SUPREME COURT OF QUEENSLAND

CITATION:	*SDA v Corporation of the Synod of the Diocese of Rockhampton & Anor* [2021] QCA 172
PARTIES:	**SDA** (appellant) **v** **CORPORATION OF THE SYNOD OF THE DIOCESE OF ROCKHAMPTON** (first respondent) **STATE OF QUEENSLAND** (second respondent/not a party to the appeal)
FILE NO/S:	Appeal No 9955 of 2020 SC No 732 of 2020
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Rockhampton – [2020] QSC 253 (Crow J)
DELIVERED ON:	20 August 2021
DELIVERED AT:	Brisbane
HEARING DATE:	10 February 2021
JUDGES:	Fraser and Morrison JJA and Lyons SJA
ORDERS:	**(a) Orders (b) and (c) will take effect if within 14 days of the date of this order the parties have not notified the registrar that they have agreed upon orders finally disposing of the appeal.** **(b) Order that the further hearing of the appeal be adjourned to a date to be fixed by the registrar.** **(c) The costs of the appeal up to the date of this order are reserved.**
CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – PERSONAL INJURY OR FATAL ACCIDENTS PROCEEDINGS – OTHER MATTERS – where the appellant was a resident of an orphanage where he was alleged to have been sexually abused – where the appellant seeks disclosure under s 27(1)(b) of the *Personal Injuries Proceedings Act 2002* (Qld) ('PIPA') – whether disclosure of prior similar incidents is considered "circumstances of, or reasons for, the incident" – whether such information ought to be disclosed under s 27(1)(b) of the PIPA

Personal Injuries Proceedings Act 2002 (Qld), s 27

Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (2009) 239 CLR 27; [2009] HCA 41, cited
Day v Woolworths Ltd & Ors [2016] QCA 337, applied
Haug v Jupiters Limited Trading as Conrad Treasury Brisbane [2008] 1 Qd R 276; [2007] QCA 199, distinguished
Oliver v Mulp Pty Ltd [2009] QSC 340, distinguished
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355; [1998] HCA 28, applied
RACQ-GIO Insurance Limited v Ogilvie [2002] 1 Qd R 536; [2001] QSC 36, applied
Wright v KB Nut Holdings Pty Ltd [2010] QDC 91, distinguished

COUNSEL: G Mullins and P Nolan for the appellant
A M Arnold for the respondent

SOLICITORS: Maurice Blackburn Lawyers for the appellant
RBG Lawyers for the respondent

[1] **FRASER JA:** I have had the advantage of reading the draft reasons for judgment of Morrison JA. Morrison JA's comprehensive description in [36] – [70] of his reasons of the context in which the issue about the proper construction of s 27(1)(b)(i) of the *Personal Injuries Proceedings Act 2002* (Qld) ("PIPA") arises in this Court enables me to express my own reasons succinctly.

[2] When the appellant was a child he resided for more than six years in the St George's Home for Children. The Home was run by the first respondent. Reverend M had been the superintendent at the Home for about a decade before the appellant arrived. M retired about a year later. Some 45 years afterwards, the appellant gave the first respondent a notice of claim under PIPA. The appellant claimed that he had suffered personal injury as a result of being sexually abused by M, other staff, and male residents at the Home.

[3] The appellant applied for orders requiring the first respondent to comply with what were submitted to be its obligations to give the appellant information he had requested under s 27(1)(b)(i) of PIPA. The issue concerns information about complaints relating to M made by other residents of the Home. Upon the evidence, the first respondent did not receive any complaint against M at any time before M retired in or about December 1974, but decades after M's retirement the first respondent received complaints about him from former residents of the Home. The first respondent acknowledged it did have some information in its possession about complaints concerning M.

[4] The primary judge held that "the [first] respondent is not obliged to provide information in response to a request under s 27(1)(b)(i) which relates to prior similar incidents, unless it can be demonstrated that the prior incidents have causative effect, in the sense of being a strand in the rope of causation",[1] "it cannot be considered that information received 25 years after the fact could have had any bearing on what the first respondent did or did not do at the time of the incident, nor

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1 Reasons [40].

could it be said to have put the first respondent on notice of the risk",[2] and there was "a lack of causative effect between the information sought and the incident ... such that the information sought could not be considered a strand in the rope of causation and as such is not disclosable under s 27(1)(b) of the PIPA".[3]

[5] For the following reasons I respectfully conclude that the nature of information about prior similar incidents which is required to be given by a respondent to a claimant under s 27(1)(b)(i) is not confined to information about prior incidents that have a causative effect in relation to the incident alleged by a claimant and that, upon the evidence supplied to the Court in this matter (which does not presently comprehend the content of any prior complaint) it cannot be concluded that there was no causative effect between the information sought and the incident alleged in the appellant's notice of claim.

[6] Under the presently relevant part of the scheme set up by PIPA, a claimant who wishes to commence litigation must give a notice of claim containing prescribed information, the respondent to the claim must obtain information about the incident alleged to have given rise to the relevant personal injury, and the respondent must take steps with a view to settling the claim before litigation. Chapter 2, part 1 of PIPA regulates pre-court procedures, including (in division 1) the claims procedure. Section 27 is in division 2 of the same part, and imposes certain obligations on the parties, mostly concerning the exchange of documents and information. The purpose of that division is expressed in s 21 as being "to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim".

[7] Section 27(1)(b)(i) obliges a respondent to a notice of claim to give the claimant "information that is in the respondent's possession about the circumstances of, or the reasons for, the incident". The term "incident" is defined to mean "…the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury". If the definition of "incident" is read into s 27(1)(b) and other relevant provisions in the same division, it produces the following results:

> s 22(1)(a)(i): "A claimant must give a respondent – (a) copies of the following in the claimant's possession – (i) reports and other documentary material about [the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury] *alleged to have given rise to the personal injury* to which the claim relates." (Sub-paragraphs (ii) and (iii) describe other reports.)
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> s 22(1)(b)(i): "A claimant must give a respondent —… (b) information reasonably requested by the respondent about any of the following – (i) [the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury;]" (sub-paragraphs (ii) – (vi) describe other information about the injury and other matters bearing upon any personal injuries claim by the claimant.)
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> s 27(1)(a)(i): "A respondent must give a claimant – (a) copies of the following in the respondent's possession that are directly relevant to

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2 Reasons [43].
3 Reasons [43].

> a matter in issue in the claim – (i) reports and other documentary material about [the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury] *alleged to have given rise to the personal injury* to which the claim relates." (sub-paragraph (ii) – (iii) describe other reports about the claimant's condition and capacities.)
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> **s 27(1)(b):** "**A respondent must give a claimant –**
>
> **(b) if asked by the claimant –**
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> **(i) information that is in the respondent's possession about the circumstances of, or the reasons for, [the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury.]; or**
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> (ii) if the respondent is an insurer of a person for the claim, information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, [the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury]."

(The repetitious text I have italicised in s 22(1)(a)(i) and s 27(1)(a)(i) also occurs in other provisions in which the term "incident" appears, including ss 23(1)(a) and 25(1)(a). That repetition should be disregarded.[4])

[8] As the High Court explained in cases to which Morrison JA refers, the principles of statutory construction require the Court "to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute",[5] and, whilst the statutory language is "the surest guide to legislative intention" ascertainment of the meeting of that text may require consideration of the context, including the general purpose and policy of the provision.[6]

[9] In *Bettson Properties Pty Ltd & Anor v Tyler*[7] the Court adopted a similar summary of the principles of relevance in that case and sounded a note of caution about the use of dictionary definitions of simple and commonly used words:

> "The construction of these sections must be sourced in the statutory text understood in its context, which includes the statutory purpose.[8] As the primary judge observed, an interpretation that will best achieve the purpose of an Act is to be preferred to any other interpretation[9] and that purpose "resides in its text and structure" and

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4 *Western Australian Planning Commission v Southregal Pty Ltd* (2017) 259 CLR 106 [55]. See also *Commissioner of Police v Kennedy* [2007] NSWCA 328 [44].

5 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69].

6 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at 46 – 47 [47].

7 [2019] QCA 176 at [1], [22], and [31]. The footnotes in that text are reproduced here with different footnote numbering.

8 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 236 CLR 27 at 46 – 47 [47].

9 *Acts Interpretation Act* 1954 (Qld), s 14A(1).

