

# Case Alert

Shaping the future of insurance law

## Enough rope? The limits of disclosure under PIPA

***SDA v Corporation of The Synod of the Diocese of Rockhampton & Anor (2020) QSC 253***

31 AUGUST 2020

### AT A GLANCE

- The Supreme Court of Queensland has dismissed an application for disclosure of information about prior incidents when contemplating the scope of a defendant's obligations under s. 27 of the *Personal Injuries Proceedings Act 2002* (Qld) (PIPA).
- The Court found that claimants have a broad entitlement to request information from respondents about the reasons for an 'incident', however, that entitlement is limited to the actual incident, not related incidents.
- If those reasons are found to constitute "a strand in the rope of causation", they will fall within the ambit of s. 27 of PIPA and trigger the requirement to provide disclosure.
- For insurers of institutions, the decision is significant as it potentially broadens the scope of a respondent's obligation to disclose information.

### BACKGROUND

The applicant had been a resident in St George's Home, an orphanage operated by the first respondent, from 6 November 1973 to March 1980. The applicant alleged he was subjected to sexual and physical abuse perpetrated by staff and other residents at the orphanage, including the superintendent, 'Reverend M', and 'Father P'.

Reverend M was the superintendent of the orphanage between December 1963 and December 1974.

The applicant had served a notice of claim for damages under the *Personal Injuries Proceedings Act 2002* (Qld) (PIPA) on the first respondent,

claiming damages for personal injury caused by the alleged abuse.

The first respondent provided information to the applicant that confirmed Reverend M's tenure as superintendent at the time of the alleged abuse and advised the applicant that the people who worked at the orphanage during that time were either dead or unable to be located.

The applicant made a request under s. 27(2)(a) and s. 27(1)(b) of PIPA seeking:

- 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. (*Our emphasis in bold.*)

- All documents recording any disciplinary 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.
- Information about the actions, if any, that were taken regarding complaints of physical abuse against Reverend M or Father P during Reverend M's tenure at St George's Home.
- Information about what procedures, if any, were in place for children at St George's Home to make complaints regarding their treatment by Reverend M or other staff during Reverend M's tenure at St George's Home.
- Information about what inspections were carried out at St George's Home during Reverend M's tenure, including full details of the nature and extent of such inspections and the identity of the person(s) tasked with the inspections.

The first respondent provided further disclosure confirming Reverend M left the orphanage in December 1974. It also provided the names and contact details of all persons known to the first respondent who were employed at the orphanage in the relevant period, despite the first respondent's view that such information was not required by s. 27(1)(b)(i) of PIPA.

The first respondent maintained that requests 1 and 2 did not relate to the 'incident' and amounted to a 'fishing expedition' and that requests 3, 4 and 5 did not "bear a relevant relationship with the incident". The first respondent also said it did not have any records to assist in providing that information and was not required to "make enquiry of outside resources" to answer the request under s. 27(1)(b)(i) of PIPA.

In the intervening exchanges between the applicant and the first respondent, the first respondent provided two statutory declarations from the first respondent's registrar and a former staff member confirming the first respondent did not have any record of a complaint, nor received any complaint,

about Reverend M or Father P before December 1974.

The applicant then brought an application seeking an order that the first respondent 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."* (*Our emphasis in bold.*)

The issue was whether the applicant was entitled to such an order under s. 27 of PIPA.

### OPERATION OF S.27 OF PIPA

Justice Crow considered the distinction between the obligation of respondents to give **documents** with the obligation to provide **information** contained in s. 27(1)(a) and s. 27(1)(b) of PIPA. His Honour found:

- The requirement to give documents was confined to those "directly relevant to a matter in issue in the claim" and "about the incident". This was distinct from the obligation to provide information to the claimant at s. 27(1)(b), which was more broadly drafted to capture information "about the circumstances of, or reasons for, the incident".
- While the definition of 'claim' has the potential for broad application, His Honour adopted the reasoning of Jerrard JA in *Haug v Jupiters Ltd*, where the 'incident' was confined to the 'incident' alleged in the notice of claim, and not "documents about (all events) which are pertained to or relate to causes of the incident".
- As the Legislature elected to adopt repetitive language in using the terms 'circumstances of' and 'reasons for', which are largely interchangeable, His Honour found that "the mere fact that they have both been used, conveys a broader meaning of either word ordinary would in this singular use; their totality broadens the singular definition", which ultimately conveyed a broader ambit than other coordinate legislation (such as the *Motor Accident Insurance Act*).

- The ‘reasons’ for an incident must involve an assessment of “the level of involvement an action or inaction may have in the occurrence of the ‘incident’”. His Honour considered whether that reason is an “indispensable link in the chain of causation or merely a strand in the rope of causation” when considering the scope of s. 27(1)(b), and given the broad construction he found ought to be applied, a ‘strand in that rope’ was enough to fall within the ambit of s. 27(1)(b).
- This did not create an unfettered obligation on the part of a respondent to provide information about what a respondent ought to have done. This delved into a contemplation of a respondent’s duty, which was not the purpose of s. 27 of PIPA.

The applicant argued that the commentary in *Day v Woolworths Ltd*, in which a plaintiff sought information and disclosure about all slip and fall incidents at a subject premises, both before and after an incident. In that case, the defendant refused to provide the information and disclosure as it was not relevant to either the circumstances of, or the reasons for, the ‘accident’ that was the subject of the claim.

The Court of Appeal ultimately did not determine the issue, however, found that such a request would have been permissible under PIPA had the plaintiff appropriately confined the question to a reasonable period before the incident. This is because such information was relevant to a determination of whether the defendant “was on notice of the risk in a way that made the measures adopted to avoid the risk inadequate” and was, therefore, ‘a strand in the rope’ of causation.



**If the reasons for an ‘incident’ are found to constitute a “strand in the rope of causation”, they will fall within the ambit of s.27 of PIPA and trigger the requirement to provide disclosure.**

In *SDA*, the applicant’s argument was rejected because s. 27(1)(b) was constrained to information about the ‘incident’ and not the claim generally. His Honour found that “the respondent is not obliged to provide information [about prior incidents] ... unless it can be demonstrated that the prior incidents have causative effect, in the sense of being a strand in rope of causation.”

Given the passage of time since the alleged abuse took place and the absence of documents in the possession of the first respondent evidencing prior complaints, His Honour found that “information received 25 years after the fact [could not] have had any bearing on what the first respondent did or did not do at the time of the incident, nor could it have said to have put the first respondent on notice of the risk.” In the absence of ‘causative effect’, the requested information was not a strand in the rope of causation and was not within the ambit of s. 27(1)(b) of PIPA.

The application was dismissed.

## THE SIGNIFICANCE OF THIS DECISION

While this application was ultimately unsuccessful, the decision potentially broadens the scope of a respondent’s obligation to disclose information to claimants about the ‘reasons’ for an incident, provided the claimant can establish that the request is relevant to causation and is reasonably contained.

This could have implications for the disclosure obligations of respondents when responding to requests for information. In assessing these issues, respondents will need to determine whether the information requested is relevant to the cause of the incident. That can be a value-based assessment that is both subjective and influenced by hindsight.

This decision also reiterates the requirement that requests for disclosure of information be limited to the subject of the dispute and not to broader matters.

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## NEED TO KNOW MORE?

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