

# SUPREME COURT OF QUEENSLAND

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

PARTIES: **SDA**  
(applicant)  
v  
**CORPORATION OF THE SYNOD OF THE DIOCESE OF ROCKHAMPTON**  
(first respondent)  
**THE STATE OF QUEENSLAND**  
(second respondent)

FILE NO/S: SC No 732 of 2020

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Rockhampton

DELIVERED ON: 19 August 2020

DELIVERED AT: Rockhampton

HEARING DATE: 3 August 2020

JUDGE: Crow J

ORDER: **1. The application is dismissed.**

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – PERSONAL INJURY OR FATAL ACCIDENTS PROCEEDINGS – OTHER MATTERS – where the applicant seeks information of prior similar incidents under s 27(1)(b)(i) of the *Personal Injuries Proceedings Act 2002 (Qld)* (“PIPA”) – whether prior similar incidents may be considered “circumstances of, or reasons for, the incident” - whether such information ought to be disclosed under s 27(1)(b)(i) of the PIPA

*Personal Injuries Proceedings Act 2002 (Qld)*, s 27

*Day v Woolworths Ltd* [2016] QCA 337, followed  
*Haug v Jupiters Ltd* [2008] 1 Qd R 276; [2007] QCA 199, followed  
*Oliver v Mulp Pty Ltd* [2009] QSC 340, applied  
*RACQ-GIO Insurance Ltd v Ogilvie* [2002] 1 Qd R 536; [2001] QSC 36, considered  
*Wright v KB Nut Holdings* [2010] QDC 91, applied

COUNSEL: P M Nolan for the applicant  
A M Arnold for the first respondent  
J Beard (*sol*) for the second respondent

SOLICITORS: Maurice Blackburn Lawyers for the applicant  
 Swanwick Murray Roche Lawyers (Rockhampton) acting as  
 Town Agent for RBG Lawyers (Brisbane) for the first  
 respondent  
 Crown Law for the second respondent

### **Background**

- [1] The first respondent managed an orphanage in Parkhurst, Rockhampton called “St George’s Home for Children” (“the Home”).
- [2] The applicant was born on 1 August 1963 and, aged 10 years, entered the Home as a resident, where he remained from 6 November 1973 until March 1980. Reverend M was the superintendent of the home between December 1963 and his retirement in December 1974. Reverend M was superintendent of the Home for approximately a year while the applicant was a resident.
- [3] The applicant alleges that he was subjected to sexual and physical abuse perpetrated by staff, including the superintendent Reverend M and Father P,<sup>1</sup> as well as older male residents during his time at the Home.<sup>2</sup>
- [4] On 16 August 2019 the applicant served a notice of claim on the first respondent pursuant to the provisions of the *Personal Injuries Proceedings Act 2002* (Qld) (“PIPA”).
- [5] On 4 September 2019 the first respondent gave notice pursuant to s 10(1)(c) of the PIPA that the second respondent considered itself a proper respondent to the claim.<sup>3</sup> The first respondent further gave notice, on 4 September 2019, that pursuant to s 12(2) of the PIPA that the “Part 1 Notice of Claim is not a complying Part 1 notice”.<sup>4</sup> In particular, it was alleged that the 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*.”<sup>5</sup>
- [6] The first respondent has made further complaints about the lack of information supplied by the plaintiff.<sup>6</sup>
- [7] By its letter of 29 November 2019,<sup>7</sup> the solicitor for the first respondent said “[o]ur inquiries reveal that none of the persons who worked at the Home during [Reverend M’s] tenure as superintendent are still alive or able to be located”.<sup>8</sup>
- [8] On 10 February 2020, the applicant’s solicitor made request for documents and information pursuant to s 27(1)(a) and 27(1)(b) of the PIPA.<sup>9</sup> The first respondent,

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<sup>1</sup> Exhibit LN17, LN20 and LN22 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>2</sup> Exhibit LN17 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>3</sup> Exhibit LN6 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>4</sup> Exhibit LN6 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>5</sup> Exhibit LN6 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>6</sup> Exhibit LN9 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>7</sup> Exhibit LN12 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>8</sup> Exhibit LN12 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>9</sup> Exhibit LN13 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

in its letter of 11 May 2020,<sup>10</sup> disclosed some documents verifying Reverend M's appointment as superintendent and the role description for the superintendent at the Home, but took issue with the request for information.