> also may appear "by appropriate reference to extrinsic materials".[10] Dictionary meanings of such a simple and commonly used English word as "prevent" provide no real assistance in determining the proper construction of these statutory provisions."[11]

[10] There is no issue in this matter about whether relevant information is in the respondent's "possession". The other words in s 27(1)(b)(i) are simple and commonly used English words. In the passage from *South Western Sydney Local Health District v Gould* that was cited with approval in *Bettson Properties Pty Ltd & Anor v Tyler*, Leeming JA with whose reasons Basten and Meagher JJA agreed, observed:

> "The legal meaning of a statutory term is but rarely assisted by resort to a dictionary definition. On at least three occasions, joint judgments of a majority of the High Court have approved Learned Hand J's statement in *Cabell v Markham* 148 F 2d 737 (2d Cir 1945) to the effect that a mature and developed jurisprudence does not "make a fortress out of the dictionary". In *Commissioner of Taxation of the Commonwealth of Australia v BHP Billiton Ltd* (2011) 244 CLR 325; [2011] HCA 17 at [49], French CJ, Heydon, Crennan and Bell JJ said that there was a well-recognised danger in making a fortress out of the dictionary when interpreting a statute. See also *Residual Assco Group Ltd v Spalvins* (2000) 202 CLR 629; [2000] HCA 33 at [27] and *Thiess v Collector of Customs* (2014) 250 CLR 664; [2014] HCA 12 at [23]. The fact that one of the meanings in a dictionary may support the legal meaning of a statutory term chosen by a court does little to provide a basis for a conclusion as to legal meaning. It often does no more than to provide the illusory comfort that the court's construction is supported by common usage. Mason P, with whom Stein and Giles JJA agreed, endorsed the remark of Randolph J of the United States Court of Appeals for the District of Columbia Circuit, writing extra-judicially:
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> > "[C]iting … dictionaries creates a sort of optical illusion, conveying the existence of certainty – or 'plainness' – when appearance may be all there is."
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> (*House of Peace Pty Ltd v Bankstown City Council* (2000) 48 NSWLR 498; [2000] NSWCA 44 at [28].)
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> A dictionary will give a range of meanings of a word. The task of a court is to identify, from text, context and purpose, the particular meaning that a statutory provision bears. The function of a dictionary and the function performed by a court construing a statute are utterly different. It must be borne in mind that the meaning of *any* word used in a statute depends on the context and purpose of the legislation in which it appears: *Coverdale v West Coast Council* (2016) 259 CLR 164; [2016] HCA 15 at [18].
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> That dictionaries tend to be unhelpful is accepted in modern Australian appellate courts. Mason P said that dictionaries "can illustrate usage in context, but can never enter the particular

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10 *Lacey v Attorney-General (Qld)* (2011) 242 CLR 573 at [44].

11 See *South Western Sydney Local Health District v Gould* (2018) 97 NSWLR 513 at [78] – [82].

> interpretative task confronting a person required to construe a particular document for a particular purpose": *House of Peace* at [28]. In *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1; [202] HCA 14 at [103]-[111], Kirby J candidly acknowledged that he was "now inclined to see more clearly than before the dangers in the use of dictionary definitions", principally because of the need to have regard to context and purpose. I respectfully agree with Weinberg J's observation in *Vanstone v Clark* (2005) 147 FCR 299; [2005] FCAFC 189 at [163], recently endorsed in *Cheryala v Minister for Immigration & Border Protection* [2018] FCAFC 43 at [31] and [44]:
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> > "[163] … Dictionary definitions are unhelpful, and say little, if anything, about how that term is to be understood in any particular situation."
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> A dictionary may assist if a question truly arises as to the meaning of a word, especially if it is an historical meaning (in *House of Peace*, the question was whether use as a "church" in a 1954 development consent comprehended use as a mosque). It may also be accepted that a dictionary may assist a court in identifying the full range of literal meanings a statute might bear, although it is unlikely that modern statutes, which tend to be drafted by parliamentary counsel, will use language that requires resort to a dictionary definition. But even in cases where a dictionary might assist at the outset, the court's task is not accomplished by surveying the range of meanings found in a dictionary and choosing that which seems most apt. Doing so may often disguise the real reasons which favour a particular legal meaning. As McHugh J said in *Kelly v The Queen* (2004) 218 CLR 216; [2004] HCA 12 at [98], "The literal meaning of the legislative text is the beginning, not the end, of the search for the intention of the legislature."

[11] A similar point had been made nearly half a century earlier by Lord Reid in *Brutus v Cozens*:[12]

> "When considering the meaning of a word one often goes to a dictionary. There one finds other words set out. And if one wants to pursue the matter and find the meaning of those other words the dictionary will give the meaning of those other words in still further words which often include the word for whose meaning one is searching.
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> No doubt the court could act as a dictionary. … But we have been warned time and again not to substitute other words for the words of a statute. And there is very good reason for that. Few words have exact synonyms. The overtones are almost always different."

[12] When construing s 27(1)(b)(i) it is necessary to take into account the influence of the context in which it appears and its role in giving effect to the statutory purpose of putting the parties in a position where they have enough information to assess liability and quantum in relation to a claim.

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12 [1973] AC 854 at 861.

[13] Having regard to the statutory scheme, the expression in the definition of "incident", incorporated into s 27(1)(b)(i), "alleged to have caused … the personal injury", refers to an allegation made by the claimant in the claimant's notice of claim given under division 1.[13] The appellant's notice of claim describes the "incident" as being that the claimant was subjected to sexual abuse perpetrated by carers, including M, whilst the appellant was a resident at the Home. The appellant alleges that the appellant was sexually abused regularly, including in the presence of other residents and other staff, and that caused the appellant to sustain a psychiatric injury. The term "incident" in s 27(1)(b)(i) therefore comprehends each alleged act of sexual abuse of the appellant by M (and others).

[14] Thus s 27(1)(b)(i) obliges the first respondent, upon request by the appellant, to give the appellant "information … in the [first] respondent's possession about the circumstances of, or the reasons for" each alleged act of sexual abuse by M upon the appellant.

[15] It is necessary next to identify potentially relevant "information" in the first respondent's possession. The mere fact that complaints about M were made to the first respondent is "information" but, in circumstances in which those complaints were not made until long after the alleged sexual abuse of the appellant by M, that fact could not of itself amount to information "about the circumstances of, or reasons for" that alleged sexual abuse.

[16] Upon the evidence in this case, the only potential candidate for information of that description comprises the statements made about M in the complaints. Statements of that kind, like some other categories of information that claimants or respondents might possess, may or may not be accurate, and a person who possesses such information may or not have any belief or knowledge about their accuracy. A question arises whether "information" in the context of s 27(1)(b)(i) is confined to matter that is accurate or believed to be accurate by the person who possess the information. In my opinion it is not.

[17] Whether or not something stated to a respondent or claimant about the circumstances or reasons for an incident is accurate or believed to be accurate by the recipient of the statement, that statement is information about that incident. That accords with the ordinary meaning of the word "information", which comprehends true information and false information. Nor, in ordinary parlance, does information cease to be information if the person in possession of it forms a belief that it is untrue. Long experience of litigation confirms that in some cases information initially believed by one party to be untrue may be proved to be true by that party's opponent. It would not serve the expressed purpose of the provisions in division 2 to withhold from a claimant (or respondent) information that otherwise must be disclosed merely upon the ground that the respondent (or claimant) had formed an honest belief, falling short of knowledge, that the information was not true.

[18] That this meaning is appropriate in s 27 is also suggested by s 27(1)(b)(ii), which provides that a respondent which is an insurer must give to the complainant, if asked, "information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, the incident". There must be many cases in which an insurer could not know, but might have a belief, whether

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13 *Haug v Jupiters Limited* [2008] 1 QdR 276 at 277 [3] (Williams JA), 280 [13] – [14], [23] (Jerrard JA), and 287 [32] (White J).

statements by an insured which conflict with a claimant's statements are accurate. On the other hand, a claimant or respondent who gives to the other a statement made by a third party about the circumstances or reasons for an incident which is false to the knowledge of the claimant or respondent, would not in ordinary parlance be described as giving information about those circumstances or reasons. That view is consistent with s 73(3) which makes it an offence for a person to give a respondent or contributor a document containing information the person knows is false or misleading in a material particular.

[19] A different view of the meaning of information in s 27 is not required by the obligation imposed upon a respondent by s 27(3) to verify by statutory declaration information provided by a respondent if the claimant so requires. (A claimant has the same obligation in relation to information provided by the claimant to the respondent pursuant to s 22(1)(b): see s 22(7).) A person, whether claimant or respondent, could "verify" the relevant information by declaring what the person does know or believe about it, which, in a case of the present kind, seems likely to include at least the content, date, and provenance of the statement.

[20] For these reasons, my view is the better construction of the word "information" in s 27(1)(b)(i) is that, whilst it excludes information which the respondent knows is false, it does not exclude information about which the respondent's belief falls short of knowledge that it is false.

[21] The remaining question is whether the content of complaints to the first respondent by other former residents of the Home in relation to sexual abuse by M, given to the first respondent long after M left the Home, is capable of being regarded as "information that is in the respondent's possession about the circumstances of, or the reasons for," M's sexual abuse of the appellant.

[22] I have mentioned that in this case the accident, act, omission or circumstance constituting "the incident" alleged to have caused personal injury comprises M's sexual abuse of the appellant. That was the direct cause of the personal injury allegedly sustained by the appellant. That the definition of "incident" does refer to a direct cause alleged by a claimant is consistent with the expression "the reasons for" in s 27(1)(b)(i) comprehending an indirect cause of the personal injury which bears upon the respondent's alleged liability.

[23] In *RACQ – GIO Insurance Limited v Ogilvie*,[14] Ambrose J construed the expression "circumstances of the accident" in s 45(1) of the *Motor Accident Insurance Act 1994* (Qld), which required a claimant to "give information reasonably asked by the insurer about – (a) the circumstances of the accident out of which the claim arose". Ambrose J stated:

> "In my view, "circumstances of the accident" are not limited to events contemporaneous with the accident observable perhaps by an independent witness having an opportunity to view it. A circumstance of the accident is any fact to which the occurrence of the accident may be attributed. In my view, upon its proper construction, "circumstances of the accident" within the mean of s. 45(1)(a) encompass all events which appertain to or are causes of the accident in which a claimant suffers personal injury."

