

SUPREME COURT OF QUEENSLAND

CITATION: *Dorante-Day v State of Queensland* [2026] QCA 112

PARTIES: **SIMON CHARLES DORANTE-DAY**
(appellant)
v
STATE OF QUEENSLAND
(respondent)

FILE NO/S: Appeal No 4909 of 2025
SC No 15085 of 2024

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2025] QSC 248 (Copley J)

DELIVERED ON: 16 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 27 May 2026

JUDGES: Boddice JA, Gotterson AJA, Cooper J

ORDERS: **1. Appeal dismissed.**
2. The appellant is to pay the respondent’s costs of the appeal.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – ENDING PROCEEDINGS EARLY – SUMMARY DISPOSAL – SUMMARY JUDGMENT FOR DEFENDANT OR RESPONDENT: STAY OR DISMISSAL OF PROCEEDINGS – where the appellant made criminal complaints to the Queensland Police Service during 2021 and 2024 which were not investigated further by the police on the ground that it involved a civil matter – where the appellant commenced a proceeding against the respondent in the Supreme Court on 6 November 2024 – where the respondent filed an application on 18 July 2025 for summary judgment pursuant to r 293 of the *Uniform Civil Procedure Rules* (“UCPR”), or alternatively for the appellant’s statement of claim to be struck out pursuant to r 171 of the UCPR or the Court’s inherent jurisdiction – where summary judgment and costs order for the respondent were handed down by the primary judge on 30 September 2025 – where the appellant appealed against the judgment of the primary judge – whether the appellant’s grounds of appeal were made out – whether the appeal should be allowed

POLICE – RIGHTS, IMMUNITIES, POWERS, DUTIES AND LIABILITIES – DISCRETION AND DUTY TO INVESTIGATE AND ENFORCE – where the appellant’s adoption records and other personal documents were published on internet sites – where the appellant made complaints to the Queensland Police Service – where the police elected not to investigate further into the appellant’s complaints – whether the *Police Service Administration Act 1990* (Qld) or the *Police Powers and Responsibilities Act 2000* (Qld) conferred a cause of action for the breach of statutory duty – whether the Queensland Police Service owed the appellant a duty of care in the investigation of the complaints

Acts Interpretation Act 1954 (Qld), s 14

Adoption Act 2009 (Qld), s 308, s 315

Criminal Code (Cth), s 474.17

Criminal Code (Qld), s 359A

Human Rights Act 2019 (Qld), s 15, s 21, s 25, s 26, s 58, s 59

Police Powers and Responsibilities Act 2000 (Qld), s 5, s 7, s 804

Police Service Administration Act 1990 (Qld), s 2.3

Uniform Civil Procedure Rules 1999 (Qld), r 171, r 293

Bank of Queensland Ltd v Y & L Promising Pty Ltd (2022)

12 QR 326; [\[2022\] QCA 217](#), cited

Byrne v Australian Airlines Ltd (1995) 185 CLR 410; [1995] HCA 24, cited

Fairfax Media Publications Pty Ltd v Voller (2021)

273 CLR 346; [2021] HCA 27, distinguished

Fuller-Wilson v State of New South Wales [2018]

NSWCA 218, distinguished

Gardiner v State of Victoria [1999] 2 VR 461; [1999]

VSCA 100, cited

General Steel Industries Inc v Commissioner for Railways

(1964) 112 CLR 125; [1964] HCA 69, cited

Groom v State of South Australia [2017] SASCF 35, applied

Polar Aviation Pty Ltd v Civil Aviation Safety Authority

(No 4) (2011) 203 FCR 293; [2011] FCA 1126, cited

Smith v State of Victoria (2018) 56 VR 332; [2018] VSC 475, distinguished

Webster v Lampard (1993) 177 CLR 598; [1993] HCA 57, cited

COUNSEL: The appellant appeared on his own behalf
D M Favell for the respondent

SOLICITORS: The appellant appeared on his own behalf
C E Christensen, Crown Solicitor for the respondent

[1] **BODDICE JA:** I agree with Gotterson AJA.

