 NEWS at 6 bulletin:

NEWS READER [*speaking to camera while seated at a desk, backed by a "1 NEWS Exclusive" logo over a still image of an industrial plant*]: New

⁹⁶ I return to this distinction at [213] below.

⁹⁷ At [82] above.

concerns have emerged about safety at one of the country's biggest employers. Whistleblowers have come to 1 News with allegations about the Talley's plant in Blenheim. The company's Ashburton factory is already being independently investigated after our series of exclusive stories last month. Thomas Mead has today's revelations.

THOMAS MEAD *[speaking over still images of stained industrial machinery, industrial machinery showing wide vertical metal open grid belt with caught vegetable matter, a worker wearing a high visibility coat standing at the level of the top of a truck's load and reaching across the load with some implement, a large cardboard-lined wooden crate fallen from where it was stacked on top of another to the ground, three crates fallen from a stack of four with raw potato chips spilled on the floor]*: It all started with these photos taken by whistleblowers who felt unsafe inside a Talley's factory in Ashburton. *[Speaking over still images of a roadside property with some buildings and a Talley's sign at the entrance to a driveway, a close-up image of a sign in a car park bearing the words "Hiring now", Talley's logo and "Blenheim" and the words "Bringing you the best of New Zealand" superimposed over a silhouette of New Zealand]* But tonight, those concerns are spreading. *[Speaking over a still image of a two storey building with mirror glass, a sign in the foreground bearing a Talley's logo and smaller writing including "Blenheim Division"]* Yet another Talley's plant, *[speaking over two flags on flag poles (one bearing Talley's logo, and the other New Zealand's Ensign) in front of a building]* this time Blenheim in the spotlight.

UNIDENTIFIED SPEAKER 1 *[speaking in darkness, only the outline of her left shoulder visible from a dim light source to her left]*: Our kids are seeing us come home broken, that's not okay.

THOMAS MEAD *[speaking over video images of ice chips dropped onto whole fish in an ice bin, a fish lying on ice in a bin and industrial conveyors operating in the background, a worker's hands shown placing fish fillets on a soft plastic sheet, muscles travelling on a conveyor, chopped frozen vegetables travelling on a conveyor, and raw potato chips dropping down a chute]*: The company runs a massive operation in the Upper South Island, their marketing material showing the production of seafood, veggies and more. *[Speaking over video of an industrial machine sealing packets, a conveyor system transporting clear packets of raw potato chips, workers in protective and sanitary apparel handling mussels as they move past them on a conveyor running alongside a reflective surface bearing signage "70 + ton Mussels", "New Zealand Greenshell", "Shucked Each Day", "2pm", and "Motueka"]* But now 1 News has obtained leaked documents revealing what those ads don't show you, *[speaking over a close up video image of a worker in protective and sanitary apparel]* the human impact. *[Speaking over a close up image of the top of a printed spreadsheet—titled "Blenheim Injury Stats", with column headers "Cut – Knife", "Cut – Other", "Dropped object", "Electrical fault", "Heavy lifting", "Hot surface", "Missed footing", "Over reaching", and "Product / Material"—before blurring the image and zooming out to show more of the spreadsheet and superimposing "174 injuries" above the words "Blenheim", "Havelock", and "Picton", above "October 2019 to September 2020"]* This internal report showing there were 174 injuries in Blenheim, Havelock and Picton alone between October 2019 and September 2020. An average of one every two or three days, *[speaking over the same image but with the words "Blenheim", "Havelock" and "Picton" removed, and—beneath "October 2019 to September 2020" and "These include:"—*

listed “10 caught between objects”, “3 ‘caught in machinery’”, “12 ‘chemical’ incidents”, “35 listed as ‘colliding with object’”, and “26 cuts with a knife”] including 10 where people were caught between objects, three caught in machinery, 12 chemical incidents, 35 listed as colliding with object and 26 cuts with a knife. [Speaking over video panning over two paper documents, placed over a printed spreadsheet titled “Blenheim Injury Statistics – YEAR TO DATE FY 2019 - 2020”: the first’s page bearing the words “Talley’s - Health and Safety Audit”, “Blenheim”, “Quality Management Services (NZ) Ltd” and “3 July 2020”, and Quality Management Services’ logo; and the second bearing the words “Talley’s - Health and Safety Audit”, “Vegetable’s & Shellfish - Blenheim”, “Quality Management Services (NZ) Ltd” and “22 February 2019”, and Quality Management Services’ logo] 1 News has also been leaked two independent health and safety audits [speaking over a still image of the first document close up] conducted at the Blenheim site. [Speaking over animated panning down the second document’s title page and another page bearing several health and safety criteria, and their respective “Weighting” and “Score”, all scores against red or orange shading] The first in February 2019 identified multiple critical issues that required action as shown here and red. The auditor noting there is likely to be significant number of unreported incidents or near misses [speaking over animated panning down the second document’s title page and a page in the report with section heading “1.9 Workplace Observation”, highlighting the words “The hopper regular jammed and was cleared while it was operating”] and in a site visit spotting 23 issues including a worker clearing a jammed hopper while it was still operating. [Speaking over animated panning down the first document’s title page and a page of a report with section heading “2 Assessment Results” to focus on a table of several health and safety criteria in one column and percentage scores in another column shaded in yellow, orange and green, then highlighting one criteria “H&S of Employees and Contractors & Sub-Contractors”, then blurring the image and superimposing the words “...it appears that all incidents and near misses are not reported across site.”] In a second report in July 2020, the auditor noticed clear improvement, but graded the health and safety of employees, contractors and subcontractors at just 50% saying yet again it appears that all incidents and near misses are not reported across site. [Speaking over video panning along a roadside property with cars parked in front of the property’s buildings, video of a person wearing high visibility clothing in a gatehouse behind a fence with barbed wire on top and a boom barrier to the right, and a still image of a Talley’s building and a mound of earth or gravel behind a white fence] 1 News has spoken to two anonymous whistleblowers, whose voices have been changed to protect their identity, claiming safety concerns are often ignored at the Blenheim plant.

UNIDENTIFIED SPEAKER 3 [speaking over video of Mr Mead looking to the side of the camera, apparently listening to the speaker]: Staff don’t feel safe to report it.

UNIDENTIFIED SPEAKER 1 [speaking as previously]: They just want to ignore you and brush it under the carpet because there’s paperwork that comes with it and it’s put in the too hard basket or it’s going to cost too much money

THOMAS MEAD [speaking over still images of an industrial buildings with two flags on flag poles (one bearing Talley’s logo, and the other New Zealand’s Ensign) and a sign bearing the words “Property under Video Surveillance: Trespassers will be prosecuted” in the foreground, and a sign bearing Talley’s

logo and the words “Blenheim” and “Hiring now”]: Saying where staff do file reports they are often not followed up.

UNIDENTIFIED SPEAKER 1 [*speaking over video of Mr Mead looking to the side of the camera, apparently listening to the speaker*]: They’re singled out, they’re bullied and harassed.

UNIDENTIFIED SPEAKER 2 [*speaking in darkness with a light source producing some light in the top left of the picture*]: I never heard back about any of it. One was very serious. I wouldn’t have gone home to my family.

THOMAS MEAD [*speaking over animated panning of a letter with Quality Management Services’ letterhead, dated 20 July 2021, headed “Independent Health and Safety Audits – Talley’s, and highlighting the words “is clear there is a substantial commitment by the company to the health, safety and wellbeing” and “significant improvements”*]: In response the Company gave us this statement from the independent auditor QMS who said Talley’s had shown a substantial commitment to health and safety and the audit showed significant improvements over time. [*speaking over the same image blurred and words ““improved on every measure”” and “Tony Hazlett, CEO of Talley’s Group Limited” superimposed*] Talley’s Chief Executive Tony Hazlett adding they had improved on every measure, saying they will continue making progress. [*Speaking over video of mussels on the half shell moving on a conveyor belt*] But those we spoke to say the company needs a culture change.

UNIDENTIFIED SPEAKER 1 [*speaking in darkness, only the outline of her left shoulder visible from a dim light source to her left*]: People need to go home every night to their families. These people are coming to work for hours and hours on end. They give up so much and they deserve to go home.

THOMAS MEAD [*speaking over a still image of an industrial building, and video of a straddle carrier moving behind a barbed wire fence*]: But concerns about Talley’s continuing to mount now spreading across the country.

NEWS READER [*speaking to camera on split screen also showing Mr Mead standing outside at night*]: Thomas what are the implications for Talley’s management here?

THOMAS MEAD [*after transition to Mr Mead alone on screen, after a graphic “Live”, speaking directly to camera*]: Yes, well you would have heard some strong comments here. We asked Talley’s for an interview to respond, but they declined. We also [*subtitle reading “Talleys management to meet WorkSafe tomorrow”*] put those claims as you heard in that story from those whistleblowers directly to them in writing, but they declined to respond to any specifics. However, they will have to answer some questions soon. That’s because WorkSafe, the government watchdog has announced action, they did that shortly after our first investigation went to air on Talleys Ashburton just a few weeks ago. Talleys is cooperating with what is a wide-reaching intervention. It gets underway properly tomorrow with the WorkSafe Chief Executive Phil Parkes meet with a group of directors of Talleys while others from WorkSafe meet with their subsidiaries, including the dairy company and the meat works AFFCO. They’re calling it a top to bottom review meaning a meeting with everyone from the directors right at the top of the company, all the way down to managers, supervisors and people working on the factory floor, looking at how Talleys are meeting their obligations under law. It’s the

first time they've ever done something like this and we'll be watching it very closely.

NEWS READER [*speaking off camera*]: Ngā mihi in Ōtautahi, Christchurch Thomas Mead thank you.

[144] From the perspective of an ordinary reasonable viewer, my broad impression was the four-minute and 35-second 21 July 2021 broadcast meant previously broadcast concerns for Talley's workers' health and safety at its Ashburton site now extended to Talley's Blenheim, Havelock and Picton sites, as illustrated by leaked documents establishing 174 injuries occurring there, on average once every few days, over the twelve months to September 2020 and indicating an auditor's substantiated view those numbers likely were underreported, while the audits affirmed Talley's commitment to health and safety and improvement over time "on every measure" between February 2019 and July 2020 at the Blenheim site. My impression also was unidentified sources contended for different worker perspectives—of Talley's disregard for and deterrence of their reporting of serious incidents of injury and risk to life at its Blenheim site, requiring a change in Talley's culture—which the broadcast meant would be addressed by WorkSafe's "top to bottom review" of Talley's health and safety compliance across all its operations to commence the following day. From the perspective of the ordinary reasonable *habitual* viewer of the 1 NEWS at 6 bulletin, if I then retained anything more than a general sense of the subject matter of broadcasts three weeks earlier, my impression was the broadcast additionally meant to confirm, enlarge and update the earlier broadcasts' meaning TVNZ's previously-established good cause for concern about Talley's health and safety measures at its Ashburton site would be investigated.

[145] Of the 21 July 2021 broadcast, Talley's pleaded:

In its natural and ordinary meaning, the 21 July Broadcast conveyed the following imputations that are defamatory of the second plaintiff:

- (a) There were 174 significant workplace injuries across the second plaintiff's Blenheim, Havelock and Picton sites between October 2019 and September 2020.
- (b) The second plaintiff ignores safety concerns raised by workers at its Blenheim site.
- (c) The second plaintiff covers up safety concerns raised by workers at its Blenheim site.
- (d) Safety standards at the second plaintiff's Blenheim site are at a low level endangering its employees.

- (e) The second plaintiff bullies and harasses employees who raise safety concerns at its Blenheim site.

[146] My impression of the 21 July 2021 broadcast did not include any ‘significance’ of the 174 reported injuries beyond that they were likely to be of whatever significance was required for reporting to WorkSafe.⁹⁸ While Talley’s pleaded imputation of ‘significance’ is made out in literal terms, it also is true in that natural and ordinary meaning. Talley’s argues Mr Mead’s identification of particular categories of injury is to overemphasise the injuries’ overall seriousness but, even if Mr Mead’s selection carries that meaning, the implication also is there are less serious injuries included in the report. The pleaded imputations (b), (c) and (e) relating to safety concerns clearly are of views held by the unidentified speakers not adopted by the broadcast but for determination on WorkSafe’s review. I gained no impression from the broadcast of the adequacy or otherwise of safety standards at Talley’s Blenheim site. Except in relation to the first, which I have held is true, Talley’s pleaded imputations of the 21 July 2021 broadcast are not made out.

[147] Talley’s seventh cause of action fails.

—eighth cause of action: 21 July 2021 article

[148] TVNZ published a 21 July 2021 article on the 1 NEWS website titled “Over 170 Talley’s staff injured at three sites in one year, probe reveals”.