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14 [2002] 1 Qd R 536 at 542 [26].

[24] It is evident from the third sentence in the above passage that the second sentence was not intended to confine the required information to information about causes of the accident. Ambrose J's statement was quoted in *Haug v Jupiters Limited*,[15] but the Court did not decide that the expression "the circumstances of … the incident" in s 27(1)(b)(i) was confined to matters that were causative of the incident alleged in the notice of claim. Such a construction would not give effect to the expressed statutory purpose, it would unduly narrow the ordinary meaning of "the circumstances of … the incident", and it would not be consistent with the distinction made by the provision between the circumstances of the incident and the reasons for the incident.

[25] Otherwise, I agree with the explanation in [127] of Morrison JA's reasons for concluding that *Haug* does not support the respondent's argument in favour of limiting the scope of the information required by s 27(1)(b)(i). Similarly, I agree with Morrison JA's explanations in [128] – [131] of his reasons for concluding that *Oliver v Mulp Pty Ltd*[16] and *Wright v KB Nutt Holdings Pty Ltd*[17] also do not support the respondent's submission.

[26] The statutory context and purpose described in [6] of these reasons must be taken into account in construing the expressions "the circumstances of" and "the reasons for". With that in mind, the required information about the reasons for and the circumstances of the incident must comprehend information relating to the question whether the respondent may or may not be found liable and the appropriate quantum of the claimant's claim. In considering those matters, the statutory scheme requires reference to the claimant's notice of claim.

[27] Section 18 of the appellant's notice of claim form is headed "Detail the reasons why the injured person believes that person caused the incident". (The expression "that person" refers to the respondent). The first paragraph of the form under that heading states that "the reasons must particularly identify the step, process or act/s of the person that caused the incident and the link to the named respondent …". After a statement that the appellant was under the "care and control of the [r]espondent", this section of the claim describes two different bases of claim.

[28] First, section 18 of the notice of claim contends that the respondent is vicariously liable for the conduct of its employees, servants and agents, including M. Secondly, that section contends that the respondent breached its duty to take reasonable care to prevent harm to the appellant and was negligent in many ways, including by:

> "(b) Failing, whether adequately or at all, to make any assessment in relation to the risk of residents, and in particular, the [appellant], suffering sexual abuse.
>
> (c) Failing, whether adequately or at all, to carry out any checks, enquiries or other investigation into the character and/or suitability of all employees/agents/servants to be in control of children.
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> (d) Failing to have in place any, or any adequate, system for monitoring the conduct of its employees/agents/servants and residents.

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15 [2008] 1 Qd R 276.
16 [2009] QSC 340 at [9].
17 [2010] QDC 91.

(e) Failing to exercise any, or any adequate, control or supervision of its employees/agents/servants and residents.

(f) Failing to take all reasonable precautions for the [appellant's] safety whilst in its care.

…

(h) Exposing the [appellant] to a risk of abuse which the [first respondent] knew, or ought to have known about.

(i) Failing to have in place any, or any adequate, system, policy or procedure or line of communication to enable the [appellant], and others, to raise concerns or complaints of sexual abuse.

…

(k) Permitting or suffering the sexual abuse to continue in circumstances in which the [first respondent] knew, or ought to have known of the abuse or, at the very least, to have been sufficiently on notice to carry out further enquiry and take steps to prevent the ongoing abuse.

(l) Failing to attend to inspect the site, whether adequately or at all, so as to ensure the [appellant] was being cared for and not mistreated.

(m) Inviting, causing, permitting or suffering its employees/agents/servants to be appointed to a position of authority, power and control over the [appellant] such as to enable and allow the sexual abuse to occur."

[29] Although paragraph (m) is expressed as a particular of the first respondent's breach of a duty to take reasonable care to prevent harm to the appellant, it is significant for the vicarious liability claim. In *Prince Alfred College Inc v ADC*,[18] French CJ, Kiefel, Bell, Keane and Nettle JJ observed that the fact that a wrongful act is a criminal offence does not preclude the possibility of vicarious liability, but "the fact that employment affords an opportunity for the commission of a wrongful act is not of itself a sufficient reason to attract vicarious liability". Their Honours described the relevant approach in such a case:

> "… the relevant approach is to consider any special role that the employer has assigned to the employee and the position in which the employee is thereby placed vis-à-vis the victim. In determining whether the apparent performance of such a role may be said to give the "occasion" for the wrongful act, particular features may be taken into account. They include authority, power, trust, control and the ability to achieve intimacy with the victim. The latter feature may be especially important. Where, in such circumstances, the employee takes advantage of his or her position with respect to the victim, that may suffice to determine that the wrongful act should be regarded as committed in the course or scope of employment and as such render the employer vicariously liable."

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18 (2016) 258 CLR 134 at 159 – 160 [80] – [81].

[30] In summary:

(a) The substance of the applicant's claim for negligent breach of duty is that the first respondent caused the appellant's psychiatric injury by failing to take specific steps alleged to be reasonably necessary to protect the residents of the Home, including the appellant, from a risk of sexual abuse, in circumstances in which the first respondent knew or should have known there was such a risk.

(b) The substance of the appellant's claim that the first respondent is vicariously liable is that M committed the alleged sexual assaults by taking advantage of the position in which the first respondent had placed him in relation to the appellant, which conferred upon him such authority, power and control as to enable him to sexually abuse the appellant.

[31] In relation to the first of those bases of the appellant's claim, information about the content of any complaint made to the first respondent is capable of being regarded as information about the reasons for M's alleged sexual abuse of the appellant, at least if the complaint refers to sexual abuse by M of a different child at the Home committed before the last act of sexual abuse allegedly committed by M against the appellant. That is so because such information could bear upon the question whether any of the steps it is alleged in the notice of claim the first respondent should have taken would have been effective to prevent the alleged sexual abuse by M of the appellant.

[32] Thus, to take as an example paragraph (i) of the notice of claim, a system under which children in the Home could effectively make a complaint to the first respondent of sexual abuse by M might have prevented the alleged sexual abuse upon the appellant if a resident of the Home had earlier used the system to make such a complaint. Information that, before the last of the alleged acts of sexual abuse of the appellant, another resident of the Home had been sexually abused by M, may contribute to an inference that the suggested system would have been used by that other resident, with the result that M would have been denied unsupervised access to children at the Home. In that way, the content of such a complaint could inform a conclusion whether the alleged negligence of the first respondent was a material cause of the sexual abuse of the appellant. That would be sufficient to justify describing such a complaint as information about the reasons for M's sexual abuse of the appellant.

[33] In relation to the vicarious liability claim, information in a complaint of the kind I have described is capable of being regarded as information both about the reasons for and the circumstances of M's sexual abuse of the appellant. If, in addition to the alleged sexual assaults of the appellant, M had previously sexually assaulted another child at the Home, that could tend to support a conclusion that, by the time the appellant arrived at the Home, the first respondent was allowing M to occupy such a position of authority, power and control over the children in the Home (a circumstance of the alleged incident) as to enable the alleged sexual abuse of the appellant (a reason for the alleged incident).

[34] In relation to each basis of claim, my conclusions are deliberately expressed in tentative terms. Those conclusions are intended to illustrate the proper construction of the statute in so far as it might apply upon the evidence in this case. Whether or not any particular complaint received by the respondent in fact falls within the provision must depend upon the content of the complaint.

Disposition and orders

[35] In accordance with the parties' agreement at the hearing of this appeal that the Court should deal with the construction of s 27(1)(b) as a preliminary issue and thereafter allow the parties an opportunity to make further submissions or agree upon suitable orders, I would make the following orders:

(a) Orders (b) and (c) will take effect if within 14 days of the date of this order the parties have not notified the registrar that they have agreed upon orders finally disposing of the appeal.

(b) Order that the further hearing of the appeal be adjourned to a date to be fixed by the registrar.

(c) The costs of the appeal up to the date of this order are reserved.

[36] **MORRISON JA:** This appeal seeks to challenge orders made on 19 August 2020,[19] dismissing an application by SDA that disclosure be made pursuant to s 27(1)(b) of the *Personal Injuries Proceedings Act 2002* (Qld).

[37] In the 1970's and 1980's the first respondent (**the Diocese**) managed an orphanage in Rockhampton called "St George's Home for Children" (**the Home**).

[38] The appellant (**SDA**) was born in 1963 and, aged 10 years, entered the Home as a resident, where he remained from November 1973 until March 1980. Reverend M (**M**) was the superintendent of the home between December 1963 and his retirement in December 1974. M was superintendent of the Home for approximately a year while SDA was a resident.

[39] SDA alleges that he was subjected to sexual and physical abuse perpetrated by staff including M and Father P, as well as older male residents during his time at the Home.

[40] The disclosure sought by SDA related to his claim that he had been sexually abused while at the Home. The relevant terms of the application were that the Diocese disclose:

> "… all information about a report, complaint, warning, concern or investigation regarding any act of sexual or physical abuse on a child committed or alleged to have been committed by [M] at [the Home] between 18 December 1963 and 10 January 1975."

Background facts

[41] The background to the dispute is set out below, drawn largely from the reasons of the learned primary judge.