- [9] By its letter of 14 May 2020,<sup>11</sup> the solicitor for the applicant confirmed that the applicant's case was "that the physical and sexual abuse ceased once Superintendent Paul Gribble took over management of St George's Home."<sup>12</sup>
- [10] 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."<sup>13</sup>
- [11] In the same letter,<sup>14</sup> the applicant 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.
- [12] On 18 June 2020,<sup>15</sup> the first respondent disclosed further documents confirming that Reverend M left St George's Home in December 1974 but denies that s 27(1)(b)(i) of the PIPA required the first respondent to provide a list of names and contact details for persons who worked in the home as a matter of law, but nonetheless provided the names of all persons known to the first respondent who were employed at the home in the relevant period. Additionally, information as to which of those witnesses have passed away and those who have not yet been located was also provided to the applicant.

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<sup>10</sup> Exhibit LN20 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>11</sup> Exhibit LN22 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>12</sup> Exhibit LN22 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>13</sup> Exhibit LN22 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>14</sup> Exhibit LN22 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>15</sup> Exhibit LN23 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

[13] With respect to the requests, the solicitor for the first respondent said:<sup>16</sup>

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).

[14] Although r 444 of the *Uniform Civil Procedure Rules 1999* (Qld) (“UCPR”) did not apply, the solicitors for the applicant sent a “rule 444 letter” to the solicitors for the first respondent on 26 June 2020,<sup>17</sup> complaining that the first respondent had failed to disclose information which it ought to have disclosed pursuant to s 27(1)(b) of the 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:<sup>18</sup>

- “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 [Reverend 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.”

[15] The first respondent’s replied as follows:<sup>19</sup>

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

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<sup>16</sup> Exhibit LN23 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>17</sup> Exhibit LN30 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>18</sup> Originating Application filed 17 July 2020.

<sup>19</sup> Exhibit LN32 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

- (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 [Reverend M] or [Father P] before [Reverend M's] retirement from the Home in December 1974. A copy of a statutory declaration by David Rees dated 29 June 2020 is enclosed.<sup>20</sup>
- (b) Neither Reverend Darnley nor Reverend Vanderwolf, the only two staff members who are still alive or available from the time of [Reverend M's] tenure as superintendent, are aware of any complaints made about [Reverend 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.”

[16] The statutory declaration of Mr Rees,<sup>21</sup> swears that the first respondent does not have any record of any complaint being made at any time prior to retirement of Reverend M in or about December 1974. As can be observed from Exhibit LN42,<sup>22</sup> the first complaint that the first respondent received from any former resident of the Home about Reverend M was a complaint received in 1999 (the time of the Forde Inquiry).

[17] As can be observed from the first respondent's response in paragraph 2,<sup>23</sup> the first respondent, although repeating its prior objections, has provided statutory declarations addressing questions 3, 4 and 5.

[18] The remaining issue therefore is whether an order ought to be made in terms of paragraph 1 of the originating application, that is, whether the applicant is entitled

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<sup>20</sup> I have concluded that the double negative in this paragraph was in error as it does not reflect Mr Rees' statutory declaration which is Exhibit LN33 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>21</sup> Exhibit LN33 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>22</sup> Exhibit LN42 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>23</sup> At [15].

to an order pursuant to s 27(1)(b) of the PIPA requiring the first defendant to provide:

“... 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 [Reverend M] at St George’s Home for Children, Rockhampton, Queensland, between 18 December 1963 and 10 January 1975.”