[149] Under the dateline, the article embedded four minutes and 31 seconds of audiovisual footage from its 21 July 2021 broadcast accessible through a video thumbnail depicting two flags on flag poles (one bearing a Talley’s logo, and the other New Zealand’s Ensign) backgrounded by a building and forested hills, titled “New concerns emerge about safety at one of NZ’s biggest employers” and captioned “Whistleblowers have come to 1 NEWS with allegations about the Talley’s plant in Blenheim. (Source: Other)”. The article then stated:

Food manufacturing giant Talley’s recorded 174 separate injuries to workers over the course of a single year at its three manufacturing sites in Marlborough, a 1 NEWS investigation can reveal.

⁹⁸ See [71] above at n 69.

Talley's Ashburton factory is already under an independent investigation, following concerns aired by 1 NEWS.

Now, those concerns extend even further, with whistleblowers coming forward over the company's operation in Blenheim.

If you have any more information about this story please email 1 NEWS reporter Thomas Mead at thomas.mead@tvnz.co.nz

Earlier this month, photos were leaked of filthy machines at the Ashburton factory despite Talley's CEO Tony Hazlett saying the machines are cleaned regularly.

The company runs a massive operation in Marlborough - their marketing material showing the production of seafood, vegetables and more.

But now, 1 NEWS has obtained leaked documents, revealing what those ads don't show - the human impact.

[Still image—of a still image of three crates fallen from a stack of four with raw potato chips spilled on the floor—captioned “Boxes of frozen food on the floor of a Talley's factory. (Source: Supplied)”]

An internal report shows there were 174 injuries in Blenheim, Havelock and Picton alone between October 2019 and September 2020 - an average of one every two or three days.

Injuries included:

- 10 where people were caught between objects
- 3 “caught in machinery”
- 12 “chemical” incidents
- 35 ‘colliding with object’
- and 26 cuts with a knife.

1 NEWS has also been leaked two independent health and safety audits, conducted at the Blenheim site.

The first, in February 2019, identified multiple critical issues that required action.

The auditor noting “there is likely to be significant number of unreported incidents or near misses”.

And, in a visit to site 23 separate issues were noted, including a worker clearing a jam in a hopper while it was still operating.

In a second report in July 2020, the auditor noticed a clear improvement, but graded “the health and safety of employees, contractors and subcontractors” - at just 50 per cent – saying “it appears that all incidents and near misses are not reported across site”.

1 NEWS has spoken to two anonymous whistleblowers who add to that - claiming health and safety concerns are regularly ignored at the Blenheim plant.

“They just want to ignore you, and brush it under a carpet because there’s paperwork that comes with it, and it’s put in the too hard basket, or it’s going to cost too much money,” one said.

It was also alleged that when staff do file reports, they’re often not followed up.

“I never head back about any of it - one was very serious, I wouldn’t have gone home to my family,” a complainant said.

In response, the company gave 1 NEWS a statement from their independent auditor, QMS - who said “it is clear there is a substantial commitment by the company to health, safety and wellbeing of their staff”.

“Talley’s have made significant improvements to their health and safety systems.”

Hazlett added the reports show “we’ve improved on every measure each year since 2019 ... We’re going to continue making progress.”

[Hyperlink—below a heading “MORE ON THIS TOPIC”—titled “Talley’s launches independent review in response to allegations in 1 NEWS story”, datelined “July 3, 2021”, with thumbnail depicting industrial machinery showing wide vertical metal open grid belt with caught vegetable matter]

But those 1 NEWS spoke to say the company needs a culture change.

“People need to go home every night to their families, these people are coming to work for hours and hours on end -they give up so much, and they deserve to go home,” a staffer said.

[150] Taking the 22 July 2021 article together with its embedded footage and hyperlinked article, my broad impression from the perspective of the ordinary reasonable reader (and viewer) of their meaning was much the same as I derived from the 21 July 2021 broadcast. My impression was the article and embedded footage had materially different emphases, the article omitting any reference to WorkSafe’s review, its identification of “an independent investigation” seeming to refer to the hyperlinked 3 July 2021 article report of the investigation commissioned by Talley’s. My broad impression from reading the 21 July 2021 article alone was—in addition to concerns relating to Talley’s Ashburton site, now independently being investigated—TVNZ separately had good cause for concern for the health and safety of workers at Talley’s Blenheim, Havelock and Picton sites, by reason of leaked documents—establishing 174 injuries occurring there, on average once every few days, over the twelve months

to September 2020 and indicating an auditor’s substantiated view those numbers likely were underreported while acknowledging Talley’s “clear improvement” at the Blenheim site in the period to July 2020—and workers’ additional allegations reports of health and safety incidents were disregarded by Talley’s, which required “a culture change”. I had the impression Talley’s relied on its auditor’s contemporaneous statement of Talley’s “substantial commitment” and “significant improvements” to health and safety as foundation for its assertion it was “to continue making progress”.

[151] Talley’s pleaded imputations of the 21 July 2021 article are the same as it pleaded of the 21 July 2021 broadcast and, notwithstanding their different emphases, also are true or otherwise not made out for the same reasons as I held of the 21 July 2021 broadcast.⁹⁹ The article’s absence of reference to WorkSafe’s review is not material to any of the imputations pleaded by Talley’s, the article still meaning “safety concerns” held by “whistleblowers” not adopted by TVNZ.

[152] Talley’s eighth cause of action fails.

—ninth cause of action: 21 November 2021 broadcast

[153] TVNZ’s 1 NEWS at 6 bulletin on 21 November 2021 commenced with Melissa Stokes foreshadowing some of the bulletin’s content. Standing in front of the large curved screen displaying still and video images of a worker on a fishing vessel wearing protective apparel and standing next to a net full of fish suspended from above, a warehouse bearing a Talley’s logo, workers in a large room wearing sanitary apparel working with fish fillets at benches, an industrial machine sealing packets, a conveyor system transporting clear packets of raw potato chips, and a hand turning through pages of the Accident Compensation Act, she said:

Tonight on 1 News, Talley’s in the spotlight again: claims the food giant’s interfering in injured workers’ access to medical and financial help on behalf of ACC.

[154] After Ms Stokes highlighted other items to come, the bulletin again led with that story:

⁹⁹ At [145]–[146] above.

MELISSA STOKES [*speaking to camera while seated at a desk, backed by a “1 NEWS Exclusive” logo over a still image of an industrial plant*]: Nau mai, haere mai, kia ora, good evening. A 5-month long 1 News investigation has raised serious concerns about the safety of thousands of people working for food manufacturing giant, Talley’s Group. Two whistle-blowers have come forward, warning the company has interfered with an injury management programme that cares for vulnerable workers caught up in accidents on their work sites. Thomas Mead has this special report.

THOMAS MEAD [*speaking over an aerial image of a port and marina, and video images of workers hoisting out of a hold plastic bins bearing “Talley’s” signage, workers in protective apparel carrying those bins in front of a warehouse bearing a Talley’s logo, a workers gloved hands cutting fish fillets with a knife on a board, workers in a large room wearing sanitary apparel working with fish fillets at benches, an industrial machine sealing packets, a conveyor system transporting clear packets of raw potato chips, and a worker’s gloved hands handling a box bearing a Talley’s logo and the words “Frozen Fish Fillets” as it travels on a conveyor*]: Every year, hundreds of employees under the Talley’s Group file injury claims after accidents on the job, including severed fingers, broken bones, and on one occasion, a meat hook impaled in a worker’s head. [*Speaking over video images: of a harbour, vessels berthed alongside a wharf bordered by several large warehouses, one warehouse bearing a Talley’s logo; and a close up of that warehouse with a person walking in front*] But it’s claimed many victims are being cheated out of medical and financial help.

UNIDENTIFIED SPEAKER [*speaking in a dark room, wearing a cap, lighting from behind touching the top of his shoulders but not his chest area, his face blurred to blend with the background darkness*]: It was very stressful. I was in a lot of pain.

THOMAS MEAD [*speaking over a still images of a sign bearing AFFCO’s logo, a sign next to a road bearing AFFCO’s logo, the words “Corporate Office”, an OpenCountry logo and an arrow directing “Staff & Visitors” straight ahead*]: Both Talley’s and the meat works AFFCO, which are subsidiaries of the wider [*speaking over an aerial image of a fishing vessel berthed alongside a wharf bordered by several large warehouses, one warehouse bearing a Talley’s logo, the image quickly blurred and Talley’s and ACC logos superimposed*] Talley’s Group, have special status as [*speaking over the previous image blurred and superimposed the words “Accredited Employer” in bold and underneath, “Acts on behalf of ACC”, “Ability to approve or reject claims”, “Control rehabilitation & compensation”*] accredited employers, allowing them to act on behalf of ACC and manage their own injury claims, meaning they can approve and reject injury cover for their workers and manage everything, from rehabilitation to weekly compensation payments. [*Speaking over still and panning images of three pieces of paper, each with IMU’s logo, two with legible headings: “Review Rights” and “Code of Claimant Rights”*] The Talley’s Group has an entire department for the job known as the Injury Management Unit.

[*Speaking directly to camera, standing outside, subtitle reading “Thomas Mead: Christchurch”*] 1 News has now spoken to two separate whistle-blowers who warned the Talley’s Group is abusing their powers and responsibilities. [*Speaking over an aerial image of vessels berthed alongside a wharf bordered by several large warehouses, one warehouse bearing a*

Talley's logo, the image quickly blurred and superimposed black silhouettes of two persons' heads and shoulders, the silhouette shape apparently hooded] Both requested anonymity for fear of being targeted, but told [*speaking over the previous silhouette image, initially superimposing the words "Factory managers secretly interfered", then substituting those words with "Denied claims", "Cut entitlements", and "Reduced rehabilitation"*] I News company managers had interfered with injury claims to save time and money, influencing claims managers to reject their claims, cut entitlements, and reduce rehab, forcing some injured employees back to work too early. [*Speaking over the previous image with the superimposed words substituted with "Took advantage of vulnerable workers"*] They say the company has exploited vulnerable workers with poor education or English as a second language.

[*Speaking over video images of a man's upper body as he handles pieces of paper at a table and then gestures while apparently talking, and a close up of the man's face as he nods, wearing a cap and facemask and his face blurred*] One accident victim who was injured at a Talley's site told us they were repeatedly pressured to return to work. They feel so intimidated; we've used an actor to represent them here.

UNIDENTIFIED SPEAKER [*speaking as previously*]: You felt like an inconvenience and that other people were having to carry the load if you weren't there. And the tone definitely changed towards me when it became apparent that my injury was such that I wouldn't be back within two weeks.

THOMAS MEAD [*speaking over video images of the man in red cap and facemask, handling pieces of paper and looking down at them*]: Adding their manager was aware of private information about their claim.

UNIDENTIFIED SPEAKER [*speaking as previously*]: It does make you feel very vulnerable that they have a part of most of your life.

THOMAS MEAD [*speaking over video of a harbour, vessels berthed alongside a wharf bordered by several large warehouses, one warehouse bearing a Talley's logo*]: Some believe Talley's and AFFCO should lose their special ACC status. [*Speaking over video of a man working in corporate attire working at a desk*] Lawyer Peter Sara says it's the worst accredited employer [*speaking over video of a hand turning through pages of the Accident Compensation Act*] he's ever dealt with.

PETER SARA [*identified by subtitled name and position, speaking to camera*]: It's not something which is a one-off, like Talley's has a bad day. They're always having a bad day. It's a consistent pattern of what I would describe as seriously dysfunctional management of ACC cases.

THOMAS MEAD [*speaking over image of written statement—"ACC takes seriously any concerns raised by employees about the way their claim is managed. Talley's employees can contact ACC at any time if they have issues. We have high expectations of all organisations in the Accredited Employer Programme to effectively manage claims and injuries to ensure the health, safety and wellbeing of their employees. We are not aware of any current complaints against Talley's, but we encourage and employees to raise their concerns with us. Gabrielle O'Connor Acting Chief Operating Officer"*—and highlighting the parts read out]: ACC refused to be interviewed, but in a

statement said they had high expectations, adding they are not aware of any current complaints about Talley's, but encourage any employees to raise their concerns with us.

[Speaking over image of written statement—"Talley's is part of the ACC Accredited Employer Scheme and is accredited at Tertiary level, which is the highest level of accreditation available under the ACC scheme. The company's injury management framework is required to be independently audited to maintain that accreditation. Talley's completely denies the allegations, which are untrue. The company maintains the highest level of independent accreditation regarding injury management that is currently possible from ACC and undergoes significant audit enquiry to ensure that's the case. Talley's follows an independent and statutory review and appeal process for any claimant who disagrees with an assessment. This follows the code of ACC claimants rights which is available to every company claimant. It is an extensive and independent review channel using external decision makers. Feedback from the site managers, line managers or supervisors is considered in the claims process as specified the Accredited Employers Program Audit guidelines. Their input can be important however they do not make claim decisions, only qualified claim's managers do. If TVNZ hold particular information illustrating a breach of employee privacy, Talley's regard that as extremely serious, it would breach company policy and Talley's invites TVNZ to forward full details to ACC. Talley's Spokesperson"—and highlighting some parts read out] As for Talley's, they completely deny the allegations, describing them as untrue. A spokesperson stating that feedback from managers and supervisors is considered in the claims process, as set out in the ACC guidelines, but those managers do not make claim decisions, leaving that to qualified claims managers. Adding they have the highest level of independent accreditation that is currently possible from ACC and are independently audited. *[Speaking over video of carcasses moving around a room on an overhead conveyor, a worker in white plastic apparel and balaclava and earmuffs watching and then handling one carcass]* But for the hundreds of people hurt at Talley's factories every year, those words may be hard to accept.