- [2] **GOTTERSON AJA:** By a claim filed in the Supreme Court at Brisbane on 6 November 2024, Simon Charles Dorante-Day (“Mr Dorante-Day”), the appellant in this appeal, commenced a proceeding against the State of Queensland (“the State”). A statement of claim was filed on the same date to which the State, having filed a notice of intention to defend, filed a defence on 4 December 2024. Mr Dorante-Day filed a reply on 18 December 2024. Thereafter, the State twice amended its defence by an amended defence filed on 23 April 2025 and a further amended defence filed on 20 June 2025. The amended pleadings were filed and served pursuant to orders made by a judge of the Trial Division, Muir J, at directions hearings on 23 April 2025 and 6 June 2025 respectively. Mr Dorante-Day filed a reply to the further amended defence on 11 July 2025.
- [3] On 18 July 2025, the State filed an application in the proceeding. The primary relief sought was that summary judgment be given to the State, as defendant, pursuant to r 293 of the *Uniform Civil Procedure Rules* (“UCPR”). Alternative relief, namely, that the statement of claim be struck out either pursuant to r 171 of the UCPR or the Court’s inherent jurisdiction was also sought, as was a costs order in respect of the State’s costs of the application and the proceeding on the standard basis.
- [4] This application was heard by Copley J of the Trial Division on 26 August 2025. His Honour reserved his decision. On 30 September 2025, he ordered that judgment be entered for the State pursuant to r 293(2) of the UCPR and that Mr Dorante-Day pay the State’s costs of the application and the proceeding on the standard basis. His Honour’s reasons for the orders were published on the same date.
- [5] On 27 October 2025, Mr Dorante-Day filed a notice of appeal against the judgment given on 30 September 2025. Orders are sought that the appeal be allowed; that the orders made on 30 September 2025 be set aside; that the proceeding be remitted to the Trial Division for re-hearing; and that both parties bear their own costs of the appeal. The appeal was heard by this Court on 27 May 2026.

Preliminary matters

- [6] It is appropriate to mention at the outset that in his amended outline of argument for the appeal, Mr Dorante-Day advanced criticisms of the conduct of the two directions hearings to which I have referred and also an anterior directions hearing before Muir J on 25 February 2025. Mr Dorante-Day has not filed a notice of appeal with respect to any of the directions hearings; nor has he sought an extension of time within which to do so. At the commencement of the hearing of this appeal, Mr Dorante-Day was informed by the presiding judge, and he accepted, that the judgment given on 30 September 2025 was the only matter the subject of the appeal.
- [7] A second matter is that subsequent to 30 September 2025, Mr Dorante-Day filed three affidavits sworn by him. The filing dates were 27 October 2025, 26 November 2025 and 27 February 2026. No application was made by Mr Dorante-Day to adduce the matters to which he swore in those affidavits as further evidence in the appeal. He was also informed by the presiding judge at the hearing, and accepted, that this Court would not give any consideration to those affidavits.

Mr Dorante-Day’s statement of claim

- [8] Justice Copley observed that the statement of claim drafted by Mr Dorante-Day pleaded circumstances in a narrative form as follows:

- “[4] The plaintiff, who was born in Britain, was the subject of an adoption in England. He migrated to Australia, married and had a family. From early 2021 the plaintiff, his wife and their business were made the subject of posts on internet sites such as Reddit and Facebook. Among other matters, the plaintiff’s adoption certificate, an extract of his birth records and other personal documents and images about him were published on those sites. The plaintiff’s complaints to persons or organisations responsible for the sites were not addressed to his satisfaction.
- [5] On 24 September 2021 the plaintiff attended a Queensland Police Service station and made or attempted to make a complaint to the Queensland Police Service about offences that the plaintiff alleged the persons who posted this material had committed. The police officer he spoke with at the station would not accept his complaint.
- [6] Further correspondence with the Queensland Police Service resulted in the plaintiff attending the same station on 18 November 2021. On this occasion the plaintiff was interviewed. He ‘submitted evidence, and was given a crime number’. The plaintiff provided the police with ‘evidence’ of the release of identifying adoption information and the publication of that information, stalking and that a carriage service had been used to menace, harass and threaten him, his wife and his family.
- [7] On 3 December 2021 the plaintiff was informed by the Queensland Police Service that the police did not intend to conduct any further investigation into his complaint, the police regarding it as a civil matter, not a criminal matter.
- [8] Over the next 12 months the plaintiff and his family were subject to continuing harassment, stalking and menacing behaviour by persons who made posts on sites on the internet via Facebook pages.
- [9] On 16 November 2022 the plaintiff went to another Queensland Police Service station and made complaints against four people who were operating a Facebook group, including a person he identified as living in Tasmania. The complaint was not accepted on the grounds that it involved a civil issue. A police officer laughed at and mocked the plaintiff and suggested sarcastically that the plaintiff approach another branch of the Queensland Police Service concerned with cybercrimes.
- [10] In the period of 12 months following this visit to the police the information regarding the plaintiff’s adoption and the publication of his birth details remained available for access on a Facebook site.
- [11] On 19 October 2024 the plaintiff received ‘a harassing QPS visit’ related to his movements. The plaintiff ‘refused to state his movements as the QPS had no legal right to request them.’”