### **Section 27(1)(b) of the PIPA**

[19] Section 27 of the PIPA 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.
- (2) A respondent must—
  - (a) give the claimant the copies mentioned in subsection (1)(a) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving a complying part 1 notice of claim and, to the extent any report or documentary material comes into the respondent’s possession later, within 7 days after it comes into the respondent’s possession; and

- (b) respond to a request under subsection (1)(b) within the period prescribed under a regulation or, if no period is prescribed, within 1 month after receiving it
- (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.”

[20] In *RACQ-GIO Insurance Ltd v Ogilvie*,<sup>24</sup> Ambrose J was required to interpret s 45(1)(a) of the *Motor Accident Insurance Act 1994* (Qld) (“MAIA”), which provided (at that time):

- “45(1) A claimant must cooperate with the insurer and, in particular, must give information reasonably asked by the insurer about —
- (a) the *circumstances of the accident* out of which the claim arose; and...”

(Emphasis added.)

[21] In that case the applicant had sought information, pursuant to s 45(1)(a), regarding the claimant’s consumption of alcohol or drugs in the 12 hour period immediately preceding the motor vehicle accident. In ordering the claimant to provide the information, Ambrose J said:<sup>25</sup>

“[26] In my view, ‘circumstances of the accident’ are not limited to events contemporaneous with the accident observable perhaps by an independent witness having the 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 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. The term certainly includes the degree of a driver’s intoxication either from drugs or alcohol if they may be causative of a collision to which personal injury is attributed. It would also include intoxication of a claimant by alcohol or drugs should that be relevant to questions of contributory negligence.”

[22] Ambrose J’s reasoning was approved by Jerrard JA (with whom Williams JA and White J) agreed in *Haug v Jupiters Ltd*.<sup>26</sup> In *Haug*, the claimant purported to utilise s 27(1)(b)(1) of the PIPA to obtain information of “[w]hat is the identifying

<sup>24</sup> [2002] 1 Qd R 536.

<sup>25</sup> *RACQ-GIO Insurance Ltd v Ogilvie* [2002] 1 Qd R 536 at 542.

<sup>26</sup> [2008] 1 Qd R 276.

description of all camera/s which filmed the incident and where are they located? e.g. ‘camera “x” and “y” located in the foyer’.”<sup>27</sup>

[23] The claimant, Haug, had sought information relating to an incident whereby he alleged he was assaulted by security staff employed by Jupiters Limited. Jerrard JA concluded that the request need not be answered as the request “seeks more than information about the circumstances of the incident or the reasons for it.”<sup>28</sup>

[24] In *Haug*<sup>29</sup> Jerrard JA accepted the reasoning of Ambrose J in *Ogilvie*.<sup>30</sup> Jerrard JA said:<sup>31</sup>

“[27] The learned trial judge in this matter considered that the construction of ‘circumstances of the accident’ in that legislation was relevant to the obligation imposed by s. 27(1)(a)(i) of the PIPA. The judge thus concluded that the obligation to produce directly relevant documents about the incident therefore extended to production of reports and other documents about (all events) which appertain to or relate to causes of the incident. I respectfully disagree; the reasoning of Ambrose J. explains why there is a significant difference between, on the one hand, the obligation in 27(1)(a)(i) to provide copies of documents which are both directly relevant and are also documents about the incident, and on the other hand, an obligation to give information ‘about the circumstances of the accident’ (the *Motor Accident Insurance Act* provision). It is much the same as the difference between the obligations in 27(1)(a)(i) and in 27(1)(b)(i). The latter obligation is much closer to s. 45(1) (as it was) than is the former. The respondent’s argument tries to find the same breadth of meaning in ‘about the incident’ as Ambrose J. found in ‘about the circumstances of the accident’, but the difference in terminology is highlighted by the wording of s. 27(1)(a)(i) and s. 27(1)(b)(i). *Courts are obliged to apply the language of the differently worded obligations as worded, and that means different outcomes.*”

(Footnotes omitted, emphasis added.)