MELISSA STOKES *[speaking to camera on split screen also showing Mr Mead standing outside]*: Okay. Thomas is with us live now. Thomas, you've had another legal threat over this story. What's it about?

THOMAS MEAD *[after transition to Mr Mead alone on screen, speaking directly to camera]*: That's right. Just a few hours ago, Talley's brought out the lawyers and made another legal threat against TVNZ. Look, we wanted to make sure the public could hear these claims. I've worked with these whistle-blowers extensively over the last five months, and they both wanted the public to know about what they felt was an abuse of power. They appeared anonymously in the story to protect their identity out of a concern and fear that the company would take action against them.

MELISSA STOKES *[speaking as previously]*: Thomas, explain to us, where does ACC fit into this?

THOMAS MEAD: Look, there's some real questions for ACC. *[after transition to Mr Mead alone on screen, speaking directly to camera]* They are the entity responsible for overseeing the Accredited Employees Programme. They're responsible for making sure every company in it is following the

rules. Look, we have some more exclusive detail about the auditing process, and we will continue our investigation tomorrow night.

MELISSA STOKES [*speaking off camera*]: Ngā mihi nui. Thanks very much, Thomas.

[155] From the perspective of an ordinary reasonable viewer, my broad impression was the five-minute and 16-second 21 November 2021 broadcast meant two unidentified sources with whom Mr Mead had been working for five months alleged inappropriate managerial input into Talley's decisions as an ACC accredited employer on injured workers' treatment, rehabilitation and compensation, as to which an also-unidentified worker alleged he had been pressured to return work. My impression also included a lawyer was highly critical of the scheme's management, otherwise intended to be conducted in accordance with ACC guidelines, of which ACC said it was aware of no complaint its "high expectations" were not being met. I comprehended Talley's denied the allegations, emphasising managerial feedback was part of its independently audited process, in which it had attained the highest available level of accreditation.

[156] I obtained the impression the impropriety alleged by TVNZ's sources (of whom, other than the injured worker, I gained no impression of their particular basis for insight) was Talley's favouring its commercial interests above those of vulnerable workers in their statutory entitlement to treatment, rehabilitation and compensation, which Talley's was accredited to manage for ACC in respect of Talley's employees. My broad impression was, from the lawyer's comment and Mr Mead's presentation's final words referring to "the hundreds of people hurt at Talley's factories every year", the 21 November 2021 broadcast meant Talley's questioned operation as an ACC accredited employer was endemic rather than anecdotal. I also obtained the impression Mr Mead dodged the presenter's question about a "legal threat" from Talley's, preferring to emphasise his sources' allegations gave rise to "real questions for ACC" to be addressed in a subsequent bulletin. From the perspective of an ordinary reasonable *habitual* viewer of 1 NEWS at 6 bulletins, having seen a range of 1 NEWS at 6 bulletins about Talley's worker safety over recent months, I had the broad impression the broadcast meant TVNZ was extending its coverage of those allegations to encompass Talley's operation as an ACC accredited employer and possibly to the accredited employer scheme itself.

[157] Of the 21 November 2021 broadcast, Talley’s pleaded:

In its natural and ordinary meaning, the 21 November Broadcast conveyed the following imputations that are defamatory of the second to fourth plaintiffs:

- (a) The plaintiffs have interfered with workers’ injury compensation claims in order to save themselves time and money.
- (b) The plaintiffs influence internal claims managers to reject valid claims, reduce rightful entitlements and rehabilitation, and force injured employees back to work too early.
- (c) The plaintiffs are abusing their powers and responsibilities under the ACC Scheme.
- (d) The plaintiffs are cheating many injured employees out of medical and financial support they are entitled to under the ACC Scheme.
- (e) The plaintiffs have exploited injured workers who are vulnerable due to their poor education or speaking English as a second language.
- (f) The plaintiffs deliberately intimidate workers who publicise concerns about their processes.

[158] None of those imputations comes close to being made out. Notwithstanding my impression the 21 November 2021 broadcast meant the whole of Talley’s operation as an ACC accredited employer was under scrutiny, it explicitly was clear the allegations were those made by unidentified sources (and the lawyer), to be addressed with ACC in the next 1 NEWS at 6 bulletin.

[159] Talley’s ninth cause of action fails.

—10th cause of action: 21 November 2021 article

[160] TVNZ published a 21 November 2021 article under Mr Mead’s byline on the 1 NEWS website titled “Talley’s interfered with injury claims, whistle-blowers claim”.

[161] Under the dateline, the article embedded four minutes and 33 seconds of audiovisual footage from its 21 July 2021 broadcast accessible through a video thumbnail of workers in a large room wearing sanitary apparel working with fish fillets at benches, titled “Five-month long 1News investigation raised serious concerns about Talley’s workers” and captioned “Two whistleblowers have come forward, warning the company has failed to care for injured workers, leaving many hurting, without a proper recovery. (Source: 1News)”. The article then stated:

Food manufacturing giant Talley's interfered with injury claims filed by its workers, denying many their rightful compensation, according to two whistle-blowers with knowledge of the situation.

The two individuals warned that Talley's and AFFCO, had abused their positions as 'ACC accredited' employers, leaving many vulnerable workers hurting and without a proper recovery.

Their claims raise concerns for the safety of hundreds of vulnerable accident victims across Talley's business empire.

1News has spent the past five months investigating an "Injury Management Unit" the group runs for thousands of employees across Talley's and its meat works AFFCO.

The unit was set up through the Accredited Employers Programme, which gives private companies the power to "act in the shoes" of ACC and manage injury claims themselves.

**- Do you have information to share on Talley's Injury Management Unit?
Email Thomas.Mead@tvnz.co.nz**

It gives the food manufacturer control over claims, including the recovery of injured workers at its many worksites. Their team has the ability to accept or deny injury claims, and the responsibility for rehabilitation and weekly compensation payments.

The unit - known as the "IMU" - deals with some nasty injuries. Workers across the Talley's Group over the years have suffered everything from severed fingers and broken bones to a meat hook impaled through the head.

[Aerial still image—of a fishing vessel berthed alongside a wharf bordered by several large warehouses, one warehouse bearing a Talley's logo—captioned "(Source: 1News)"]

It has received more than 1200 injury claims between 2018 and 2021, with close to 200 filed just this year, according to data obtained from ACC.

Two whistle-blowers have now come forward to 1News to warn that Talley's has abused their powers through the scheme.

Both people, who spoke to us separately and were not connected, said Talley's and AFFCO factory managers had interfered with the IMU to save the group time and money. They did not want to be identified out of fear of reprisal.

The unit has its own case workers and qualified claims managers who make decisions - factory managers are unable to do so.

But both whistle-blowers warned factory managers had intervened in claim management to influence the denial of compensation, the cutting of entitlements and reduction in the rehab offered to injured workers.

Some accident victims had even been forced back to work before they had recovered, the two people added.

Both whistle-blowers stressed this had led to the exploitation of workers with low levels of education and migrants who spoke English as a second language.

ACC records show the company rejects dozens of injury claims every year, with the group refusing to pay out on 58 claims in 2018, 66 claims in 2019, 68 claims in 2020 and 53 claims between January and June this year.

1News spoke to one of the company's accident victims, who told us they were repeatedly pressured to return to work.

"It was very stressful, I was in a lot of pain," they said, speaking under the condition of anonymity.

"You felt like an inconvenience, and that other people were having to carry the load if you weren't there, and the tone definitely changed towards me when it became apparent that my injury was such that I wouldn't be back within two weeks."

They added that their manager was aware of private information about their claim.

"It does make you feel very vulnerable, that they have a part of most of your life," they said.

"It was incredibly stressful, to feel that my manager was involved in my injury really; I should be speaking to somebody else, I felt, about it."

Some believe Talley's and AFFCO should lose their "accredited" status with ACC.

Lawyer Peter Sara has represented many Talley's injury claimants and said the company took an "aggressive" approach.

"Talley's would be the worst performer in terms of the different accredited employers I've dealt with," he said.

"It's not something that is a one-off, that Talley's had a bad day. They're always having a bad day. It's a consistent pattern of what I would describe as seriously dysfunctional management of ACC cases."

The Government should take action to protect the vulnerable people involved, the lawyer said.

"The experience of my clients is that Talley's turns on them, they become a kind of adversary, and that really is very, very bad obviously for an ongoing employment relationship," he added.

"ACC is supposed to be managing this with a partner programme, it's supposed to be keeping an eye on accredited employers to make sure they are doing the right job, and it seems to me they're not - so it's a fault of ACC as much as it is of the accredited employer."

1News put the whistle-blowers claims to ACC but they refused to be interviewed, instead releasing a short written statement.

Their acting chief operating officer, Gabrielle O'Connor, said the agency was "not aware" of any current complaints against Talley's but employees were encouraged to raise their concerns with ACC.

"We have high expectations of all organisations in the Accredited Employer Programme to effectively manage claims and injuries to ensure the health, safety and wellbeing of their employees," she said.

"ACC takes seriously any concerns raised by employees about the way their claim is managed. Talley's employees can contact ACC at any time if they have any issues."

Meanwhile a spokesperson for Talley's issued a statement saying the company "completely denies the allegations", describing them as "untrue".

The spokesperson said they have been accredited at "tertiary" level, the highest level of accreditation available under the ACC scheme, and they are independently audited to maintain that accreditation.

They confirmed their site managers, line managers and supervisors were able to contact the unit to provide "feedback" on injury claims, "as specified [in] the Accredited Employers Programme Audit Guidelines".

But they denied crossing the threshold in those conversations, to order a specific outcome on the injured workers.

"Their input can be important however they do not make claim decisions, only qualified claim's managers do."

Words that may be hard to accept, for the hundreds of employees injured on their sites every year.

[162] Taking the 21 November 2021 article together with its embedded footage, my broad impression from the perspective of the ordinary reasonable reader (and viewer) of its meaning was moderated from that I derived from the 21 November 2021 broadcast alone. I gained the impression the article supplemented the broadcast to mean IMU "case workers and qualified claims managers" were intended independently to conduct Talley's accredited employer programme for ACC, but were alleged by unidentified sources (and a lawyer) not to be doing so by acceding to factory manager intervention and engaging in adversarial employment relationships (resulting in rejection of many injury claims), such falling for ACC's intervention through its "partner programme", which both ACC and Talley's explained appeared met, including by Talley's tertiary accreditation on which it independently was audited. My broad impression was, whether reading the article alone or together with viewing the embedded footage, it meant there was a basis to query if the IMU's intended

independence was compromised by Talley's commercial and employment imperatives.

[163] Of the 21 November 2021 article, Talley's pleaded (in slightly different terms from those imputations it pleaded of the broadcast):

In its natural and ordinary meaning, the 21 November Web Article conveyed the following imputations that are defamatory of the second to fourth plaintiffs:

- (a) The plaintiffs have interfered with the management of workers' injury claims in order to save themselves time and money.
- (b) The plaintiffs intervene in injury claims management to deny compensation, cut entitlements and reduce rehabilitation for injured workers.
- (c) The plaintiffs are abusing their powers and responsibilities under the ACC Scheme.
- (d) The plaintiffs have denied many injured employees their rightful compensation under the ACC Scheme.
- (e) The plaintiffs have exploited injured workers who have low levels of education or who are migrants speaking English as a second language.

[164] However, notwithstanding the pleaded differences, none of those imputations comes close to being made out either. As with the 21 November 2021 broadcast, given the meaning I derived from the article only of "a basis to query", it explicitly was clear the allegations were those made by unidentified sources (and the lawyer) and not themselves meant by the article.

[165] Talley's 10th cause of action fails.

—*11th cause of action: 22 May 2022 broadcast*

[166] On 22 May 2022 Ms Stokes introduced one of the stories of the 1 NEWS at 6 bulletin:

MELISSA STOKES [*speaking to camera while seated at a desk, backed by a "1 NEWS Exclusive" logo over a still image of an industrial plant*]: A 1 News special investigation conducted over the past seven months can reveal a history of suffering at food manufacturer Talley's and its meat works division AFFCO. Documents show that at different times over the past four years the two companies have failed to meet basic standards of care for injured employees at their factories. Thomas Mead has this exclusive report.