[42] On 16 August 2019, SDA served a notice of claim on the Diocese pursuant to the provisions of the *Personal Injuries Proceedings Act 2002* (Qld).[20]

[43] On 4 September 2019 the Diocese gave notice pursuant to s 10(1)(c) of PIPA that the second respondent (**the State**) considered itself a proper respondent to the claim. The Diocese further gave notice that, pursuant to s 12(2) of PIPA, the "Part 1 Notice of Claim is not a complying Part 1 notice". In particular, it was alleged that the

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19 *SDA v Corporation of the Synod of the Diocese of Rockhampton & Anor* [2020] QSC 253.

20 To which I shall refer as PIPA.

notice of claim was "non-compliant because it does not provide the particulars in relation to each incident alleged as required by s.3(3) of the *Personal Injuries Proceedings Regulation* 2014."

[44] The Diocese has made further complaints about the lack of information supplied by SDA.

[45] By its letter of 29 November 2019, the solicitor for the Diocese said "[o]ur inquiries reveal that none of the persons who worked at the Home during [M's] tenure as superintendent are still alive or able to be located".

[46] On 10 February 2020, SDA's solicitor made a request for documents and information pursuant to s 27(1)(a) and 27(1)(b) of PIPA. The Diocese, in its letter of 11 May 2020, disclosed some documents verifying M's appointment as superintendent and the role description for the superintendent at the Home, but took issue with the request for information.

[47] By its letter of 14 May 2020,11 the solicitor for SDA confirmed that SDA's case was "that the physical and sexual abuse ceased once Superintendent Paul Gribble took over management of St George's Home."

[48] The letter also includes the statement that "[o]ur client confirms that he made a statement to the Forde Commission of Inquiry regarding the physical abuse he suffered at St George's Home, but he does not have a copy of that statement."

[49] In the same letter, SDA made a request for information and documents to be verified by declaration in respect of:

> "(1) All documents recording a report, complaint, warning, concern or investigation regarding any act of physical abuse on a child committed or alleged to have been committed by Reverend M or Father P during Reverend M's tenure at St George's Home.
>
> (2) All documents recording any disciplinary and/or proposed disciplinary action against Reverend M or Father P for any act of physical abuse on a child committed or alleged to have been committed by either of them during Reverend M's tenure at St George's Home.
>
> (3) What actions, if any, were taken by your client in relation to complaints of physical abuse against Reverend M or Father P during his tenure at St George's Home?
>
> (4) What procedures, if any, were in place for children at St George's Home to make complaints in relation to their treatment by Reverend M or other staff during Reverend M's tenure at St George's Home?
>
> (5) Were inspections carried out by your client at St George's Home during Reverend M's tenure? If so, we request full details of the nature and extent of such inspections including the identity of the person or persons tasked with such inspections."

[50] On 18 June 2020, the Diocese disclosed further documents confirming that M left St George's Home in December 1974 but denied that s 27(1)(b)(i) of PIPA required

it to provide a list of names and contact details for persons who worked in the home as a matter of law. It nonetheless provided the names of all persons known to the Diocese who were employed at the home in the relevant period. Additionally, it gave information as to which of those witnesses have passed away and those who have not yet been located.

[51] With respect to the requests, the solicitor for the Diocese said:

> "1. The requests for documents in paragraph 1 and 2 do not relate to the incident and extend beyond what is permissibly sought in s 27(1)(a)(i). It amounts to a fishing expedition.
>
> 2. The request for information in paragraphs 3, 4 and 5 do not bear a relevant relationship with the incident. Our client does not have any records which would assist it to answer those requests. Further, our client is not obliged to make inquiry of outside sources to seek to answer a request under s 27(1)(b)(i)."

[52] Although r 444 of the *Uniform Civil Procedure Rules 1999* (Qld)[21] did not apply, the solicitors for SDA sent a "rule 444 letter" to the solicitors for the Diocese on 26 June 2020, complaining that the Diocese had failed to disclose information which it ought to have disclosed pursuant to s 27(1)(b) of PIPA. The "rule 444 letter" sought information in terms of paragraphs 1 and 2 of the subsequently filed originating application, which was attached in draft form to the letter. The originating application seeks the following orders:

> "1. Pursuant to Section 27(1)(b) of the *Personal Injuries Proceedings Act 2002* (Qld) the First Respondent disclose all information about a report, complaint, warning, concern or investigation regarding any act of sexual or physical abuse on a child committed or alleged to have been committed by [M] at St George's Home for Children, Rockhampton, Queensland, between 18 December 1963 and 10 January 1975.
>
> 2. The First Respondent pay the Applicant's costs of and incidental to this Application."

[53] The Diocese replied as follows:

> "As to the relief to which the draft Originating Application refers, we are instructed to respond as follows:
>
> 1. The request for information in paragraph 1 of the Originating Application is not made in your letter of 14 May 2020 and our client has not been given one month to respond under s.27(2)(b) PIPA. Further, the request does not relate to incidents particularised in the notice of claim and is too wide as it extends beyond "the circumstances of, or reasons for" the incidents allegedly involving your client within the meaning of s.27(1)(b) PIPA. Notwithstanding it is under no obligation to do so, our client has instructed us to obtain statutory

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21 To which I shall refer as the UCPR.

declarations to respond to the request. Those declarations are to the effect that:

(a) Searches of our client's records by David Rees, our client's recently retired Registrar, have not revealed that our client did not receive any complaint about [M] or [Father P] before [M's] retirement from the Home in December 1974. A copy of a statutory declaration by David Rees dated 29 June 2020 is enclosed.

(b) Neither Reverend Darnley nor Reverend Vanderwolf, the only two staff members who are still alive or available from the time of [M's] tenure as superintendent, are aware of any complaints made about [M] or [Father P]. Reverend Darnley also addresses this issue in his statutory declaration. A copy of the statutory declarations by Reverend Vanderwolf is enclosed. That declaration has not been witnessed as the declarant has not been able to find a qualified witness in the short time available and because of concerns in leaving his house in Melbourne due to the COVID-19 virus. Please confirm you will not take issue with that declaration not being witnessed.

2. As to questions 3, 4 and 5 in your letter of 14 May 2020, we repeat the objections stated in our letter of 18 June 2020. Notwithstanding, the statutory declarations of Reverend Darnley and Reverend Vanderwolf address these matters to the best of their recollections."

[54] The statutory declaration of Mr Rees swears that the Diocese does not have any record of any complaint being made at any time prior to retirement of M in or about December 1974. As can be observed from Exhibit LN42, the first complaint that the Diocese received from any former resident of the Home about M was a complaint received in 1999 (the time of the Forde Inquiry).

[55] As can be observed from the Diocese's response in paragraph 2, although repeating its prior objections, has provided statutory declarations addressing questions 3, 4 and 5.

[56] It was an accepted fact below that no complaint had been received about M prior to the time he retired in December 1974.

The basis of the claim

[57] The appellant gave the requisite notice of claim under the Act, detailing the basis for the claim. The date of the "incident" is stated as "Various incidents between approx. 1 Jan 1973 to 31 Dec 1981".[22]

[58] The "incident" is described in the claim as the appellant being subjected to sexual abuse by, inter alia, M.[23]

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22 AB 69, para 7.
23 AB 69, para 9.

[59] As to why the appellant believes the respondent "caused the incident", this was said:[24]

> "The Respondent is vicariously liable for the conduct of its employees, servants and/or agents, including [M].
>
> The Respondent breached its duty to take reasonable care to prevent harm to the Claimant and was negligent…"

[60] Particulars of the claim based on a breach of duty to take reasonable care to prevent harm are then set out:

(a) inviting, permitting and/or allowing the appellant to be sexually abused;

(b) failing, whether adequately or at all, to make any assessment in relation to the risk of residents, and in particular, the appellant, suffering sexual abuse;

(c) failing, whether adequately or at all, to carry out any checks, enquiries or other investigation into the character and/or suitability of all employees/agents/servants to be in control of children;

(d) failing to have in place any, or any adequate, system for monitoring the conduct of its employees/agents/servants and residents;

(e) failing to exercise any, or any adequate, control or supervision of its employees/agents/servants and residents;

(f) failing to take all reasonable precautions for the appellant's safety whilst in its care;

(g) failing to do, observe and carry out all acts, requirements and directions to provide for the fit and proper care of the appellant;

(h) exposing the appellant to a risk of abuse which the Respondent knew, or ought to have known about;

(i) failing to have in place any, or any adequate, system, policy or procedure or line of communication to enable the appellant, and others, to raise concerns or complaints of sexual abuse;

(j) failing to provide information to the appellant in relation to how to complain or raise concerns in relation to sexual abuse;

(k) permitting or suffering the sexual abuse to continue in circumstances in which the respondent knew, or ought to have known of the abuse or, at the very least, to have been sufficiently on notice to carry out further enquiry and take steps to prevent the ongoing abuse;

(l) failing to attend to inspect the site, whether adequately or at all, so as to ensure the appellant was being cared for and not mistreated;

(m) inviting, causing, permitting or suffering its employees/agents/servants to be appointed to a position of authority, power and control over the appellant such as to enable and allow the sexual abuse to occur.

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24 AB 72-73, para 18.

