



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

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IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE REGISTRY

BETWEEN:

**DZY (A PSEUDONYM)**

Appellant

and

**TRUSTEES OF THE CHRISTIAN BROTHERS**

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Respondent

### **APPELLANT'S OUTLINE OF ORAL SUBMISSIONS**

#### **Part I: Certification**

1. This outline of oral submissions is in a form suitable for publication on the internet.

#### **Part II: Propositions to be Advanced in Oral Argument**

##### ***Ground 1: Error as to the correct approach to s 27QE(1)***

- 20 2. By elevating two considerations in the s 27QE(1) analysis — whether the *Ellis* or limitation defence had a ‘material’ impact upon a claimant’s decision to settle — to the status of ‘central’ or ‘leading’ factors, absent which it would be ‘doubtful that any cogent ground would exist’ to find that it is just and reasonable to set aside a previous settlement, *Beach and Macaulay JJA* impermissibly fettered the exercise of the statutory power {AS [20]-[21]; Reply [3]}.
3. Such an approach is discordant with the text, context and purpose of s 27QE(1).
  - a. The provision expressly identifies neither the relevant factors in the required evaluative judgment nor their relative weight or significance, such factors depending on the particular circumstances of each case {AS [24], [27]}.
 

30 *TRG v The Board of Trustees of the Brisbane Grammar School* (2020) 5 Qd R 440, [28] {JBA vol 4 pt D tab 9 p 205}.
  - b. The phrase ‘just and reasonable’ in s 27QE(1) is of ‘broad ambit’ and there is no reason to limit its generality {AS [22]-[23], [25]-[28]; Reply [4]-[5]}.

*Roman Catholic Trusts Corporation for the Diocese of Sale v WCB*  
(2020) 62 VR 234, [104], [121] {**JBA vol 4 pt D tab 8 p 158**}.

- c. The legislature's purpose in enacting s 27QE(1) included providing a remedy to claimants who had settled for reasons other than the impact of the *Ellis* or limitation defence. The extrinsic materials not only provide examples of other factors, but also expressly exclude any requirement that the existence of a limitation period [and by extension, the *Ellis* defence] be the 'predominant' reason for an agreement being entered {**AS [29]-[33]**}.

- 10           4. The approach of Beach and Macaulay JJA went beyond the development of guidelines as to the exercise of the power and was inconsistent with a proper interpretation of the provision {**Reply [4]**}.

***Ground 2: Misapplication of applicable test: it was just and reasonable to set aside the settlement deeds, and the Court of Appeal erred in setting aside Trial Division judgment***

- 20           5. On the totality of the evidence, the correct and preferable conclusion was that it was, and is, just and reasonable to set aside in whole the previous settlement agreements. As the Primary Judge found, a potential obligation for a Centrelink repayment was not the Appellant's sole or dominant motivation for instructing his solicitor not to pursue an economic loss claim and cannot be isolated from the other relevant factors, including the *Ellis* and limitation defence issues {**AS [36]-[37], [39]-[41]; Reply [6], [9]-[10]**}.
- 30           a. The Appellant's uncontradicted evidence was that, on the legal advice he received in 2012, he felt he had no choice but to settle because the legal barriers were too great and concern at having to pay the Respondent's costs {**AS [14], [40(f)]; Reply [7]**}.
- b. The advice concerning the possibility of a Centrelink repayment in the lead up to settlement in 2012 was oral, limited and concurrent with advice concerning the legal barriers {**AS [13(c), [36(b)], [40(b)], [40(c)], [40(d)]; Reply [8(b)]**}.
- c. Unlike the Centrelink advice, the advice concerning the *Ellis* and limitation defence hurdles was consistently provided before, during and after the

settlement conference and these were material factors that motivated the Appellant to settle his claim {AS [40(a)], [40(b)]; Reply [8(a)]}.

- d. The Court of Appeal was incorrect to characterise the Appellant's evidence in [28] of his Affidavit as making "no sense" (CA footnote 104); although ineloquently expressed, the evidence provides for an inference to be drawn that the Appellant considered the difficulties in suing Church institutions as connected to issues of employment and Centrelink {AS [13(d)], [40(c)]; Reply [7]}.
- e. The Appellant's evidence as to his mental state, intoxication and difficulty processing what he was told is relevant {AS [13(d)], [42]-[45]; Reply [8(c)]}, as is his reaction to and understanding of similar economic loss carve out clauses in the 2015 Deed {AS [17]-[19]}.

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Dated: 13 February 2025



**Gideon Boas**