THOMAS MEAD [*speaking over video of Mr Fitness and his partner holding hands and sitting together and talking to each other outside on a concrete block surrounded by trees and greenery*]: Richard Fitness is one of thousands of people working for Talley's and AFFCO but over the past year his life has descended into a whirlwind of pain.

RICHARD FITNESS [*identified by subtitled name and position (AFFCO meatworker), speaking to camera sitting next to his partner on a couch*]: I'm a hard worker in general you know. I'll push myself to do it you know and I just keep going and going and going and yeah, and I just slowly just slowly worn out.

THOMAS MEAD [*speaking over video of moving industrial food processing machinery*]: He'd been working a saw at an AFFCO plant in Fielding, [*speaking over video of carcasses hanging on an overhead conveyor*] cutting carcasses like these, and after a life in the meatworks his shoulder gave up.

RICHARD FITNESS [*speaking as previously, initially with his right hand on his left shoulder and moving his left arm up and down*]: It just only lifts so far and stops and it's just crunching you know, and it still crunches yeah and it just yeah just seizes up and it starts aching and aching.

THOMAS MEAD [*speaking over a still image of a roadside sign bearing AFFCO's logo, "Manawatu" and an arrow directing traffic to the "Main Entrance", and large industrial building in the background beyond*]: When he filed an injury claim [*speaking over a close up video image of that sign before panning to focus on the large industrial building in the background*] it went straight to his employer. AFFCO is ACC accredited meaning it's allowed to make its [*speaking over still images of industrial buildings, car parks next to buildings*] own decisions on claims. The company stopped his wages for nearly four months as [*speaking over video of Mr Fitness speaking, as previously, to Mr Mead, and then at close up*] it's allowed to do while it ran an investigation, but the wait took a toll.

RICHARD FITNESS [*speaking as previously, next to his partner on the couch*]: I lost so much weight, um wondering what's going to happen, what am I going to do cause no one's believing me. My shoulder's, shoulder's given away.

THOMAS MEAD [*speaking over video of Mr Fitness and his partner, Ms McKenzie, walking, holding hands, through a green area*]: With the pain constant, Richard and his partner Jo quickly went into debt and ran out of money for groceries.

RICHARD FITNESS [*speaking as previously, at close up*]: You know I was too scared to eat because we don't when the next time we were able to buy some food.

JO MCKENZIE [*identified by name and relation to Mr Fitness, speaking to camera, seen sitting next to Mr Fitness on the couch, then at close up*]: To be honest there was probably many times where Richard didn't know that I went out and had a bit of a cry, cause I felt like I was letting him down.

THOMAS MEAD [*speaking over video of printed letter with ACC's letterhead being placed on top of other documents, the paper isolated by*

lighting against a dark background]: Documents obtained by 1 News under the Official Information Act [*speaking over video panning across the documents*] show both Talley's and AFFCO have a history of failing staff at their time of need. [*Speaking over animated panning of a digital form of the letter showing heading "Weekly Compensation and Compliance Monitoring" and addressed to "Talley's Group Ltd"*] This letter reveals ACC had to voice concern about the company's behaviour seven times between 2018 and 2020 [*highlighting one heading "Ongoing performance concerns"*] over repeated [*blurring part of the document and superimposing "Issues related to injury payments", then substituted with "Staff underpaid after accidents", then substituted with "Legal requirements 'not being consistently met'"*] issues with injury payments, showing that at times Talley's underpaid its own workers after they were hurt on the job. And the basic legal requirements were not being consistently met. [*Speaking to camera as the camera moves towards him in a dimly lit room*] It's the same story at AFFCO. ACC ordered the company to make back payments to injured staff in 2020, describing their short-term rate of compensation as consistently inaccurate. [*Speaking over a still image of a warehouse bearing a Talley's logo*] In response, Talley's Group which owns both Talley's and [*speaking over a still image of the AFFCO logo*] AFFCO claimed the company's injury programme had since improved, [*speaking over a still and blurred aerial image of a marina superimposing Talley's and AFFCO logos and the words "Independently audited", "Focus on employee entitlements", "Now meet highest ACC standards possible"*] saying the two companies had been independently audited since that letter was written, with specific focus on employee entitlements and both now met the highest ACC standards possible, [*speaking over the same image as previously but substituting the image of the marina with one of industrial buildings, and then substituting the superimposed words with "'emphatically reject an insinuation, that they are deliberately underpaying employee entitlements'"*] stressing that they emphatically reject any insinuation that they are deliberately underpaying employee entitlements. [*Speaking over video of Mr Fitness and Ms McKenzie sitting on the couch as previously looking down at documents*] But Richard's case suggests history has only repeated.

RICHARD FITNESS : The list goes on hey.

THOMAS MEAD : His claim was finally accepted by AFFCO in June 2021 when a doctor found osteolysis or a melting of the bone in his shoulder. He was back paid, but in November Jo noticed something strange on his payslip.

JO MCKENZIE [*speaking to camera at close up*]: Actually had a conversation with Richard and I said, this doesn't add up.

THOMAS MEAD [*speaking over video of Mr Fitness and Ms McKenzie, walking, holding hands, through a green area next to a pond*]: AFFCO had short changed Richard by more than \$5,000, the mistake happening well after the audit in which Talley's recorded full compliance.

RICHARD FITNESS [*speaking as previously, at close up*]: It's just another, another.

JO MCKENZIE: Kick in the guts.

RICHARD FITNESS: Yeah, another knife in the back.

JO MCKENZIE [*speaking as previously, on the couch next to Mr Fitness*]: If we hadn't have clicked ourselves.

RICHARD FITNESS: They'd still be underpaying.

JO MCKENZIE : Would it have ever actually have been corrected?

THOMAS MEAD [*speaking over video of Mr Fitness and Ms McKenzie walking as previously*]: Richard is still waiting for his surgery but is speaking out because he fears others may have been underpaid too.

JO MCKENZIE [*speaking as previously*]: Stand up.

RICHARD FITNESS: Yeah. Stand up, yeah. You have to talk. You have to speak up.

THOMAS MEAD [*speaking over video of Mr Fitness and Ms McKenzie walking in a park area*]: A highly profitable company underpaying its most vulnerable.

MELISSA STOKES [*after a graphic "Live", speaking to camera on split screen also showing Mr Mead standing outside at night*]: Okay, Thomas is with us now live from Christchurch. Thomas there seems to be two issues here, the delay and then the underpayment. How did Talley's Group explain Richard being underpaid?

THOMAS MEAD [*after transition to Mr Mead alone on screen, speaking directly to camera*]: Look this investigation shows that at different times over four consecutive years both Talley's and AFFCO have recorded issues [*subtitle reading "Talley's investigation reveals history of suffering"*] with injury payments, so those have popped up in 2018, 2019, 2020, and again in 2021. In the most recent example, Richard Fitness' example, they described it as a one-off accident, saying it did not represent a wider problem at the company and call it a regrettable miscalculation which has since been fixed and apologised for. But as for Richard, he points out that it was only fixed because he uncovered it in the first place, and his story really shows the kind of devastation that these mistakes can have. These people who are at their most vulnerable. They're hurting, they're in pain, they've been injured on the job, struggling to sleep at night, all those things that go with it and here in this example, having to fight to get their proper compensation.

MELISSA STOKES [*speaking as previously*]: And where is ACC in all of this?

THOMAS MEAD [*speaking as previously*]: Look ACC are the ones who give both Talley's and AFFCO this accreditation and they're also responsible for auditing them. They told us that they're going to look into Richard's case but they didn't say much more. In fact, they refused to be interviewed by us, they ignored many of our questions, and they issued just a short statement saying they've helped Talley's improve in the past and will "continue working closely with them".

MELISSA STOKES: Tēnā koe, thanks Thomas. [*Speaking over images of TVNZ's web interface and promotion of its online interfaces*] And for more on

Thomas' story, there's a full feature and extended interview on our website
1news.co.nz.

[167] From the perspective of an ordinary reasonable viewer, my broad impression was the five-minute and 47-second 22 May 2022 broadcast meant Talley's—an ACC accredited employer, to decide workers' claims for cover of personal injuries—repeatedly from 2018 to 2021 underpaid injured workers the compensation to which they were entitled, ACC describing its payment of short-term compensation in 2020 as “consistently inaccurate”. My impression was the broadcast meant Talley's conduct of denying workers' timely entitlement to “basic standards” of care and compensation for personal injuries was exemplified by its dealings with Mr Fitness, despite Talley's insistence its operation had improved as substantiated by subsequent audits, which ACC endorsed (while saying it would look into Mr Fitness' case). From the perspective of the ordinary reasonable *habitual* viewer of 1 NEWS at 6 bulletins, my broad impression additionally was the broadcast meant to reinforce TVNZ's earlier query if Talley's was compromised in its ACC accreditation by commercial and employment imperatives.

[168] Of the 22 May 2022 broadcast, Talley's pleaded:

In its natural and ordinary meaning, the 22 May 2022 Broadcast conveyed the following imputations that are defamatory of the second to fourth plaintiffs:

- (a) The plaintiffs' failure to meet basic standards of care under the ACC Scheme caused Richard Fitness pain and suffering.
- (b) The plaintiffs unreasonably delayed accepting Richard Fitness' injury compensation claim for four months, causing significant financial hardship.
- (c) Richard Fitness had to fight the plaintiffs to get the injury compensation he was entitled to.
- (d) The plaintiffs are conducting the ACC Scheme unfairly.

[169] Again, none of those imputations is made out:

- (a) I did not obtain any meaning from the broadcast Mr Fitness' pain and suffering was caused by any failure on Talley's part. The broadcast was express both Mr Fitness' pain was caused by injury arising from a lifetime of demanding physical exertion at work and he had no entitlement to continue to be paid during Talley's investigation of its

qualification for accident compensation. I inferred the broadcast meant, whatever further duration of Talley's investigation, Mr Fitness had consumed any paid sick leave or other financial resources available to him (except by incurring debt). Nothing in the broadcast meant AFFCO New Zealand Limited had any obligation to continue or otherwise to substitute for his income pending the result of its investigation. Irrespective of the investigation's outcome, Mr Fitness was exposed to an interim lack of income;

- (b) neither did the broadcast carry any meaning as to the reasonableness of the duration of Talley's investigation into Mr Fitness' injury compensation claim, expressly noting only his wages were not paid "for nearly four months as it's allowed to do while it ran its investigation". Specifically, the broadcast did not identify any date by which it was said Mr Fitness' claim should have been accepted;
- (c) nor did the broadcast mean Mr Fitness had to "fight" Talley's for compensation. To the contrary, the broadcast meant his entitlement to cover turned on the availability of a qualifying medical diagnosis, for which he was back-paid, albeit initially less than that to which he was entitled, but corrected on him drawing the error to Talley's attention. Rather, 'fight' was Mr Mead's summary characterisation of Mr Fitness' experience, which was not the meaning I took from the broadcast but mere journalistic licence, particularly given Mr Mead's recitation of Talley's explanation as "a regrettable miscalculation which had since been fixed and apologised for". In context, Mr Mead was saying no more than such errors can be devastating to injured people "at their most vulnerable", illustrated by Mr Fitness and his partner's characterisation of their experience as "a kick in the guts" or "a knife in the back"; and
- (d) last, the broadcast did not carry any meaning Talley's was conducting the ACC scheme unfairly. Instead, the broadcast focused instead on Talley's repeated miscalculation of compensation payments, including underpayments. The credit I afford the ordinary reasonable viewer of

understanding such calculation may not be straightforward means that viewer would not comprehend Talley's conduct of the ACC Scheme therefore to be unfair.

[170] On that basis, Talley's 11th cause of action also fails.

[171] Nonetheless, I have given anxious consideration if my comprehension the broadcast meant "Talley's conduct of denying workers' timely entitlement to 'basic standards' of care and compensation for personal injuries was exemplified by Talley's dealings with Mr Fitness" is or is not materially different from Talley's pleading the broadcast meant "[t]he plaintiffs' failure to meet basic standards of care under the ACC Scheme caused Richard Fitness pain and suffering". Ultimately, I conclude the natural and ordinary meaning of Mr Fitness' clear "pain and suffering" in the context of the broadcast does not extend to the metaphysical consequences of awaiting receipt of any statutory entitlements, however devastating.