[9] As to breach of statutory duty, his Honour noted:

“[12] Under the heading ‘BREACH OF STATUTORY DUTY’ the statement of claim asserted that the Queensland Police Service had a ‘statutory obligation, let alone an arguable duty of care,’ pursuant to the *Police Service Administration Act 1990* (Qld) and the *Police Powers and Responsibilities Act 2000* (Qld) for: the preservation of peace and good order in all areas of the State and outside the State where the laws of the State may be lawfully applied; protection of all members of the community from unlawful disruption of peace and good order that resulted or was likely to result from the actions of criminal offenders and the prevention of crime; the detection of offenders; the bringing of offenders to justice and the upholding of the law generally.”

[10] In paragraph 13 of his reasons, Copley J set out a series of paragraphs from the statement of claim as follows:

- “65. On three (3) separate occasions between 2021 and 2024, despite providing comprehensive evidence to the contrary, the plaintiff was denied natural justice without a valid or lawful excuse by the QPS.
- 66. During the same time period, despite numerous written requests from the plaintiff, and directions from Federal Government, the Queensland Government and QPS, have failed to provide any legitimate explanation or been accountable for, the denial of the plaintiff’s natural justice without a valid or lawful excuse.
- 67. During the same period, the QPS have acted as an illegitimate ‘gatekeeper’ to the plaintiff receiving natural justice both in his home country of citizenship, the UK, and in the Netherlands, as well as inter-State, by their inaction(s) and action(s), without a valid or lawful excuse.
- 68. In the process of this the plaintiff has been heckled, mocked, teased, laughed at, ignored, defamed, given the runaround, lied to, and humiliated by various QPS and QFTAC staff despite having a legal right to seek natural justice for the criminal issues he, and his family, were enduring outlined in the Factual Background above.
- 69. As a result, the plaintiff argues that not only are the action(s) and decision(s) of the QPS unlawful, and a failure of their statutory obligation, but they are also unlawful by virtue of section 58 of the *Human Rights Act 2019*.
- 70. In the first instance the QPS acted, and made a decision, in a way that is not compatible with the human rights of the plaintiff i.e. section 15 Recognition and equality before the Law by removal of natural justice with no legal or lawful excuse.
- 71. In the second instance the QPS in making that decision, failed to give proper consideration to a human right of the plaintiff relevant to the decision i.e. section 25 protection of privacy and

reputation from being unlawfully and arbitrarily interfered with; and section 26 protection of families and children without discrimination.

72. In the third instance the QPS have paid no regard to the rights of the plaintiff as both a resident of Queensland and a British Citizen, particularly by providing an impediment to the HPS, not recognising the Family Law issues occurring, nor the logistical obstacles facing the plaintiff.
73. Finally, the QPS have paid no regard to the statutory breaches of adoption and privacy legislation that have occurred and failed to recognise the plaintiff's right under section 21 to freedom of expression without interference, especially unlawful, regarding his paternity and adoption.
74. Indeed, it could be claimed that given their knowledge and awareness of the plaintiff's situation that the QPS were not only negligent but that they recklessly endangered the well-being of the plaintiff and his family by not upholding their duty of care, and the Law. Had people been apprehended earlier this would have provided a significant deterrent to others attempting the same or, ... much worse activities."