[61] Thus the two bases for the claimed injury are (i) vicarious liability, and (ii) negligence.

[62] The case based on breach of duty of care is essentially particularised as omissions on the part of the respondent to take steps. They include failure to:

(a) make an assessment in relation to the risk of sexual abuse;

(b) carry out checks, enquiries or other investigation into the character and/or suitability of M;

(c) have an adequate system for monitoring the conduct of M;

(d) have any adequate control or supervision of M;

(e) take reasonable precautions for the appellant's safety;

(f) take steps to provide for the fit and proper care of the appellant;

(g) have in place an adequate system to enable the appellant to raise concerns or complaints of sexual abuse;

(h) tell the appellant how to complain or raise concerns in relation to sexual abuse; and

(i) inspect the site so as to ensure the appellant was being cared for and not mistreated.

[63] The particularised case on breach of duty included matters which appear to be positive acts but which are simply the counterparts of the omissions referred to above:

(a) inviting, permitting and/or allowing the appellant to be sexually abused by M;

(b) exposing the appellant to a risk of sexual abuse which the respondent knew, or ought to have known about;

(c) allowing the sexual abuse by M to continue when the respondent knew, or ought to have known, of the abuse, or was on notice to enquire and take steps to prevent the ongoing abuse; and

(d) appointing M to a position of authority, power and control over the appellant such as to enable and allow the sexual abuse to occur.

[64] The material reveals that some information has already been provided:

(a) extracts from the Bishop's licence book showing the appointment of M as superintendent;

(b) the role description for the superintendent;

(c) a note from the Department of Communities, Child Safety and Disability Services dated 25 November 1974 stating that M was leaving the Home on 4 December 1974;[25]

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25 AB 120.

(d) a letter dated 24 January 1974 (but actually 24 January 1975) from the Bishop of Rockhampton to the Director of Children's Services stating that M left the Home "at the end of 1974" and was succeeded by Reverend G;[26]

(e) a memorandum for the Minister dated 10 February 1975 noting that Reverend G commenced his role at the Home from 10 January 1975;[27]

(f) that the respondent has no employment records for the Home for the period from 6 November 1973 (when the appellant arrived at the Home) to 4 December 1974 (when M left the Home);[28]

(g) the names of the six members of staff at the Home between 6 November 1973 and 4 December 1974, and which of those worked in the part of the Home that the appellant was in, which of them were still alive,[29] and that one (Ms Banks) could not be located;[30]

(h) the names of seven other staff members who worked at the Home during M's time as Superintendent (though perhaps before the appellant arrived) which had died, or which were unable to be contacted;[31]

(i) that the respondent had no records that would enable it to respond to the following questions posed by the appellant:[32]

(i) what actions, if any, were taken by the respondent in relation to complaints of physical abuse against M during his tenure at the Home?

(ii) what procedures, if any, were in place for children at the Home to make complaints in relation to their treatment by M or other staff during M's tenure at the Home?

(iii) were inspections carried out by the respondent at the Home during M's tenure? If so, the appellant requested full details of the nature and extent of such inspections including the identity of the person or persons tasked with such inspections;

(j) a newspaper article obtained from the Department's records, which shows M had an operation for cancer in 1972 and his departure from the Home was for health reasons;[33]

(k) that no complaint about M had been made by the time M left in 1974;[34]

(l) that searches of the respondent's records revealed that the respondent did not receive any complaint about M before M's retirement;[35]

(m) neither of the two surviving staff members from M's time (Reverend Darnley and Reverend Vanderwolf) were aware of any complaints about M;[36]

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26 AB 122.
27 AB 121.
28 AB 117.
29 Rev. Darnley, Rev. Vanderwolf and Ms Banks.
30 AB 117.
31 AB 118.
32 AB 114 and 118.
33 AB 143 and 152.
34 AB 144.
35 AB 144.
36 AB 144.

(n) those two surviving staff members addressed in statutory declarations their responses to the questions:[37]

(i) what actions, if any, were taken by the respondent in relation to complaints of physical abuse against M during his tenure at the Home?

(ii) what procedures, if any, were in place for children at the Home to make complaints in relation to their treatment by M or other staff during M's tenure at the Home?; and

(iii) were inspections carried out by the respondent at the Home during M's tenure? Is so, the appellant requested full details of the nature and extent of such inspections including the identity of the person or persons tasked with such inspections;

(o) a statutory declaration by Mr Rees dated 29 June 2020;[38]

(p) a statutory declaration by Reverend Darnley dated 29 June 2020;[39] and

(q) a statutory declaration by Reverend Vanderwolf dated 29 June 2020;[40]

(r) that the respondent has no evidence of any complaints (of sexual or physical abuse) being made about M during his tenure at the Home;[41]

(s) that the first complaints about M were received in 1999;[42]

(t) there was no mention of M in the final report from the Forde Commission of Inquiry;[43] and

(u) from 2004 the process for handling any complaints made against Clergy or staff of the respondent has been to refer such complaints to the Director of Professional Standards of the Brisbane Diocese;[44] that body had been consulted by the Diocese in order to respond.

Approach of the primary judge

[65] The learned primary judge dismissed the application, reasoning:

(a) the phrase "reasons for the incident" imposed a different obligation from the phrase "circumstances of the incident";[45]

(b) adopting what was said in *RACQ-GIO Insurance Limited v Ogilvie*[46] and *Haug v Jupiters Ltd*,[47] there was a significant difference between the obligations in s 27(1)(a) and s 27(1)(b); the former requires disclosure of documents directly relevant to a matter in issue "in the claim", whereas the latter refers to the "incident", not the "claim";[48]

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37 AB 144.
38 AB 146.
39 AB 147.
40 AB 150.
41 AB 160.
42 AB 161 and AB 164.
43 AB 161.
44 AB 161.
45 Reasons below at [20]-[30].
46 [2002] 1 Qd R 536.
47 [2008] 1 Qd R 276.
48 Reasons below [27].

(c) s 27(1)(b)(i) had a broader ambit than that imposed by s 45 of the *Motor Vehicles Insurance Act* 1994 (Qld), signified by the use of the additional phrase "reasons for the incident";[49]

(d) in deciding whether something is a "reason" for an incident it must be first decided as to the level of involvement an action or inaction may have in the occurrence of the "incident" (keeping in mind that the incident itself is discrete from the claim as a whole); as s 27 of the PIPA ought to be given "a broad, remedial construction" it is necessary that the "reason" be a strand in the rope of causation;[50]

(e) adopting what was said in *Oliver v Mulp Pty Ltd*,[51] the "circumstances of … the incident" included any fact to which the occurrence of the incident may be attributed;

(f) adopting what was said in *Wright v KB Nut Holdings Pty Ltd*,[52] under s 27(1)(b) disclosure was directed at what a respondent did or did not do, not at what it ought to have done; consequently, disclosure of information could not be compelled if it was relevant to the question of what respondent's duty was in the circumstances;[53]

(g) use of the reference to "the claim" in s 27(1)(a) obliges a respondent to disclose documents relating to prior similar incidents, however, Parliament's deliberate discarding of the broader term in "the claim" and use of the narrower phrase "the incident" in s 27(1)(b)(i) leads to the conclusion that the respondent is not obliged to provide information in response to a request under s 27(1)(b)(i) which relates to prior similar incidents, unless it can be demonstrated that the prior incidents have causative effect, in the sense of being a strand in the rope of causation.[54]

[66] The learned primary judge expressed his conclusion on the application for disclosure in this way:[55]

> "[41] If it had been Parliament's intention to require provision of information of prior similar incidents then Parliament could either have discarded the phrase "the incidents" in s 27(1)(b)(i) and persisted with "the claim" as used in s 27(1)(a)(i) or alternatively included the words "or similar incidents" after the word "incident" in s 27(1)(b)(i).
>
> [42] Here, it is established by the statutory declaration of Mr Rees, the first respondent does not have any documents relating to the request. Nor did the first respondent receive any complaint against Reverend M or Father P at any time prior to retirement of Reverend M in or about December 1974. Further, exhibits LN41 and LN42 show that the first respondent did not receive any complaint about Reverend M from any former resident of

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49 Reasons below [30]-[32].
50 Reasons below [34].
51 [2009] QSC 340 at [9].
52 [2010] QDC 91 at [37]-[38].
53 Reasons below [37].
54 Reasons below [40].
55 Reasons below [41]-[43]; internal footnotes omitted.

> St George's Home until 1999; 25 years after Reverend M left the Home in 1974.
>
> [43] Therefore, it cannot be considered that information received 25 years after the fact could have had any bearing on what the first respondent did or did not do at the time of the incident, nor could it be said to have put the first respondent on notice of the risk. In the present case, there is a lack of causative effect between the information sought and the incident is such that the information sought could not be considered a strand in the rope of causation and as such is not disclosable under s 27(1)(b) of the PIPA."

Scope of the relief sought

[67] In the course of oral address Mr Mullins of Counsel, appearing for SDA, referred to two points which were the subject of contention at first instance, though not mentioned in the reasons for judgment. The first was that period of time in respect of which information was sought, namely more than 11 years. The second was the breadth of what was sought, which comprehended not just information about a report, complaint or warning, but also a "concern".[56] In addition the Court raised the fact that the application sought information relating to "physical abuse" as well as "sexual abuse" when the claim alleged only sexual abuse.