[25] Williams JA, who agreed with the reasons of Jerrard JA said:<sup>32</sup>

“[2] The duty imposed upon a claimant by s. 22 of the *Personal Injuries Proceedings Act* 2002 (‘the Act’) and the duty imposed on a respondent by s. 27 thereof are consequent upon a notice of claim having been given pursuant to s. 9 of the Act. Section 9(2)(a) provides that the notice must contain the information required under a section, and s. 3(3) of the

<sup>27</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 284.

<sup>28</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 287.

<sup>29</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276.

<sup>30</sup> *RACQ-GIO Insurance v Ogilvie* [2002] 1 Qd R 536.

<sup>31</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 286.

<sup>32</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 277.

*Personal Injuries Proceedings Regulation 2002* requires details of how the incident alleged to have caused the personal injury happened to be set out in the notice. Further, in the Schedule Dictionary to the Act the term ‘incident’ is defined in relation to personal injury as meaning ‘the accident, or other act, omission or circumstance, alleged to have caused all or part of the personal injury’.

[3] Against that background when s. 27(1)(a)(i) of the Act requires a respondent to provide copies of reports and documents ‘material about the incident alleged to have given rise to the personal injury to which the claim relates’ that must be a reference to the ‘incident’ described and particularised in the notice of claim.

[4] Similarly, when s. 27(1)(b)(i) of the Act requires a respondent to provide information ‘about the circumstances of, or the reasons for, the incident’ that must be a reference to the ‘incident’ described and particularised in the notice of claim.”

[26] White J, in *Haug*, said:<sup>33</sup>

“[32] I have read the reasons for judgment of Jerrard J.A. and agree with his Honour for the reasons that he gives that this appeal must be allowed.

[33] I have also read Williams J.A.’s observations on the scope and purpose of the *Personal Injuries Proceedings Act 2002* particularly as they relate to the obligations imposed on the parties by ss 22 and 27 respectively. I agree with his Honour that although the purposive approach to statutory construction must be preferred to any other interpretation, s. 14A of the *Acts Interpretation Act 1954*, it may not prevail over the clear words of the provisions of the Act. Accordingly, the broad construction sought to be advanced by Mr Myers for the respondent must give way to the actual words employed by the legislature which have the effect of limiting the categories of material that must be disclosed and produced by the appellant.”

[27] As emphasised by each of the Justices in *Haug*,<sup>34</sup> there is a significant difference between s 27(1)(a)(i) which requires disclosure of documents directly relevant to a matter in issue “in the claim” and s 27(1)(b) which makes specific reference to “the incident” not the claim. The “incident”, as Williams JA points out is, having regard to the definition of incident in the schedule dictionary to the Act, the incident particularised in the notice of claim.

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<sup>33</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 287.

<sup>34</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276.