[172] If I am wrong in that—and the imputation then is made out as rebuttably false, at least about AFFCO Holdings Limited—I also would have found TVNZ had not proved Talley's dealings with Mr Fitness exemplified any denial of workers' timely entitlement to basic standards of care and compensation. To the contrary, Mr Fitness was not entitled to cover for his injury unless it could be classified "personal injury caused by a work-related gradual process".¹⁰⁰ The evidence was clear the IMU was scrupulous in its pursuit of that entitlement for Mr Fitness, in his complex presentation of initially non-qualifying medical diagnoses, within timeframes specified by and with such supplementary care as was available under the legislation. I have no doubt Mr Fitness and his partner found the procedure frustrating but there was nothing untoward in the IMU's diligent investigation and management of Mr Fitness' claim and its acceptance within days, and initial payment of backdated compensation within two weeks, of receiving its medical qualification. The complexity of Mr Fitness' claim resounded also in calculation of consequent compensation, as derived from the circumstances of his comprehended qualifying injury, with underpayments being corrected by Talley's within days of their identification in 2021 (and again in 2025).

¹⁰⁰ Accident Compensation Act, s 20(1)(c) and (2)(e), further defined at s 30 and which the Act includes at s 57 as a "complicated" claim for cover.

[173] On that basis, I would then have held Talley’s pleaded imputation (a) to have been made out, and again as damaging to Talley’s reputation in a more than minor way, being an adverse reflection on Talley’s compliance with its legal obligations.

—*12th cause of action: 22 May 2022 article*

[174] TVNZ embedded audiovisual footage from its 22 May 2022 broadcast into an illustrated article published under Mr Mead’s byline on the 1 NEWS website, titled “A History of Suffering: Food giant Talley’s Group underpaid injured workers”.

[175] Accompanying an image of Richard Fitness looking to one side of the camera and showing his face and shoulders against a black background, captioned “Richard Fitness. (Source: 1News)”, the article stated:

Food manufacturing giant Talley’s underpaid workers injured at its factories. Its meat works division AFFCO did the same. The impact for one man was devastating.

When the money ran out, Richard Fitness made sure his dog ate first.

The North Island AFFCO employee was used to going hungry. For months he had been too sore to work, his wages on hold.

His left shoulder, wrecked by a life of hard toil, often kept him awake at night. Even a little movement could lead to agony, the bone slowly melting away, a reminder of all the time he once spent working a meat saw.

By June 2021 he was in debt, depressed and had just \$30 a week for groceries.

But he still made sure his dog Rocky was fed.

“I was too scared to eat, because we don’t know when the next time we were able to buy some food,” Fitness, 39, said. “[But] the animals, the animals, you know, it’s not their fault they’ve got to starve.”

The Manawatū man isn’t the first person to face a desperate situation while working for Talley’s Group, the parent company of food manufacturer Talley’s and the meat works AFFCO.

Both Talley’s and AFFCO have partnerships with ACC, allowing them to manage the care process for their own employees after injuries. It’s a significant task: they have thousands of workers across New Zealand between them, with factories from Invercargill to Moerewa producing seafood, meat and vegetables on an enormous scale.

Every year, hundreds of those employees report injuries. But at multiple different times between 2018 and 2021, Talley’s Group failed to provide injured workers with basic standards of care.

A seven-month 1News investigation found both Talley's and AFFCO have a history of underpaying employees hurt at their factories.

Correspondence obtained by 1News reveals ACC raised concerns seven times between 2018 and 2020, after both companies failed to take care of staff at their time of need.

At one point in 2020, the regulator found AFFCO was making "consistently inaccurate" payments to meat workers after they were injured on the job.

While both Talley's and AFFCO have passed ACC audits in recent years and been allowed to stay in the programme, 1News has found an underpayment as recently as November 2021.

How the scheme works

[Five minutes and 14 seconds of embedded audiovisual footage from the 22 May 2022 broadcast accessible through a video thumbnail depicting Mr Fitness looking to one side of the camera and showing his face and shoulders against a black background, titled "Meat worker describes impact of being underpaid thousands while working for AFFCO" and captioned "Talley's is one of New Zealand's largest food producers. (Source: Other)"]

The control Talley's and AFFCO have over staff comes from the Accredited Employers' Programme, designed to give private companies the ability to work "in the shoes of ACC".

It gives both companies the power to make their own decisions on ACC claims filed by their employees - they can choose whether to accept or reject workers' applications for compensation following accidents at their factories.

The companies are also financially liable for those injuries and must follow the law and proper procedures. They must rehabilitate injured workers and pay proper weekly compensation, as ACC would.

But correspondence obtained by 1News under the Official Information Act shows ACC has repeatedly had to intervene after the two companies failed to live up to that standard.

'Employees Being Underpaid': History of Failings at Talley's and AFFCO

In a June 2020 letter to Talley's Group management obtained by 1News, an ACC manager outlined several "ongoing performance concerns" at Talley's and AFFCO.

At times, they said, Talley's couldn't prove it even knew how to calculate payments properly.

"There was insufficient evidence to confirm that the organisation had an accurate and repeatable approach to the calculation of weekly compensation," they wrote in the letter. "In particular there were examples of employees being underpaid."

They added that “despite clear expectations and ongoing training”, aspects of the group’s audit and legislative requirements were “not being consistently met”. In other words, it was breaking the law.

The problems were deep-seated. In February 2020 an ACC monitoring report found short-term injury payments were “consistently inaccurate” at AFFCO.

An ACC advisor had to intervene, ordering AFFCO to reassess several files due to “underpayments”.

“Files need to be re-assessed and the employee provided back payment,” they said at the time.

ACC listed additional training it had to run for the two companies, saying it was yet to see adequate improvement.

Issues included:

- a failure to meet basic wage compensation and case management requirements in August 2018
- a need for in-person training on the “critical aspects” of weekly compensation in November 2018
- ongoing issues with compensation and case management in January 2019, including inaccuracies in the way weekly compensation was calculated
- a teleconference with the Talley’s payroll team to discuss issues with weekly compensation in March 2019, particularly issues in “onshore/offshore scenarios”
- a failed audit at an AFFCO plant in October 2019, where an independent auditor found “several primary level injury management requirements were not being met”
- further in-person training to educate Talley’s payroll team on “critical aspects of the assessment, calculation and provision of weekly compensation” in November 2019
- monitoring which found AFFCO was still failing to meet “audit and legislative requirements” in February 2020
- and “consistently inaccurate” wage compensation payments at AFFCO in February 2020.

Talley’s audits show improvement

Talley’s Group refused 1News’ request for an interview, sending a written statement through its lawyers instead.

Talley’s suggested its claims team, known as the Injury Management Unit or IMU, had introduced additional training, compliance and audit initiatives in recent years.

“Since the letter you refer to, Talley’s has been extensively audited,” the statement said.

“Those audits have recorded full compliance across every requirement, including confirming the accuracy of assessed entitlements for employees.”

It added that both Talley's and AFFCO were recently independently audited by ACC -Talley's in June 2021 and AFFCO in October. Both passed with the highest possible accreditation, showing both companies had improved to the point where they met all applicable standards.

Talley's IMU regularly conducted its own audits, and used external auditors to review calculations, the statement added.

"Talley's and its IMU team emphatically reject any insinuation that they are deliberately underpaying employee entitlements."

'It just wasn't right': Injured meat worker short-changed by \$5000

Despite those assertions, 1News can reveal history has repeated.

In November 2021, a month after it passed its ACC audit with flying colours, AFFCO underpaid Richard Fitness, an injured meat worker, by more than \$5000.

Speaking to 1News from a Palmerston North motel room alongside his partner Jo McKenzie, the pain was written on his face. His hand would often drift instinctively to his shoulder, where the bone was slowing melting way after 20 years in the industry.

[Eight minutes and 31 seconds of embedded audiovisual footage of Mr Mead's interview with Mr Fitness and his partner accessible through a video thumbnail depicting Mr Fitness looking to one side of the camera and showing his face and shoulders against a black background, titled "Full Interview: Richard Fitness tells his story" and captioned "Richard Fitness reported an injury to his employer Affco, after suffering excruciating pain on the job, but the meat works under-paid him by more than \$5000. (Source: 1News)"]

His ordeal began around February 2021, while working at AFFCO Manawatū.

While he was a boner by trade, Fitness ended up on the saw. His job was to cut down beef carcasses as they appeared on the factory line, each one weighing hundreds of kilograms. It is hard, physical work: saw down the ribs, saw down the back and push it along to the next station.

"I'm a hard worker in general, I'll push myself to do it," he told 1News. "I just kept going and going and going, and I slowly, just, slowly worn out."

A few months after he started in the role, Fitness noticed his left shoulder was hurting.

"It got to the stage where I was just getting sorer and sorer, and I knew I was," he said.

"It [would] only lift so far and stop, and it was just crunching. And it still crunches, and it just seizes up and it starts aching and aching. And the pain down the arm, pins and needles, I'd wake up during the night and my shoulder's just locked into place."

The injury would later be diagnosed as osteolysis, a condition where bone tissue is slowly destroyed. It's very painful, with the bone slowly wearing away, leaving it feeling like it's "melting".

At the time, the cause wasn't immediately clear. Fitness was soon too sore to work, filing a gradual process injury claim to AFFCO. But help was not immediately forthcoming.

AFFCO spent nearly four months investigating his claim and stopped his wages in the interim. It's entitled to do so under the law, but that left Fitness too sore to work and without any income. Soon he was losing weight from the pain, dropping nearly 20kg.

'Living off the basics'

With no money coming in, Fitness was only able to survive with financial support from his partner. His weight dropped as low as 53kg. The couple quickly went into debt.

With the pain constant, Fitness found himself depressed.

"I'd sit there just dazed, just lost," he said. "I felt sorry for Jo getting up, going to work, keeping going, trying to keep the bills afloat, the mortgage, rates, and all stuff like that, and just me being home alone depressed, it's not a good space."

They got by on food assistance and whatever they could pick from their garden, with just \$30 a week for groceries. They often went hungry.

"We were just living off the basics," Fitness said. "I wouldn't top up my phone, wouldn't have my car on the road, had to stop that."

McKenzie handled much of the ACC work, negotiating with AFFCO to get the claim approved.

His first claim was declined because the paperwork was wrong. The second wasn't initially accepted, because there was no evidence it was specifically tied to his role as a saw operator at Affco Manawatu. But McKenzie refused to take no for an answer.

"One day at a time, literally it was one day at a time," she said. "There was probably many times where Richard didn't know that I went out and had a bit of a cry because I felt like I was letting him down."

Fitness eventually saw a specialist occupational physician, who found the injury was linked to his entire 20-year history in the meat works, rendered symptomatic at AFFCO.

Dr Michael Antoniadis found AFFCO had followed proper procedures and was within its rights to decline the earlier claim. But his report made all the difference - it was indeed a 'work-related gradual process injury'.

AFFCO finally accepted the claim on that basis in June 2021, four months after Fitness had first asked for help, and he was back-paid for the time he had waited.

‘This doesn’t add up’

But later, in November 2021, McKenzie found something strange on his payslip. AFFCO had underpaid her partner by more than \$5000.

“I actually had a conversation with Richard and said, ‘This doesn’t add up, I’ve seen your payslips, I know what you’re bringing in,” McKenzie said. “I clicked, it just wasn’t right.”

By November 22, a case manager from AFFCO’s Injury Management Unit was in touch to apologise for the company’s mistake.

“Thank you for bringing this to our attention, we apologies [sic] for any hardship this may have caused,” she wrote in an email obtained by 1News. “I have obtained further information and can confirm the long-term rate is to be amended and increased.”

For Fitness, who had waited for so long to get his claim approved, it was “another knife in the back”.

“Once again, it’s, how many other people are they doing it to?,” he said. “It’s just repetitive, repetitive stuff from them.”

Through its lawyers, Talley’s Group said Fitness’ case was not evidence of a widespread problem. The company said the situation was an individual mistake that arose due to Fitness being covered by two separate payrolls in the company’s system.

“What you have identified is one example of a complex medical claim being determined within the statutory timeframe in accordance with the proper processes, including the employee then being back paid for the entire period.” Talley’s Group said.

“In this one instance, there was regrettably a miscalculation of entitlements, which as soon as it was identified was fixed and apologised for”.

But both Fitness and McKenzie feel the mistake was only rectified because they found it themselves.

“If we hadn’t have clicked ourselves,” McKenzie said, Fitness finishing her sentence, “they’d still be underpaying.”

The question for McKenzie remained.

“Would it have ever have actually been corrected?”

ACC looks into Fitness’ case

Auckland ACC law specialist Hamish Peart told 1News underpayments could lead to “quite significant problems” for claimants.

“All New Zealanders pay into ACC, and it’s a system for all of us, so it’s really quite a basic thing isn’t it? You would have an expectation that the calculations are being done properly and you’re getting what you’re entitled to under the law.”

Peart felt questions should also be asked of ACC in its role as the regulator.

“Kiwis have given up their right to sue, so if you have a significant injury at work, the quid pro-pro is that you’re going to be able to get compensation or payment through ACC,” he said.

“You can’t sue the company, and you can’t recover your loss of wages any other way.”

Further investigation could be warranted, he added, to make sure problems did not persist at Talley’s Group.

“If ACC is satisfied that those issues have been fixed, how have they established that?”, the lawyer asked.