[68] Further, Mr Mullins frankly conceded that the orders sought in the application were too wide and should be narrowed depending on the view taken by the Court of the construction of s 27(1)(b).[57]

[69] Ultimately each side agreed that the Court should deal with the construction of s 27(1)(b) as a preliminary issue, then give the parties an opportunity to agree a suitable order, or make further submissions.[58]

Construction of s 27(1)(b)(i)

[70] At the heart of the parties' contentions is the proper construction of s 27(1)(b) of the Act. Resolution of that issue impacted on the essential point of departure between the parties, namely whether there was an obligation to provide any information in relation to complaints that had been made at a later time (after the retirement of M) in respect of events that occurred earlier.

[71] The objects and purposes of the legislation must be considered when construing s 27(1). The proper approach has been often reinforced by the High Court in cases such as *Project Blue Sky Inc v Australian Broadcasting Authority*.[59] It requires that consideration focus on the text of the provision, in context.

[72] It is well established by *Project Blue Sky* that:[60]

> "The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and

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56 Appeal transcript page 9 lines 1-9.
57 Appeal transcript page 17 lines 27-40.
58 Appeal transcript page 31 lines 11-26.
59 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.
60 (1998) 194 CLR 355 at 381 [69].

> purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'."

[73] Further, as was said in *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue*:[61]

> "This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself… The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy."

The statutory provisions

[74] The *Personal Injuries Proceedings Act* 2002 (Qld) states the objects and purposes of the Act. The long title of the Act is: "An Act to regulate particular claims for and awards of damages based on a liability for personal injuries, and for other purposes". The main purpose and how that purpose is to be achieved is set out in s 4:

> "(1) The main purpose of this Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.
>
> (2) The main purpose is to be achieved generally by—
>
> (a) providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies; and
>
> (b) promoting settlement of claims at an early stage wherever possible; and
>
> (c) ensuring that a person may not start a proceeding in a court based on a claim without being fully prepared for resolution of the claim by settlement or trial; and
>
> (d) putting reasonable limits on awards of damages based on claims; and
>
> (e) minimising the costs of claims; and
>
> (f) regulating inappropriate advertising and touting."

[75] Section 7(1) provides that provisions of the Act as to the kind of damages and amount of damages are substantive, not procedural law. That seems to make it clear that s 27 is procedural law.

[76] Chapter 2 Part 1 deals with "pre-court procedures". Section 9 provides: "Before starting a proceeding in a court based on a claim, a claimant must give written notice of the claim, in the approved form, to the person against whom the proceeding is proposed to be started." Section 9(2) stipulates that the notice of

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61 (2009) 239 CLR 27 at 46-47 [47].

claim must: (i) contain a statement of the information required under a regulation; (ii) authorise the intended respondent and its insurer to have access to records and sources of information relevant to the claim specified under a regulation, and (iii) be accompanied by documents required under a regulation.

[77] Section 10 then provides that a recipient of a notice of claim must give a preliminary response to it. This requires the recipient to state: (i) if it considers it is a proper respondent to the claim, in which case it must give a notice under s 12; (ii) if it cannot decide if it is a proper respondent, advise the claimant of the further information reasonably needed to determine that issue; once it has that information it must decide if it is a proper respondent or not, and say so; (iii) if it determines it is not a proper respondent, give the claimant reasons why that is so, and any information the recipient has that might help the claimant identify the proper respondent; the claimant must respond saying whether it accepts that to be so, or not.

[78] The position of a recipient of a notice which responds by saying it is a proper respondent is protected by s 11, which provides that such a response is not an admission of liability.

[79] Where a recipient of a notice of claim responds that it is a proper respondent, it must then give a notice under s 12. This requires the proper respondent to state whether it is satisfied that Part 1 of the notice is a "complying part 1 notice of claim", and if it is not, specifying the non-compliance and saying whether it waives the non-compliance. If it does not waive non-compliance it must give time for the claimant to remedy the non-compliance. Failure of a recipient to respond under s 12 has the effect that the notice of claim is conclusively presumed to be compliant: s 13.

[80] A claimant's failure to give a complying Part 1 notice of claim places hurdles in the claimant's ability to proceed with the claim: s 18.

[81] Section 20 of the Act obliges a respondent to a complying Part 1 notice to takes steps with a view to settling the claim:

> "(1) Within the period prescribed under a regulation or, if no period is prescribed, within 6 months after a respondent receives a complying part 1 notice of claim, the respondent must—
>
> (a) take reasonable steps to inform himself, herself or itself about the incident alleged to have given rise to the personal injury to which the claim relates; and
>
> (b) give the claimant written notice stating—
>
> (i) whether liability is admitted or denied; and
>
> (ii) if contributory negligence is claimed, the degree of the contributory negligence expressed as a percentage; and
>
> (c) if the claimant made an offer of settlement in part 2 of the notice of a claim, inform the claimant whether the respondent accepts or rejects the offer, or if the claimant did not make an offer of settlement in part 2 of the

notice, invite the claimant to make a written offer of settlement; and

(d) make a fair and reasonable estimate of the damages to which the claimant would be entitled in a proceeding against the respondent; and

(e) make a written offer, or counter offer, of settlement to the claimant setting out in detail the basis on which the offer is made, or settle the claim by accepting an offer made by the claimant."

[82] Chapter 2 Div 2 then contains provisions relating to the "obligations of the parties". The purpose of Div 2 is set out in s 21: "The purpose of this division is to put the parties in a position where they have enough information to assess liability and quantum in relation to a claim."

[83] It must be noted that s 21 uses the phrase "enough information". It does not say all information, or something of that kind. And, the extent of the information is shown because it is to put the party in a position to "**assess** liability and quantum", not prove it or disprove it in the way that occurs at a trial.

[84] The obligations on the parties commence with s 22, dealing with the duty of the claimant to provide documents and information to the proper respondent:

"(1) A claimant must give a respondent—

(a) copies of the following in the claimant's possession—

(i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;

(ii) reports about the claimant's medical condition or prospects of rehabilitation;

(iii) reports about the claimant's cognitive, functional or vocational capacity; and

(b) information reasonably requested by the respondent about any of the following—

(i) the incident;

(ii) the nature of the personal injury and of any consequent disabilities;

(iii) if applicable, the medical treatment and rehabilitation services the claimant has sought or obtained;

(iv) the claimant's medical history, as far as it is relevant to the claim, and any other claims for damages for personal injury made by the claimant;

(v) the claimant's claim for past and future economic loss;

(vi) any claim known to the claimant for gratuitous services or loss of consortium or servitium consequent on the claimant's personal injury."

[85] One can see the two categories, "reports" and "other documentary material" in ss (1)(a) and "information" in ss (1)(b). Relevantly the documents and information must be "**about** the incident alleged to have given rise to the personal injury", or "**about**" aspects of the claimant's condition and prospects. The section does not define the reports or documents by reference to those which are directly relevant to the particular issue, but merely "about" that issue. The word "about" itself is not the subject of a definition but bears the meaning of "on the subject of" or "concerning".

[86] The "information" in s 22(1)(b) is conditioned in a number of ways. First, it is limited to that which is "reasonably requested". Secondly, the information must be "about" the incident alleged to have given rise to the personal injury, and aspects of the claimant's claim, such as the medical treatment, medical history, past claims, and heads of the claim for economic loss.

[87] The material obliged to be given under s 22(1) can be seen to further the purpose of putting the respondent in the position of being able to assess the claim. The ability to assess the claim is protected as time goes on because the claimant must inform the respondent of changes to the claimant's medical condition or disabilities, or other circumstances relevant to the assessment of the claim: s 22(5).

[88] The "information" given under s 22 is for the express purpose of giving enough information so that the respondent can assess the claim. That assessment is critical given the obligation on the respondent to make a fair and reasonable estimate of the damages and then make an offer to settle the claim: s 20(1)(d) and (e), see paragraph [81] above.

[89] The word "information" is not defined but bears the meaning of facts about something. In my view, the legislature must have intended that the information required to be given by a claimant is true, either because it is known to be true or can be proved to be true. The fact that the scheme of the Act is to put the respondent in the position of being able to assess the claim, make a fair and reasonable estimate of the damages, and then make an offer, compels that conclusion. In any event s 73(2) and (3) makes it an offence for a claimant to "state anything to the respondent … the person knows is false or misleading in a material particular", or to "give the respondent … a document containing information the person knows is false or misleading in a material particular".

[90] The statutory purposes are furthered by provisions such s 25, under which a claimant must submit to a reasonable request that the claimant to be examined by a doctor for the purposes of preparing a report about the claimant's medical condition, prospects of rehabilitation, or cognitive, functional or vocational capacities: s 25(2).

[91] Section 27 relevantly provides:

"**27 Duty of respondent to give documents and information to claimant**

(1) A respondent must give a claimant—

(a) copies of the following in the respondent's possession that are directly relevant to a matter in issue in the claim—

(i) reports and other documentary material about the incident alleged to have given rise to the personal injury to which the claim relates;

(ii) reports about the claimant's medical condition or prospects of rehabilitation;

(iii) reports about the claimant's cognitive, functional or vocational capacity; and

(b) if asked by the claimant—

(i) information that is in the respondent's possession about the circumstances of, or the reasons for, the incident; or

(ii) if the respondent is an insurer of a person for the claim, information that can be found out from the insured person for the claim, about the circumstances of, or the reasons for, the incident.