- [28] Use of the different words “claim” and “incident” in ss 27(1)(a) and 27(1)(b) have the effect, as White J said, of limiting the categories of material that must be disclosed and produced.<sup>35</sup>
- [29] I am conscious of the difference between the words used in s 45(1)(a) of the MAIA, that is, “the circumstances of the accident” and s 27(1)(b)(i) of the PIPA which obliges the provision of information “about the circumstances of, or the reasons for, the incident”. This raises the issue of whether Parliament’s deployment of the additional words “or the reasons for” the incident contained in s 27(1)(b)(i) of the PIPA and not in s 45(1)(a) of the MAIA results in the conclusion that the obligations to disclose information in ss 45(1)(a) of the MAIA and s 27(1)(b)(i) of the PIPA differ as “differently worded obligations... mean different outcomes.”
- [30] It has been authoritatively decided by *Haug* that the phrase “circumstances of the accident” ought to be interpreted as Ambrose J did in *Ogilvie* case to “encompass all events which appertain to or are causes of the accident”. There is, however, no express declaration in case law as to whether the words “reasons for the incident” purport a somewhat different obligation to provide information. I conclude that it does.
- [31] The Macquarie Dictionary defines “reason” as “a ground or cause, as for a belief, action, fact, event...”<sup>36</sup> The same dictionary defines “circumstance” as “a condition, with respect to time, place, manner, agent, etc., which accompanies, determines or modifies a fact or event...the existing condition or state of affairs surrounding and affecting an agent...”<sup>37</sup>
- [32] While the singular definitions of the word “reason” and “circumstance” do not significantly differ, and in fact in most scenarios could be used interchangeably, the mere fact that they have both been used conveys a broader meaning than either word ordinarily would in their singular use; their totality broadens the singular definition. As Parliament has chosen to include both I am “obliged to apply the language of the differently worded obligations as worded.”<sup>38</sup> Therefore, I conclude that s 27(1)(b)(i) of the PIPA has a broader ambit than that of s 45(1)(a) of the MAIA.
- [33] However, this raises some difficulty in affixing a definition as to what may be the “reasons” for an incident under s 27(1)(b)(i) of the PIPA. It can be appreciated that the PIPA governs a large number of proceedings that appear before this, and other courts. The factual basis for those proceedings can range from malfunctioning equipment to, as is the case here, allegations of systemic physical and sexual abuse.
- [34] 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). Is it necessary that the “reason” be an indispensable link in the chain of causation or merely a strand in the rope of causation? As s 27 of the PIPA ought to

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<sup>35</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 287.

<sup>36</sup> *Macquarie Dictionary* (online at 18 August 2020) ‘reason’.

<sup>37</sup> *Macquarie Dictionary* (online at 18 August 2020) ‘circumstance’.

<sup>38</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 286.

be given “a broad, remedial construction”<sup>39</sup> the latter conclusion, that is that the “reason” be a strand in the rope of causation, is the appropriate conclusion.

[35] I agree with the reasons of Martin J in *Oliver v Mulp Pty Ltd*,<sup>40</sup> where his Honour said:<sup>41</sup>

“[9] In *Haug v Jupiters Limited Trading* [2008] 1 Qd R 276 the Court of Appeal considered the provisions of s 27(1)(a) and s 27 (1)(b) of PIPA. The following principles may be drawn from that decision:

- (a) When s 27(1)(b)(i) of the Act requires a respondent to provide information ‘about the circumstances of, or the reasons for, the incident’ that must be a reference to the ‘incident’ described and particularised in the notice of claim.
- (b) Provisions such as s 27 should be given a broad, remedial construction; but that does not mean words of limitation found in the section can be ignored.
- (c) Unlike the duty of the claimant in s 22(b) of PIPA, the respondent’s obligation under s 27(1)(b)(i) to provide information to the claimant is not limited by the requirement that the information be ‘reasonably requested’.
- (d) The obligation in s 27(1)(b)(i) is much closer to that in s 45(1) of the *Motor Accident Insurance Act* which was considered by Ambrose J in *RACQ/GIO Insurance Ltd v Ogilvie* [2002] 1 Qd R 536. It would follow, then, that the ‘circumstances of ... the incident’ would include any fact to which the occurrence of the incident may be attributed.”

[36] In *Oliver*, the applicant, Oliver, was involved in an altercation with another patron of the St George Hotel Motel both inside the hotel and outside the entrance of the hotel. The applicant sought information about incidents of physical altercations between patrons “with respect to the period of 12 months preceding the assault.”<sup>42</sup> Martin J said that he could not see how they were facts to which “the occurrence of the incident may be attributed...[m]any of those questions are nothing more than fishing expeditions.”<sup>43</sup>

[37] Both *Haug* and *Oliver* were carefully considered by McGill SC DCJ in *Wright v KB Nut Holdings*.<sup>44</sup> I agree with the conclusions of McGill SC DCJ that:<sup>45</sup>

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<sup>39</sup> *Haug v Jupiters Ltd* [2008] 1 Qd R 276 at 277.

<sup>40</sup> [2009] QSC 340.

<sup>41</sup> *Oliver v Mulp Pty Ltd* [2009] QSC 340 at [9].