“It seems to me there should be some kind of independent oversight or independent inquiry.”

Like Talley’s Group, ACC declined to be interviewed by 1News. In a written statement, it said it had worked closely with Talley’s “over the last couple of years” to improve the company’s claims and injury management.

Acting chief operating office Gabrielle O’Connor said ACC had seen improvements over this time. However, she added that the regulator will “continue to work closely with them”.

“We take seriously any concerns raised by employees about the way their claim is managed. Talley’s employees can contact ACC at any time if they have issues.”

O’Connor did not respond to several specific questions about ACC’s regulation of Talley’s and AFFCO. She also did not respond to questions about Fitness’ case, saying only the following: “We are in contact with Talley’s to follow up on the concerns raised by Mr Fitness.”

Talley’s next audit was in June this year, and further claim file monitoring was planned for the second half of this year, she said.

‘Stand up, stand up, you have to talk’

For Richard Fitness and Jo McKenzie, the ordeal will leave lasting scars. A year after he first reported the injury, the meat worker is still waiting on surgery.

Even when it’s finished, it will never be the same. His days on the bandsaw are over.

“I don’t know what my shoulder’s gonna be like once I’ve had my surgery, and being my main arm, it’s still on my mind,” he said.

“I still don’t know what I’m gonna do yet, but I can’t really do much. [I’m trying] not to think about it until my surgery’s done. But it plays on my mind. It does, it takes its toll, but I’ve managed to slowly put some weight on.”

The trauma is heavy for McKenzie too.

“There’s nothing worse than seeing someone that you care very muchly for in constant pain, whether it be physically or mentally, and you can’t do anything,” she said. “All I could do was do my best, as anyone can, to try and keep his spirits up.”

The couple decided to speak out in fear others may have been underpaid too.

“Stand up, you have to talk,” Fitness said. “You have to speak up, don’t let anyone - don’t pull strings over your eyes.”

Fitness feared, too, that injured workers would return to work while AFFCO or Talley’s investigated their claims. Four months without a decision and without pay was too long for many, he said.

“Some families have kids, and stuff like that, and they still have to push on because they still need to support their family, regardless of their injury,” Fitness said.

“I don’t want to see other families go through this, especially families with children,” McKenzie added.

A final message

A year after it all began, it’s clear the experience left the couple with a strong bond. Throughout the interview, Fitness’ hand was always close to McKenzie’s. They often chatted quietly, their fingers intertwined.

And as it wrapped up, the couple had a final message for anyone working for Talley’s Group.

“You’re just a number at the end of the day. They don’t care,” McKenzie said.

Fitness echoed the same thought.

“Any sort of injury, get it dealt with, don’t let them tell you otherwise!”

Do you have a story to share about Talley’s Group? Email Thomas Mead on thomas.mead@tvnz.co.nz

[176] From the perspective of the ordinary reasonable reader (and viewer) of the 22 May 2022 article, my broad impression was the article provided a very great deal more detail for the meaning to be taken from the broadcast, without materially changing that meaning as available also from the article. From the article, including its embedded audiovisual footage, my broad impression was it meant Talley’s repeated underpayment of compensation to which injured workers were entitled was exemplified by its dealings with Mr Fitness, despite ACC’s prior interventions and independent audits establishing Talley’s met “all applicable standards” in its standing as an ACC accredited employer. I had the impression a lawyer specialising in ACC queried the adequacy of the accredited employer scheme to meet injured workers’

entitlements without independent oversight. From the article, I obtained a significantly more detailed impression of the extent of ACC's interventions with Talley's, and the detrimental impact of Mr Fitness' case on him and his partner, than was available from the corresponding broadcast alone. But I also gained the impression the complexities of Mr Fitness' case, both in obtaining a qualifying diagnosis and calculating consequent compensation, rendered it a poor foundation for the article's overall meaning.

[177] Of the 22 May 2022 article, Talley's pleaded:

In its natural and ordinary meaning, the 22 May 2022 Web Article conveyed the following imputations that are defamatory of the second to fourth plaintiffs:

- (a) The plaintiffs' failure to meet basic standards of care under the ACC Scheme caused Richard Fitness pain and suffering.
- (b) The plaintiffs unnecessarily delayed accepting Richard Fitness' injury compensation claim for four months, causing significant financial hardship.
- (c) Richard Fitness had to fight the plaintiffs to get the injury compensation he was entitled to.
- (d) The plaintiffs' underpayment of an injured worker, Richard Fitness, caused him devastating hardship.
- (e) The plaintiffs are conducting the ACC Scheme illegally.
- (f) The plaintiffs do not care about the wellbeing of injured workers.

[178] The first three pleaded imputations are the same as those pleaded of the broadcast—with the exception the third now pleads Talley's "unnecessarily delayed" accepting Mr Fitness' claim (rather than it "unreasonably delayed")—and, for the same reasons as I explained of those imputations pleaded of the broadcast, none is made out. If anything, the article is more explanatory of the necessity in delay of acceptance of Mr Fitness' claim and omits any reference to "fight" (although that remains in its embedded audiovisual footage from the broadcast). While my impression the article's meaning is not well-founded on Mr Fitness' case offers additional support for my 'anxious consideration' of Talley's first pleaded imputation, that does not change the natural and ordinary meaning to be given to the pleaded "pain and suffering".

[179] The balance of the pleaded imputations also is not made out. The article does not attribute any hardship incurred by Mr Fitness to Talley’s underpayment, but rather to his injury and the time taken without income for its resolution as compensable. Neither does the article impute any illegality to Talley’s operation as an accredited employer; rather, a lawyer only commented on the desirability of an additional layer of oversight to ensure due compensation was paid. And the assertion Talley’s “don’t care” for its injured workers clearly is expressed as the view of Mr Fitness’ partner.

[180] Thus Talley’s 12th cause of action also fails.

Conclusion on Talley’s causes of action

[181] In the result, then, Talley’s has succeeded only in its fifth cause of action and then only to the extent the 3 July 2021 broadcast falsely meant an insufficiency in emergency stop buttons at Talley’s Ashburton site “was known to, and raised by workers with, Talley’s management but not addressed”;¹⁰¹ such imputation being not materially different from that pleaded by Talley’s and—by “not addressed”—tending to lessen, and giving rise to ““more than minor’ harm” to, Talley’s reputation among some prospective and then-current Talley’s employees.¹⁰²

Pecuniary loss

[182] As identified above,¹⁰³ s 6 of the Act provides proceedings for defamation brought by a body corporate, as is Talley’s, shall fail unless Talley’s “alleges and proves that the publication of the matter that is the subject of the proceedings ... has caused pecuniary loss; or ... is likely to cause pecuniary loss” to Talley’s.

[183] “[T]he publication of the matter that is the subject of the proceedings” is not to be understood a generic reference to TVNZ’s publication of the six broadcasts and six articles the subject of this proceeding. Rather, because s 7 provides “[p]roceedings for defamation based on a single publication constitute one cause of action, no matter how

¹⁰¹ At [80] above.

¹⁰² At [136] above.

¹⁰³ At [42] above.

many imputations the published matter contains”, ‘the publication of the matter’ is to be understood by reference to each successful cause(s) of action.

[184] Thus Talley’s must allege and prove publication of the 3 July 2021 broadcast has caused, or is likely to cause, pecuniary loss to Talley’s. By ‘pecuniary loss’ is meant the harm must “sound in money”;¹⁰⁴ that is to say, “the defamation has either caused, or is likely to cause, actual financial loss”,¹⁰⁵ which the drafters of what became s 6 comprehended was “good law”.¹⁰⁶ The consequent Defamation Bill 1988, in adopting that recommendation, was express “the provision purports to state the existing common law rule in relation to defamation proceedings by bodies corporate, in order to remove any doubt in the matter”.¹⁰⁷ The legislative intention in that respect is clear.¹⁰⁸ Section 6 thus is distinguishable from the subsequent legislative development in the Defamation Act 2013 (UK), which provides a statement is not defamatory unless its publication has caused, or is likely to cause, serious harm to a claimant’s reputation (whether or not a body corporate). Section 6 does not constrain if a publication is defamatory (necessarily, in a “‘more than minor’ way”), but establishes—even so defamed—a body corporate’s proceeding in defamation “shall fail” without proof of qualifying pecuniary loss.

[185] Section 6(b)’s “is likely to cause pecuniary loss” has been the source of conflicting interpretations. On the one hand, there is any number of cases which approach the question of pecuniary loss effectively as to the standing of a body corporate to sue in defamation, allowing inference of pecuniary loss from the impugned publication.¹⁰⁹ But there also are cases in which proof of pecuniary loss is treated as a condition subsequent to proof of defamatory publication for consequent relief to a corporate plaintiff.¹¹⁰

¹⁰⁴ *Lewis v Daily Telegraph* [1964] AC 234 (HL) at 262.

¹⁰⁵ Committee on Defamation “Recommendations on the Law of Defamation. Report of the Committee of Defamation” (1 December 1977) [McKay Committee report] at [359].

¹⁰⁶ At 360.

¹⁰⁷ Defamation Bill 1988 (72-1) at 4.

¹⁰⁸ *Midland Metals Overseas Pte Ltd v The Christchurch Press Co Ltd* [2002] 2 NZLR 289 (CA) at [12] and [62].

¹⁰⁹ See, for example, *Rural News Ltd v Communications Trumps Ltd* HC Auckland AP167-SW00, 4 April 2001 at [14]; *Rural News Ltd v Communications Trumps Ltd* HC Auckland AP404/167/00, 5 June 2001 at [14].

¹¹⁰ *Chinese Herald Ltd v New Times Media Ltd* [2004] 2 NZLR 749 (HC) at [53]. See also, *CPA Australia Ltd v New Zealand Institute of Chartered Accountants* [2015] NZHC 1854 [CPA Australia] at [81].

The pecuniary loss caused or likely to be caused should normally arise from damage to the claimant's business interest or goodwill. The pecuniary loss arises from injury to the reputation of the plaintiff's trade or business. The loss need not necessarily be confined to loss of income and can include loss of goodwill. Commercial loss of this or a similar type must be proved before a body corporate can obtain relief under the Act.

The latter approach is more consistent with appellate direction “the legislative intent [of s 6] was to limit compensatory relief for a corporate plaintiff to pecuniary loss”,¹¹¹ “to confine corporate plaintiffs to economic loss”,¹¹² as well as with appellate adoption of the “‘more than minor’ harm” threshold, and I adopt it.

[186] However, s 6 does not address itself to compensatory relief. Under the Act, non-compensatory relief—by way of declaration and costs only, as is sought by Talley's—also is available (under s 24(2), as are punitive damages under s 28). Rather, s 6 provides the proceeding “shall fail” without proof the publication has caused, or is likely to cause, pecuniary loss to the plaintiff body corporate. Thus the legislative intent must be to prohibit any relief to a corporate plaintiff, unless proving a defamatory publication has caused or is likely to cause pecuniary loss to it.

[187] I also take the view, by “has caused ... or ... is likely to cause” pecuniary loss to the body corporate, s 6 means respectively proof of retrospective or prospective pecuniary loss caused by a defamatory publication. ‘Is’ is not to be read as “was”, not least because such an interpretation would be to subsume s 6(a)'s subject within para (b), the actuality of any pecuniary loss proving its likelihood. In that respect I adopt also the approach taken in *CPA Australia Ltd v New Zealand Institute of Chartered Accountants*.¹¹³

[T]he onus [a corporate plaintiff] is required to discharge is to prove that the statements complained of have caused pecuniary loss to it, or that those statements are likely to cause it loss in the future.

Even allowing a corporate plaintiff may prove a defamatory statement is likely to cause it pecuniary loss in the future, frankly—if now, over four years after the 3 July

¹¹¹ *Midland Metals Overseas Pte Ltd v The Christchurch Press Co Ltd* [2002] 2 NZLR 289 (CA) at [12].

¹¹² At [62].

¹¹³ *CPA Australia*, above n 110, at [68]. For clarity, I interpret the Court of Appeal's “no likely pecuniary loss was caused” in *Television New Zealand Ltd v Talley's Group Ltd*, above n 47, at [42] as an omnibus reference to the Defamation Act's subss 6(a) and (b).

2021 broadcast, Talley's cannot prove the broadcast has caused it pecuniary loss—in the particular circumstances of the defamatory publication I have found, any pecuniary loss cannot be thought nonetheless to remain likely.