….

(3) If the claimant requires information provided by a respondent under this section to be verified by statutory declaration, the respondent must verify the information by statutory declaration.

(4) If a respondent fails, without proper reason, to comply fully with this section, the respondent is liable for costs to the claimant resulting from the failure."

[92] The obligations under s 22 and s 27 are excused in some cases. Section 30 relives a party from the obligation to disclose "information or documentary material" if the information or documentary material is protected by legal professional privilege.[62] Further, if a respondent has reasonable grounds to suspect a claimant of fraud, the respondent may apply on an *ex parte* basis to withhold from disclosure "information or documentary material, including a class of documents, that, … would alert the claimant to the suspicion … or … could help further the fraud": s 30(3).

[93] Section 31 makes it an offence for a respondent to withhold information or documentary material from disclosure under either Div 1 or Div 2 of the Act, "unless the withholding is permitted under the division or the court approves the withholding".

[94] Apart from that, failure to disclose a document has the effect that the party in breach cannot use the document in subsequent court proceedings based on the claim or deciding the claim, without the court's leave: s 32.

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62 Subject to a qualification in s 30(2) concerning reports relevant to the claimant's rehabilitation.

[95] Information, reports and documentary material given or disclosed under Div 1 or Div 2 "are protected by the same privileges as if disclosed in a proceeding before the Supreme Court": s 33. And there is a provision avoiding duplication in production of documents or information: s 34.

[96] Compliance with Div 1 or Div 2 by either party can be enforced by the court: s 35.

[97] It is in that context that s 27 falls to be construed.

Construction of s 27(1)(b)

[98] The term "incident" is relevantly defined to mean "the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury". It is appropriate to read the definition of "incident" into s 27(1)(b)(i) (the operative provision) before construing it.[63]

[99] Reading in the definition of "incident", that provision relevantly reads:

> "information that is in the respondent's possession about the circumstances of, or the reasons for, the … act, omission or circumstance, alleged to have caused all or part of the personal injury".

[100] The words of s 27(1)(b)(i) are that the respondent must "give … information". That can be contrasted with what is required under s 27(1)(a), which is concerned with documents: "reports" and "other documentary material". The use of an alternative word means that "information" is not the same as, nor confined to, documents. Further, in the case of s 27(1)(a), what must be given are documents as well, namely "copies of" the reports and other documentary material. The same is not the case with the "information". A simple example will suffice to indicate the point. A respondent may receive an oral communication about the alleged incident. Even though no documentary record of that communication is made or retained by the respondent it will nonetheless constitute "information" in the respondent's possession for the purposes of s 27(1)(b). Assuming it otherwise complies with s 27(1)(b) that information must be given to the claimant on request. It is possible that the giving of the information may necessitate producing a record of it, but it may also simply be given by referring to the information in correspondence.

[101] In my view, as with s 22, the information given by a respondent under s 27(1)(b) must be true, either because it is known to be true or can be proved so. It can hardly be consistent with the statutory scheme that such pre-proceeding steps could differ as between the claimant and the respondent. All the information being considered under the provisions in Div 2 is information being exchanged prior to proceedings being commenced. Two of the main purposes of the Act are to promote settlements at an early stage and ensure a claimant does not start a proceeding without being fully prepared for resolution: s 4(2)(b) and (c). Further to those ends, the information given to a respondent must be such that it serves the statutory purpose of enabling the respondent to assess the claim and make a fair and reasonable estimate of

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63 *Kelly v The Queen* [2004] HCA 12, (2004) 218 CLR 216 [84], [103]; *Watson v Scott* [2015] QCA 267, [2016] Qd R 184 [49]-[50]; *Bond v Chief Executive, Department of Environment and Heritage Protection* [2017] QCA 180, [2018] 2 Qd R 112 [10]-[11]; *Gold Coast City Council v Sunland Group Ltd* [2019] QCA 118, (2019) 1 Qd R 304 [33].

the damages. And, the information given to a claimant must be such that the claimant is enabled to assess liability and respond to the offer that a respondent is required to make.

[102] It must be noted that, in respect of the obligation on a respondent to give information to the claimant, there is no provision equivalent to s 73, which makes it an offence to give false information, but only in respect of information given to a respondent. That may be a reflection of the fact that under the Act the respondent is obliged to assess the claim and make an offer to settle, and therefore the legislature felt that s 73 was necessary to deter false claims. However, it means there is no statutory sanction on a respondent's giving information to a claimant which the respondent knows to be false.

[103] However, in my view, the legislature cannot have intended that a respondent's obligation to provide information could be met by the provision of information known to be false. An example may suffice to make the point. Let it be assumed that the Diocese received a note from a person saying that he had been abused by M while a student at the home, but the Diocese knew for a fact that the person had never been at the home. It cannot have been intended that the note or its contents, being false, constitute information obliged to be provided under s 27(1)(b).

[104] What, then, of an intermediate position, where the respondent does not know if the information is true or not? For example, where a person said that they made a complaint about M during the time he was at the home but there is no record of such a complaint. What the Diocese knows to be true is that the person has asserted something, but it does not know if what they assert is true.

[105] In my view, the obligation on a respondent under 27(3) has an impact on this question. If the claimant requires information provided by a respondent under s 27(1)(b) to be verified by statutory declaration, "the respondent must verify the information by statutory declaration".

[106] In the intermediate example above the "information" that the respondent can verify by statutory declaration is that the person has asserted that he made a complaint, not that such a complaint was actually made.

[107] In my view, the two factors, one being the evident purpose of the pre-proceedings exchange of information is to promote the fair and reasonable settlement of claims, and the second being that the respondent can be obliged to verify the information it gives by statutory declaration, leads to the conclusion that the information to be provided must be true, either because it is known to be true or can be proved so.

[108] However, that also means there must be a critical examination of just what constitutes the "information" in the particular case.

[109] Further, the information must be "in the respondent's possession". In my view, given the fact that the phrase is cast in the present tense and the purpose of the legislation, that means in the actual possession of the respondent, not constructive possession. It does not extend to what might be obtained through enquiry. Had that been intended then words similar to those found in relation to insurers in s

27(1)(b)(i) would have been used.[64] Thus a respondent who is not an insurer does not have to go outside what it has in its actual possession.

[110] Next, the information must be "**about** the circumstances of, or the reasons for, the incident" alleged to have cause the personal injury. Therefore, the information must be on the subject of or connected with the act, omission, or circumstance that is alleged to have caused the personal injury. As is evident, that is a different thing from the requisite connection for documents under s 27(1)(a), where documents have to be directly relevant to a matter in issue in the claim.[65]

[111] As noted above, the word "incident" is defined in Schedule 1 to the Act as meaning, in relation to personal injury: "the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury".

[112] It can be seen that the definition deals with two separate categories of event, each of which is an event alleged to have caused the personal injury. The first is the "accident", and the second is something "other" than the accident, namely any "act, omission or circumstance". Plainly if the claim does not allege that an accident caused the personal injury, then one must turn to the second category. This claim does not allege accident.

[113] The second category refers to an "act, omission or circumstance". Each of those is qualified in the sense that it each refers to what is alleged to have caused all or part of the personal injury. Given that s 27 applies before any proceedings are commenced in court, each refers to what is alleged in the notice of claim as being the cause of the personal injuries.

[114] Therefore, the information required to be given under s 27(1)(b)(i) falls into two categories. One is information about "the circumstances of … the act, omission or circumstance, alleged to have caused all or part of the personal injury". The second is information about "the reasons for … the act, omission or circumstance, alleged to have caused all or part of the personal injury". As the legislature chose to use both formulations it may be accepted that there is a difference between what is intended by the "circumstances of", and the "reasons for", the relevant act, omission or circumstance.

[115] The word "circumstances" refers to the facts surrounding the act, omission or circumstance. In the words used by Ambrose J in *RACQ GIO Insurance Limited v Ogilvie*,[66] it refers to any fact to which the occurrence of the act, omission or circumstance may be attributed.

[116] There might be thought to be some circularity in the expanded phrase "the **circumstances of** … **the** act, omission or **circumstance**, alleged to have caused all or part of the personal injury". However, on closer consideration, the first refers to facts generally whereas the second refers to particular facts, that is, those that are alleged to have cause the personal injury. It is, in my view, of little moment in light of the words which matter to the issues here, namely the "reasons for the act, omission or circumstance".

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64 *Oliver v Mulp Pty Ltd* [2009] QSC 340 at [13].

65 See *Haug v Jupiters Limited Trading as Conrad Treasury Brisbane* [2008] 1 Qd R 276, at [3]-[5], [26].

66 *RACQ-GIO Insurance Limited v Ogilvie* [2002] 1 Qd R 536 at 542; adopted in *Haug v Jupiters Limited Trading as Conrad Treasury Brisbane* [2008] 1 Qd R 276, at 286 [26].

[117] In my view, "reasons for" should be understood in s 27(1)(b)(i) as referring to facts serving to explain the act, omission or circumstance that is alleged to have caused all or part of the personal injury.