<sup>42</sup> *Oliver v Mulp Pty Ltd* [2009] QSC 340 at [15].

<sup>43</sup> *Oliver v Mulp Pty Ltd* [2009] QSC 340 at [15].

<sup>44</sup> [2010] QDC 91.

<sup>45</sup> *Wright v KB Nut Holdings* [2010] QDC 91 at [37]-[38].

“[37] ...[Section] 27(1)(b) is essentially talking about the issue of causation. Information can be obtained about what the respondent did or did not do, but not about what the respondent ought to have done.

[38] ...[T]he claimant is entitled to information about what the respondent actually did or did not do by way of cleaning or inspection of premises, but information which is relevant to the question of what the respondent’s duty was in the circumstances then prevailing, in relation to the cleaning or inspection of the premises, is not something which is within the scope of s 27(1)(b)...”

[38] In *Day v Woolworths Ltd*,<sup>46</sup> Jackson J (with whom McMurdo P and Philippides JA agreed) said:<sup>47</sup>

“[105] Question 26 asked as follows:

‘26. Please provide the relevant documents and information relating to all slip and fall incidents that occurred at the premises of the Woolworths Limited’s supermarkets and in the Woolworths supermarket at Springfield prior to and after the incident on 18 December 2014, including the number of the incidents, the dates and the description of the spillage hazards caused such slip and fall incidents.’

[106] The first respondent’s answer was as follows:

‘Question 29[sic] The request for documents relating to all slip and fall incidents at Woolworths’ stores prior to and after 18 December 2014 is not directly relevant to either the circumstances of the accident or the reasons for the accident.’

[107] The primary Judge held that because Question 26 relates to all slip and fall incidents at the store before and after the incident it did not bear on the circumstances or reasons for the applicant’s fall.

[108] The applicant submits that disclosure will show that the incident was the “product of a systemic pattern” of a “negligent system”. She relies on *Broadhead v State of Queensland*.

[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

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<sup>46</sup> [2016] QCA 337.

<sup>47</sup> *Day v Woolworths Ltd* [2016] QCA 337 at [105]-[110].

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.

- [110] It may be that Question 26 should have been answered as to any relevant prior incident for a reasonable period. In my view, that would be confined in time to no more than say five years beforehand and to slip and fall incidents where the slip was caused by a substance dropped on the floor making it slippery. However, the applicant's question was not so confined. Therefore it may not have been erroneous for the first respondent to decline to answer. In my view, it is ultimately unnecessary to answer that question in the circumstances of this case."

(Footnotes omitted.)

- [39] In *Day v Woolworths Ltd*,<sup>48</sup> the appellant, Ms Day, had slipped on a piece of shallot on the floor of a supermarket in December 2014. As may be seen from paragraph 110 of the reasons of Jackson J, the unconfined nature of the question led his Honour and the Court of Appeal to conclude that it was not erroneous for the first respondent to decline to answer such that as it was "ultimately unnecessary to answer that question in the circumstances of this case."
- [40] In the present case, the applicant argues that the reasons at paragraph 109 of *Day* support a conclusion that all prior similar incidents ought to be disclosed, the conclusion contrary to *Oliver*. In my view, Parliament's 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.
- [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,<sup>49</sup> 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<sup>50</sup> show that the first respondent did not receive any complaint about Reverend M from any former resident of St George's Home until 1999; 25 years after Reverend M left the Home in 1974.

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<sup>48</sup> [2016] QCA 337.

<sup>49</sup> Exhibit LN33 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

<sup>50</sup> Exhibits LN41 and LN42 to the affidavit of Lucille Deborah Nel filed 17 July 2020.

- [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,<sup>51</sup> nor could it be said to have put the first respondent on notice of the risk.<sup>52</sup> 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.
- [44] The application is dismissed.

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<sup>51</sup> *Wright v KB Nut Holdings* [2010] QDC 91 at [37].

<sup>52</sup> *Day v Woolworths Ltd* [2016] QCA 337 at [109].