[188] Talley's alleges TVNZ's impugned broadcasts and articles "have caused and/or are likely to cause" it pecuniary loss, particularised in relation to Talley's Limited as:

- (a) Opportunity cost of management and staff time spent responding to the allegations in the Broadcasts and Web Articles, including but not limited to:
 - (i) liaising with key customers, suppliers and stakeholders, in particular:
 - (A) Foodstuffs, Woolworths/Countdown, Kraft Heinz, McCain, Bank of New Zealand, Inland Revenue, AON, Bidfood, Starfoods, Tai Pan NZ, MegaFood, Service Foods, Hopewell Food, Hamilton Foods, Tai Wah, Aldi, Wendy's, My Food Bag and various growers, suppliers and contractors;
 - (ii) engaging with external consultants, in particular those listed at (c) below;
 - (iii) liaising with WorkSafe;
 - (iv) internal discussions to determine appropriate response; and
 - (v) communicating with staff about the allegations and the response.
- (b) Reduced staff morale, productivity and engagement due to diverted attention, anxiety, negativity and increased likelihood of resignation, particularly (but not limited to):
 - (i) at the Ashburton Site, caused by the 1, 2 and 3 July Broadcasts and Web Articles;
 - (ii) at the Blenheim Site, caused by the 21 July Broadcast and Web Article; and
 - (iii) staff in the Injury Management Unit (IMU) employed by Talley's Group Management Ltd (TGML) and partially charged back to Talley's Ltd, caused by the 21 November and 22 May Broadcasts and Web Articles.
- (c) Costs of external consultants, in particular:
 - (i) Bush International Consulting Ltd, Risk Management Group Limited, P A Swale Holdings Limited T/A Risk Prevention, EIS Group Limited, Publik Limited, AskYourTeam Limited, Forte Business Group Limited, Fiona Carney Consulting Limited, R G Ross Health & Safety Limited and Holmes Solutions LP.
- (d) Costs of site inspections and audits required by customers and regulators in response to the Broadcasts and Web articles.
- (e) Lost sales due to delay in finalising a contract with Countdown to supply vegetable products for their home brands.
- (f) Likely lost sales of "Talley's" branded retail products to customers.
- (g) Damage to the "Talley's" brand and to goodwill.

- (h) Increased cost of recruitment, and decreased effectiveness of recruitment.
- (i) Reduced efficiency and effectiveness of the IMU in managing the recovery of injured Talley's Ltd workers and fulfilling their other functions.

Further pecuniary loss is alleged caused by the 21 November 2021 and 22 May 2022 broadcasts and articles to each AFFCO Holdings Limited and AFFCO New Zealand Limited but, as the defamatory publication I have found relates only to Talley's Limited, I need not to consider those alleged heads of loss.

[189] The issue for me is what pecuniary loss has Talley's proved caused by publication of the 3 July 2021 broadcast; what pecuniary loss is proved caused by that publication's false meaning I have held established as tending to lessen, and giving rise to "more than minor' harm" to, Talley's reputation among some prospective and then-current Talley's employees.¹¹⁴ I focus my attention on those aspects only.

[190] Talley's chief financial officer, Gregory Kingston, was clear the "opportunity costs" incurred by Talley's were in response to what it perceived was a "relentless" public attack on it by TVNZ,¹¹⁵ "a rolling maul of allegations", accepting under cross-examination that included TVNZ publications on which Talley's had not sued. He said the response "took up substantial time" of many people within Talley's, "particularly the senior leadership", which time "would otherwise have been devoted to making [Talley's] more productive and profitable". While acknowledging Talley's was "suffering considerable staff shortages due to border closures" given rise by regulatory responses to the COVID-19 pandemic, he said the impact of TVNZ's publications "made an already difficult business environment worse". He said "[m]uch of our work was in direct response to the allegations made over those first three nights in July 2021".

¹¹⁴ Had they been materially similar to any imputation pleaded by Talley's, my finding at [172] above the 22 May 2022 broadcast falsely meant "Talley's dealings with Mr Fitness exemplified any denial of workers' timely entitlement to ... basic standards [of workplace health and safety]" would have led to the same point, as tending to lessen, and giving rise to "more than minor' harm" to, Talley's reputation among some prospective and then-current Talley's employees. Again, Dr Morrison's assessment was any materially similar imputation asserted by Talley's suggested "Talley's falls below social norms related to physical and psychological safety", with the same consequences as I have outlined of her evidence at [117]–[123] above.

¹¹⁵ TVNZ objects to the admissibility of Mr Kingston's evidence of a "public attack" as straying into my exclusive determination of the impugned publications' meaning. But Mr Kingston's statement expressly is made "[f]rom [Talley's] perspective". It has not swayed me. The objection is dismissed.

[191] Mr Kingston illustrated that response as including from Talley’s general manager of vegetables, Danie Swanepoel—who issued a 3 July 2021 email to Ashburton staff advising “[t]he onslaught against our business continues with another story on One News tonight[,] ... [t]his time about the number of E-stops in the plant ...”, while addressing also issues arising from prior broadcasts—and Mr Howes (Talley’s human relations manager), among others. Mr Kingston approximated members of Talley’s senior leadership team and other senior leaders “were spending anywhere between 10% and 50% of their time on issues arising from the 1 NEWS broadcasts between July and August 2021”. He noted Talley’s public relations consultant, Publik, charged some \$7,000 “[f]or time in July supporting Talleys with media, and customer, staff and stakeholder communications relating to 1News’ stories about health and safety”, and another consultant, Forté Management, rendered invoices amounting to nearly \$2,000 for “scheduled coaching sessions” of staff, in which it is said also to have “provided support around” the 1 NEWS stories.

[192] Talley’s also instructed former Commissioner of Police, Mike Bush, to investigate if allegations made in TVNZ’s 1–3 July 2021 broadcasts were “of substance, justified, how they arose and how (if at all) they were or had been addressed by the company”. Among those allegations—although not made in those terms by the 3 July 2021 broadcast, but in prior correspondence from Mr Mead¹¹⁶—was:

Emergency stop buttons are few and far between, meaning employees cannot quickly stop the line if an accident takes place. There are only 15 or fewer emergency stop buttons in the Ashburton factory. In particular on the corn line, there are none that are obvious to general staff. Local management have been aware of this for some time as a directly highlighted risk and have taken no action. There are only 10 to 15 emergency stop buttons on the entire site. One line, the corn line, does not have a single emergency stop button that is obvious to general staff. There are failings in your training and ongoing communications issues, meaning staff often do not know where to find the estops.

[193] Of that allegation, Mr Bush found:

There are 153 emergency stop buttons within the Ashburton site, far in excess of the 15 stated in the allegation. It is acknowledged that there is no emergency stop buttons on the corn kernel cutting deck. Each machine on the corn kernel cutting deck has a green go and red stop button which are highly visible. The machines in this line are not manually operated but are observed by staff (i.e.,

¹¹⁶ See [93] above.

automated). When a machine “jams” or “malfunctions”, the correct procedure is that the stop button is activated before any remedial action is taken. Management is reviewing the safety aspect of these machines and are cognizant that there has not yet been a health and safety issue with the automated machines.

Mr Bush and his team rendered invoices for some \$90,000 in relation to his overall instructions.

[194] Mr Kingston also said:

[T]he 1 NEWS Stories came at a time when many businesses in New Zealand were suffering staff shortages. That was particularly acute for Talley’s as some of our plants (for example, Blenheim) rely a lot on staff on working holiday visas.

Our spending on recruitment increased significantly from 2019 to 2023. That was mainly due to COVID-19 and the lockdowns. However, the pandemic impacts hit the business starting well over a year prior to the 1 NEWS Stories: the first lockdown began March 2020 and the first 1 NEWS Story was 1 July 2021.

He concluded “[t]he 1 NEWS Stories—which remain available on the internet—continue to have a negative effect on our ability to recruit staff”, which Mr Howes was to address.

[195] Under cross-examination, Mr Kingston agreed Talley’s compilation of costs incurred as a result of TVNZ’s broadcasts were obtained by his request of managers as to expenses incurred in response TVNZ’s “campaign”, rather than relating to any particular publication. He admitted, of the consultant costs:

[T]here is an element of real benefit to the company, in terms of that health and safety spend and improving our business and making it safer but at the same time, there were some of those costs that were duplication or were simply investigating allegations made by TVNZ so not all of those costs did generate benefits for the company.

but contended Publik’s and Mike Bush’s investigation expenses were “only generated as a result of the TVNZ coverage”. While accepting some of Publik’s expenses were incurred in advance of the broadcasts in responding to Mr Mead’s questions of Talley’s, he thought “the vast majority of the work that Publik did was ... particularly in response to those early stories, the 1st, 2nd and 3rd of July 2021”; they were “the three most damaging” of the six (meaning broadcasts and articles), with “the biggest impact on our brands and our people”, asserting “the concerns around safety are far

more fundamental and more damaging allegations, saying that our employees are in danger, that cuts the deepest”. He accepted there were a number of “confounding factors” of worker availability and international freight costs associated with the pandemic that made it difficult to isolate the “campaign’s” financial impact on Talley’s.

[196] Mr Swanepoel’s evidence did not materially expand on his response to the 3 July 2021 broadcast, other than to say he “spent a lot of time responding to the 1, 2, and 3 July Broadcasts and Web Articles in various ways”, including in internal presentations to the entire Ashburton plant. His 7 and 9 July 2021 presentations, he said, “were almost entirely dominated by the July Broadcasts”. The presentations included reference to the 3 July 2021 broadcast as being about “Emergency Stops: Not enough – ‘only 15 on site’”, as to which Mr Swanepoel concluded the July broadcasts were “Out of context. Outdated information. False information. Sensationalism”. He advocated to “[l]et expert opinions and balanced views set records straight ... [and] [t]ake the opportunity to improve”. He recorded, as a “reality check”, more than 35 “Care Cards” (identifying health and safety issues) had been submitted by staff that year and followed up and there had been in the past six months a number of machine safety audits, including an “E-Stop audit” to “standardise to current requirements”. He noted Talley’s had committed \$240,000 to health and safety capital projects, and spent nearly \$450,000 on health and safety aspects of repairs and maintenance and another \$275,000 on other health and safety expenses, that year. Under cross-examination, Mr Swanepoel agreed the presentations were a regular feature of his management of the Ashburton plant, including reference to the July broadcasts as topical.

[197] Mr Swanepoel’s July presentations also noted a restructure at the Ashburton plant was nearly complete with “[s]ome vacancies remain[ing]” and a “[r]ecruitment effort to intensify to fill vacancies across all areas”. His evidence in chief concluded:

Employing people at Ashburton is difficult because it is rural. Even though it is close to Christchurch, some people are not easily convinced to live rurally. This has been heightened by some applicants having an already bad view of Talley’s.

illustrating the point with a 23 November 2023 email from a recruitment consultant to Mr Howes (copied to Mr Swanepoel) in which the consultant advised:

[Candidates'] main issue is the location (even with relocation assistance), with a few people having preconceived ideas about Talley's that couldn't be swayed with an explanation of the false bad publicity.

[198] Mr Howes estimated, after the 1–3 July 2021 broadcasts about the Ashburton site, “around half of [his] total time at work was spent dealing with the fallout. It was a dominating topic of any conversation across the whole company”, increasing “to a new level” after the 21 July broadcast (relating to other Talley's sites). He said, after TVNZ's publications, “[fewer] people applied for roles at Talley's. As a result Talley's had to invest more time and money into its recruitment efforts”.

[199] Under cross-examination, Mr Howes also contended the AskYourTeam survey “was triggered by our reaction from the [TVNZ publications]”, but accepted the scope of that three-year project was about “betterment of the working environment at Talley's”. He said “we embrace the negative commentary that we got from the surveys and embarked on a series of initiatives to try and address those”. He accepted Talley's “had a range of recruitment problems prior to the [TVNZ publications], arising over COVID and other problems”, which continued “well after the publications”. He considered the TVNZ publications:

...we had to address more often were the ones that implied that the senior leadership of Talley's didn't care about their people. That was the key thing that I had to address in my own experiences of recruiting people.

But:

[T]here were already challenges. COVID was still a thing, there was still a lack of the, I guess the working holiday type people within the country at that time, so there absolutely was other challenges, not just the TVNZ, but the TVNZ coverage certainly made a bad situation worse.

Mr Howes agreed he had no evidence of recruitment costs prior to the TVNZ publications or any change in those costs arising from the TVNZ publications in general or any specific TVNZ publication.

[200] Talley's has not proven any pecuniary loss arising from the 3 July 2021 broadcast, whether or not separately from or in addition to any pecuniary losses as may have arisen from any other of TVNZ's broadcasts and articles, whether or not sued upon by Talley's. In respect of the 3 July 2021 broadcast, that particularly is vexed by the concurrency of the other 1–3 July 2021 broadcasts and articles. Even if

losses are open to being claimed under the “inchoate” heads pleaded by Talley’s,¹¹⁷ the evidence does not permit me to attribute any of them directly (even if not exclusively) to publication of the 3 July 2021 broadcast. I have serious doubts about the legitimacy as ‘pecuniary loss’ of the marginal additional expenses claimed in terms of executive and management and some consultant time, when that sunk expense is in any event to direct and manage Talley’s operation irrespective of measurement in terms of productivity and profitability. As Mr Kingston said, Talley’s “overriding view is that there is no wasted money in [health and safety]”.