[118] In lay terms the difference can be explained this way. The information as to the "circumstances of" the relevant accident, act, omission or circumstance alleged to have caused the personal injury consists of the facts as to **what happened**. The formulation as used by Ambrose J in *RACQ-GIO Insurance Limited v Ogilvie* and adopted in *Haug v Jupiters Ltd* is apposite:[67]

> "A circumstance of the accident is any fact to which the occurrence of the accident may be attributed. In my view, upon its proper construction, 'circumstances of the accident' within the meaning of s. 45(1)(a) encompass all events which appertain to or are causes of the accident in which a claimant suffers personal injury."

[119] By contrast, the "reasons for" the relevant accident, act, omission or circumstance alleged to have caused the personal injury consists of facts which explain **why it happened**.

[120] An example will serve to illustrate the distinction. A worker sustains personal injuries by falling into a pit at the workplace, at a time when the lights are off. Those are facts which go to the "circumstances of" the act or omission. The employer later discovers that a strike at the electricity supplier's generating plant led to the electricity for the lights being cut off. That is a fact that goes to the "reasons for" the act or omission.

[121] However, in my respectful view, there is no reason to put a gloss on the plain words of the statute by limiting that which must be disclosed as the "reasons for the act, omission or circumstance alleged to have caused … the personal injury". It may be accepted that for a fact to be a reason for the cause of what happened it must be a strand in the rope of causation, as explained by the primary judge.[68] But I do not consider that under s 27(1)(b)(i) the information is limited to what the respondent did or did not do, and excludes information relevant to the respondent's duty in the circumstances.[69] The plain words of the section do not suggest such a limitation, nor is it required by applying a broad, remedial construction on the section.

[122] As noted above, the word "reasons" refers to the facts serving to explain why the act, omission or circumstance (alleged to have caused the personal injury) occurred. The very use of the three alternate words reveals the difficulty with any suggested limitation. They are different events which may be alleged to have caused the personal injury. What constitutes an "act" may well be different from an "omission", and different again from a "circumstance". If the information required to be disclosed catches reasons for the omission that is alleged to have caused the injury, one can immediately see that the scope is wide.

[123] A simple example of a claim that personal injury was caused by sexual abuse illustrates the point. An "act" would catch a positive act such as an allegation that the claimant was sexually abused by X. That would be different from an alleged

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67 *RACQ-GIO Insurance Limited v Ogilvie* [2002] 1 Qd R 536 at 542.

68 Reasons below [34].

69 The view expressed in *Wright v KB Nut Holdings Pty Ltd* [2010] QDC 91 at [37]-[38].

"omission", such as an allegation that the employer of X did not take reasonable steps to prevent the sexual abuse from happening. And, each could be different from a "circumstance", such as an allegation that the place where the sexual abuse occurred was of a particular configuration, or remoteness, so that it permitted concealment of the abuse.

[124] In my view, the phrase "act, omission or circumstance" refers to factual matters in each case. It refers to the facts that explain what is alleged to have caused the personal injury. Where what is alleged as the cause is an omission to take reasonable care, one can see that facts that might explain why the omission occurred could comprehend that other things happened which served to put the respondent on notice. In that respect, I respectfully agree with the comments of Jackson J in *Day v Woolworths Ltd*, at least as it relates to "reasons for" the incident:[70]

> "[109] In my view the existence of prior similar incidents, if any, may be information about the circumstances or reasons for the incident. Those circumstances could include that the respondent was on notice of the risk in a way that made the measures adopted to avoid the risk inadequate. That would be a circumstance of the incident for the purposes of s 27(1)(b)(i) of PIPA, read in the context of ch 2 pt 1 div 2 generally."

[125] It follows that I respectfully disagree with the learned primary judge's reasoning at paragraph [41] of the Reasons below: see paragraph [66] above.[71] Once it is understood that the "incident" in s 27(1)(b)(i) refers to the "incident" described and particularised in the notice of claim, there is no relevant distinction between that and the "claim" under s 27(1)(a).

[126] The respondent urged that reliance should be placed on the decisions in *Haug*, *Oliver* and *Wright*, and that those decisions stood as authority limiting the scope of the information under s 27(1)(b)(i). For reasons which follow I do not consider that submission should be accepted.

[127] *Haug* considered whether documents and information had to be about the incident described and particularised in the notice of claim. At issue were orders made, based on a broad view of s 27(1)(a)(i), which had the effect that the documents to be provided did not have to be "about the incident" in the notice of claim, nor directly relevant. Ultimately the only order in contest, and therefore the only order that the Court had to deal with, was one seeking information under s 27(1)(b), namely the identifying description and location of security cameras.[72] That was dealt with shortly, on the basis that it sought more than information about the circumstances of or the reasons for the incident.[73]

[128] *Oliver* concerned a claimant who was injured when involved in a fight at a hotel. The claimant contended that the hotel and its security guards should have done more to evict his assailant and prevent the fight, and that the hotel did not properly train or supervise the security guards. The information requested under s 27(1)(b)

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70 *Day v Woolworths Ltd & Ors* [2016] QCA 337 at [109].

71 The Diocese eschewed reliance upon his Honour's reasoning in this respect: amended outline, paragraph 13.

72 *Haug* at [20], question 11; [28].

73 *Haug* at [28].

went to, *inter alia*, whether in the 12 months prior to the incident there had been other fights between patrons. Martin J identified various principles drawn from *Haug*,[74] but none of them are determinative here. His Honour held that the questions about other fights were not facts to which the occurrence of the incident may be attributed.[75] That conclusion sets no precedent for the current case given the more restricted form of the claimed breaches of duty made in *Oliver*. The only allegation that might have come close to justifying that information was that the hotel failed to take any reasonable steps to prevent patrons at the hotel from becoming involved in a physical altercation when it knew or ought to have known of the risk of that eventuating after an initial altercation.[76] That alleged risk was vague in content, and in any event, the fight in which the claimant was injured occurred outside the hotel.

[129] In my respectful view, *Wright* suffers from two difficulties that prevent its adoption as authority limiting the scope of information in the present case. First, the learned judge reasoned that s 27(1)(b) was concerned with questions of causation, not duty of care, and that therefore questions could be asked of what the respondent did or did not do, but not of what it ought to have done. His Honour held that information that was "**only** relevant to the question of whether the respondent had a duty to do something" was not caught by s 27(1)(b)(i).[77] In that analysis no account seems to have been taken of the impact of reading the definition of "incident" into the provision, and therefore the reasoning does not address the question of information about an omission which is alleged to have caused the injury.[78]

[130] Secondly, his Honour seems to have acknowledged that where an omission is the basis of the alleged cause, information may be legitimately sought about prior events:[79]

> "[35] If there is a duty to act and the defendant does not act, and if, had the defendant performed that duty and acted, the harm to the plaintiff would have been averted, it can be said that the omission was a cause of the harm the plaintiff suffered. But does it follow that a respondent must give a claimant (if asked) information about any relevant omission on the part of the respondent, or about circumstances which are sought to be relied on as giving rise to a duty on the part of the respondent to act, on the basis that it is information about the circumstances of, or the reasons for, the incident?
>
> [36] If one focuses on the scope of the reasons for the incident, it may be in a particular case that one of the reasons for the incident can be seen as an omission on the part of the respondent to do something which, if done, would have prevented the incident. On the basis, it may well be relevant to inquire about whether the respondent had done, or had not done, at or prior to the time of the incident, any particular

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74 *Oliver* at [9].
75 *Oliver* at [15].
76 See *Oliver* at [3], paragraph 18(vii).
77 *Wright* at [37]-[38]; emphasis added.
78 His Honour noted the definition at [35], but does seem to have returned to it.
79 *Wright* at [35]-[36].

> things which if done, or perhaps if done more thoroughly or extensively, or better, would have prevented the incident. That could well cover matters like inquiries as to previous directions given by school staff to pupils in relation to their conduct, which it is alleged ultimately led to the claimant's injury, as in *Broadhead*. Possibly, it might extend to information about whether or not the respondent had done anything in relation to a particular individual alleged to have been responsible for the harm as a result of previous conduct by that individual, as in *Wolski*."

[131] In my view, when that passage is read with what follows in paragraph [37] of *Wright*, his Honour's comments cannot be accepted as limiting the information requested in this case.

[132] Here the claim in negligence particularises an alleged cause of the personal injury based on, *inter alia*, omissions to act in the face of actual or constructive knowledge that SDA was being sexually abused by M: see paragraphs [62] and [63] above. In such a case the fact that there were complaints about M's conduct, that is conduct during the period when SDA was at the Home, whenever those complaints were made, might be relevant information to explain the alleged cause of the injury, that is the failure to act. In other words, those complaints might be facts serving to explain the cause of the omission alleged to have caused the personal injury.

[133] In my respectful view, the learned primary judge took an unduly constrained view of such complaints. His Honour reasoned that "information received 25 years after the fact could have had any bearing on what the [Diocese] did or did not do at the time of the incident, nor could it be said to have put the [Diocese] on notice of the risk".[80] But if those complaints revealed, for example, that someone had complained during the time M was in charge, that could be argued to be a fact that would have put the Diocese on notice as to M's actions.

Further conduct of the appeal

[134] I agree with the orders proposed by Fraser JA.

[135] **LYONS SJA:** I agree with the reasons of his Honour Justice Fraser JA and the orders proposed.

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80 Reasons below [43].