[201] Given Talley’s less discriminate approach to alleging and proving pecuniary loss, I find it has not proved TVNZ’s publication of the 3 July 2021 broadcast either has caused or is likely to cause any pecuniary loss to Talley’s.

[202] Accordingly, the proceeding fails.

Defence of responsible communication on a matter of public interest

[203] I therefore have not required to consider if TVNZ has made out its defence the 3 July 2021 broadcast was a responsible communication on a matter of public interest. Plainly issues of Talley’s compliance with health and safety obligations are matters of public interest, given their engagement with worker welfare (irrespective if considerable public notoriety or controversy has attached).¹¹⁸ I do not understand Talley’s to argue otherwise.

[204] For TVNZ, Gavin Ellis—a media researcher and commentator “associated with journalism for six decades”, having retired in 2005 as editor-in-chief of the *New Zealand Herald* “after a 40-year career in daily journalism”—opined responsible journalism could be assessed from the perspectives:¹¹⁹

Journalism’s first obligation is to the truth;

Journalism’s first loyalty is to citizens;

The essence of journalism is a discipline of verification;

¹¹⁷ *Low Volume Vehicle Technical Association Inc v Brett* [2017] NZHC 2846, [2018] 2 NZLR 587 at [42].

¹¹⁸ See [38] above.

¹¹⁹ Referring to 10 principles articulated in Bill Kovach and Tom Rosenstiel *The Elements of Journalism* (3rd ed, Three Rivers Press, New York, 2014).

Journalists must maintain an independence from those they cover;
Journalists must serve as independent monitors of power;
Journalism must provide a forum for public criticism and comment;
Journalists must make the significant interesting and relevant;
Journalists should keep the news in proportion and make it comprehensive;
Its practitioners have an obligation to exercise their personal conscience; and
Citizens have rights and responsibilities in relation to news.

All were to be exercised within the bounds of “fairness, balance, accuracy ... [and] [i]ndependence”. In terms of Mr Mead’s repeated assertion part of his role as a journalist and reporter was “to hold people in positions of power to account fairly”, Dr Ellis emphasised:

[F]or example you can’t hold power to account inaccurately or in an unbalanced or unfair way. Holding power to account still requires attention to those other elements that are part of the journalist guidebook, if you like. So holding power to account is exercised by still maintaining those other principles.

[205] Dr Ellis referred in particular to the Broadcasting Standards Authority’s standard 5, on balanced reporting in news, current affairs and factual content, which states:

When controversial issues of public importance are discussed in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant viewpoints either in the same broadcast or in other broadcasts within the period of current interest unless the audience can reasonably be expected to be aware of significant viewpoints from other media coverage.

In discussion with me, Dr Ellis agreed the Authority’s guidelines explained standard 5 applied when the subject matter of the ‘discussion’ is:

- an issue ‘of public importance’ (something that would have a significant potential impact on, or be of concern to, New Zealanders)
- ‘controversial’ (an issue of topical currency; which has generated or is likely to generate conflicting opinion; or about which there has been ongoing public debate – eg issues related to New Zealand political policy, public health and safety, public expenditure)
- ‘discussed’ in a news, current affairs or factual programme (eg investigative or in-depth work – brief news reports, programmes clearly focused on a particular perspective, or personal or human interest stories, may not amount to a discussion).

[206] The Authority comments on its standard:

The purpose of this standard is to ensure competing viewpoints about significant issues are available, to enable the audience to arrive at an informed and reasoned opinion.

A common sense approach should be taken – the practical reality is that programmes cannot be perfectly balanced, and this is not required.

The standard and guidelines reflect the present broadcasting environment in New Zealand and the increased flows of information available from sources and on topics of all kinds. Given the proliferation of information available to today's audiences, complaints under this standard will rarely be upheld. However, it provides protection in cases where balancing viewpoints on controversial issues have not been available across time, different programmes or different media.

An issue will not be 'controversial' for the purposes of the standard simply because some continue to hold alternative views about it (eg climate change, vaccine safety).

The standard does not require news, current affairs and factual programming to be presented impartially or without bias. Within the limits established by this standard, broadcasters are free to promote or challenge particular ideas, philosophies or people (eg politicians).

A key consideration is what an audience expects from a programme and whether they were likely to have been misinformed by the omission or treatment of a significant perspective (eg where a significant perspective is presented with limited coverage or in a manner which undermines its validity).

[207] Dr Ellis considered the issues the subject of the impugned publications were of public importance "not least because the products produced are sold to the public. So the means by which those goods are produced is a matter of public interest". He agreed they were controversial as being "capable of carrying alternative viewpoints". As to the third element, Dr Ellis considered "anything that attempts to analyse what has been said would fall into the realms of discussion". Thus he agreed any such analysis "requires broadcasters to make reasonable efforts or give reasonable opportunities to present significant viewpoints".

[208] Dr Ellis continued:

Balance requires [broadcasters] to give equal effort to both sides. They may, however, rely on one of the sources to do that work for them, you know, for example, if you go to a politician seeking a response to an allegation, you may rely on their staff to come back to you with that information to counter the claim made. So it's not necessarily a journalist who will do all of the work themselves. They may be relying on other parties and the resources of other parties to supply some of that counterargument if you like.

He agreed the standard was to require “a fair voice to contradictory viewpoints”, to which he added:

To the limits of what you’re provided with. In other words, if you’re provided with a one sentence reply, then that may be all that you have access to. Talking about records for example that are behind a closed door, you may not have access to that. But the party that’s subject to the story, may have access to it, but if they choose not to divulge it, then that doesn’t mean that you’ve breached your duty of fairness, because you’ve given them the opportunity.

And he agreed “equally, if they have divulged a volume of information, it’s the broadcaster’s obligation to present that fairly, to give fair voice to that alternative”. That was not done “simply by affording a right to reply”:

[Y]ou really do need to provide some balancing. If you’re talking about a contentious matter, then you do need to provide some balancing to that story in order to be fair.

Dr Ellis added:

[I]f you give the opportunity [to reply], then it’s incumbent upon them to take up that opportunity as well. If they choose not to, you’re in a very difficult position in terms of exercising that right of reply.

He said “it’s important to at least acknowledge that the opportunity has been presented” and agreed “if the opportunity has borne fruit, there’s an obligation on the broadcaster to present that fruit fairly”.

[209] Given the meaning I have found of the 3 July 2021 broadcast—that an insufficiency in emergency stop buttons at Talley’s Ashburton site “was known to, and raised by workers with, Talley’s management but not addressed”—I may have been assisted by Dr Ellis’ explanation also of the Authority’s standard 6 on accurate reporting in news, current affairs and factual content, which states:

Broadcasters should make reasonable efforts to ensure news, current affairs and factual content:

- is accurate in relation to all material points of fact
- does not materially mislead the audience (give a wrong idea or impression of the facts).

In the event a material error of fact has occurred, broadcasters should correct it within a reasonable period after they have been put on notice.

[210] The Authority’s relevant guidelines are:

6.1 The requirement for factual accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact. However, broadcasters should still make reasonable efforts to ensure analysis, comment or opinion is not materially misleading with respect to any facts:

- referred to; or
- upon which the analysis, comment or opinion is based.

6.2 The standard is not concerned with technical or other points unlikely to significantly affect the audience's understanding of the content as a whole.

6.3 The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:

- the source of material broadcast (eg a reputable organisation or an authoritative expert; or social media or third-party content from a non-reputable or non-authoritative organisation or person which may require additional care or steps to be taken by the broadcaster)
- whether the broadcast was live or pre-recorded
- whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
- whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
- the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster
- the effect of any subsequent or follow-up coverage (eg where information has been updated or corrected as part of a developing story; or there is a delay between the time of broadcast and when the content has been accessed)
- the level of the broadcaster's editorial control over the content.

the Authority commenting:

The purpose of this standard is to protect the public from being significantly misinformed. The standard recognises the important role broadcasters play in protecting New Zealanders from misinformation and disinformation. The selection of programmes, opinions and interviewees to feature is a matter of editorial choice. However, reasonable efforts must always be taken to avoid misleading the public with respect to matters of fact. This applies whether facts are stated directly or form the basis of an opinion.

The standard applies only to news, current affairs and factual programming:

- News and current affairs can usually be readily identified as such, taking into account the topic(s) being discussed, and what audiences would reasonably expect to be news and current affairs. News and current affairs programmes may still contain – and can reasonably be expected to contain – opinion and analysis (eg from political editors and other experts).
- Factual programmes are non-fiction programmes which contain information audiences might reasonably expect to be authoritative or

truthful, such as documentaries which are presented as being trustworthy.

In assessing whether a statement was a statement of fact, or was analysis, comment or opinion (Guideline 6.1), the following factors may be relevant:

- the language used
- the type of programme (eg talkback can involve discussion of factual matters but is generally recognised as a robust environment focused on the exchange of opinions)
- the role or reputation of the person speaking
- the subject matter
- whether the statement is attributed to someone
- whether evidence or proof is provided.
- A programme may be inaccurate or misleading, but nevertheless may not breach the standard, if the broadcaster took reasonable steps, for example, by relying on a reputable source (Guideline 6.3).

[211] In respect of the 3 July 2021 broadcast’s “not addressed” ‘bite’, as I have said, my impression was that was not a meaning published as relying on any allegation made by any source.¹²⁰ Rather, my impression was the pre-recorded communication—that “[c]oncerns about emergency stops [were] ignored”—was conclusory, Mr Mead adding “Talley’s refusing to speak to respond to us on those specific questions today as their investigation begins”.

[212] As I have outlined,¹²¹ Mr Mead put more muted versions of that particular allegation (together with others) to Talley’s, initially as about the number of emergency stop buttons at the Ashburton factory, then as “a directly highlighted risk” of no emergency stop buttons on the Ashburton factory’s corn line to which “local management ... have taken no action” and ultimately as having “chosen not to adequately address” the sufficiency (including staff knowledge) of emergency stop buttons at the Ashburton factory. Mr Mead had Mr Hazlett’s direct statement he was confident Talley’s workers knew where emergency stop buttons were in the areas they were trained. He had Talley’s subsequent response it would “continue looking” at the allegation (with others) “to ensure they were also dealt with”. If then “not adequately” as TVNZ queried, Mr Mead also had Mr Hazlett’s direct statement Talley’s view was the allegation was best addressed by “an independent and expert review”. On that

¹²⁰ At [101] above.

¹²¹ At [92]–[95] above.

basis, the conclusory meaning I carried away in my head from the 3 July 2021 broadcast thus was not an accurate, balanced or fair communication. Talley's had not ignored the sufficiency of emergency stop buttons in its Ashburton factory and Mr Mead did not directly put to Talley's the proposition it ignored workers' concerns about emergency stop buttons in the Ashburton factory or fairly present Talley's response to the lesser allegations it raised with Talley's prior to broadcast.

[213] However, noting the difference in my broad impression of each the 3 July 2021 broadcast and article,¹²² I have more closely reviewed both for the purpose of TVNZ's defence (no longer limiting myself to the broad impression I took away in my head from either). In doing so, I noted there was a pause in the broadcast after Mr Mead said "But at Talley's it's claimed the opposite happened" and before he continued "Concerns about emergency stops ignored". In the article, that pause is substituted by the word "with". Thus it is plain my impression the broadcast carried the conclusory meaning I found was due to Mr Mead's expression and emphasis, rather than to its substance in characterising "ignored" as attributed to the unidentified source. In retrospect, it was an impression obtained from an accident of phrasing or perhaps even from when Mr Mead chose to take a breath. Accordingly, "ignored" not being TVNZ's own description of Talley's conduct, the broadcast was not inaccurate, unbalanced or unfair. Having regard for the "practical realities" of broadcast publication,¹²³ I cannot say Mr Mead's expression and emphasis in the 3 July 2021 broadcast was irresponsible. Had Talley's proven TVNZ's publication of the 3 July 2021 broadcast caused it pecuniary loss, I would have upheld TVNZ's defence of a responsible communication on a matter of public interest, to dismiss Talley's proceeding.

Result

[214] The proceeding is dismissed.

Costs

[215] If costs are not agreed between the parties, they are reserved for determination on short memoranda each of no more than five pages—annexing a single-page table

¹²² At [136] and [140] above.

¹²³ See [41] above.

setting out any contended allowable steps, time allocation and daily recovery rate—to be filed and served by TVNZ and Mr Mead within 10 working days of the date of this judgment, with any response or reply to be filed and served within five working day intervals after service.

—Jagose J

Counsel/Solicitors:

D M Salmon KC, Auckland

B H Dickey KC, Auckland

W R Potter, Barrister, Auckland

Meredith Connell, Auckland

Lee Salmon Long, Auckland