[11] Next, at paragraph 14 of his reasons, his Honour set out certain pleaded paragraphs relating to the relief claimed, namely:

- "77. The plaintiff argues that the opportunity to restore natural justice still exists i.e. the house hasn't burnt down, a life hasn't been lost, or loss of the use of a limb has not been inflicted. In fact, the criminal behaviour, menacing, harassing, threatening, adoption and privacy breaches, ... are still current and have escalated ...
78. Therefore, by way of relief the plaintiff primarily seeks the restoration of natural justice denied him by the QPS i.e. his complaints ... be upheld, investigated, and prosecuted by QPS according to the law: restoration of Natural Justice.
79. Moreover, the plaintiff would appreciate some form of lawful justification from the QPS for their action(s) and the 'watch list' status.
80. Secondly, the plaintiff seeks General Compensatory Damages (non-financial loss) for the human rights denied him for three years.
- ...
81. Thirdly, the plaintiff asks the Court to award punitive damages against the defendant as a deterrent to the State of Queensland for the unlawful process of dealing with this issue that has occurred over the past three years."

[12] As to the forms of relief sought, Copley J stated:

“[15] The plaintiff seeks three forms of relief. First, the restoration of natural justice by the police investigating his complaints and commencing prosecutions as a result of those investigations. Second, general damages for the denial of human rights recognised in the *Human Rights Act 2019* (Qld). Third, punitive damages related to an unlawful process of dealing with his complaints. Two possible causes of action might be discernible as providing bases for the relief sought. One is breach of statutory duty, or ‘obligation’ as it is termed in paragraph 60. Another is a possibility of a cause of action in negligence because paragraph 74 says ‘it could be claimed’ that the QPS was negligent.”

Reasons of Copley J

- [13] Justice Copley set out r 293 of the UCPR. In citing two High Court authorities¹ to that effect, his Honour was mindful of the exceptional caution to be taken towards a summary judgment application. As to the relevant inquiry, he adopted the formulation of it by Cooper J in *Bank of Queensland Ltd v Y & L Promising Pty Ltd*² as “whether there exists a real, as opposed to fanciful, prospects of success”.
- [14] As to breach of statutory duty, Copley J noted that Mr Dorante-Day’s pleaded case was premised upon the QPS having had imposed upon it by statute, a duty for breach of which, a victim of offences³ was intended to have a cause of action to recover damages.
- [15] His Honour referred to the statement of Brennan CJ, Dawson and Toohey JJ in *Byrne v Australian Airlines Ltd*⁴ that a cause of action for damages for breach of statutory duty arises where the statute imposes an obligation for the protection or benefit of a particular class of persons **and**, upon its proper construction, intends to provide a ground of civil liability for breach. As well, he noted that in *Gardiner v State of Victoria*,⁵ Phillips JA observed that enactment of a statute primarily for the general good of the community points strongly against an individual right to sue for non-compliance.
- [16] In this context, consideration was given by Copley J to relevant provisions of the *Police Service Administration Act 1990* (Qld) and the *Police Powers and Responsibilities Act 2000* (Qld). As to the former, his Honour concluded:

“[30] The objects of the Act and the subject matter dealt with in the Act do not disclose any legislative intention to confer a right of action on an individual for any breach of the Act. The purpose of the Act is for the continuance and administration of an essential service provided by the State for the protection of the whole of the community. The functions conferred on the

¹ *General Steel Industries Inc v Commissioner for Railways* (1964) 112 CLR 125 at [129] and *Webster v Lampard* (1993) 177 CLR 598 at 602.

² (2022) 12 QR 326 at [106].

³ Mr Dorante-Day claims to be a victim of stalking (*Criminal Code* (Qld) s 359A); of publishing identifying material (*Adoption Act 2009* (Qld) (*Adoption Act*) s 315); and of using a telecommunications network with intent to commit a serious offence (*Criminal Code* (Cth) s 474.17).

⁴ (1995) 185 CLR 410 at 424.

⁵ [1999] 2 VR 461 at 469.

Police Service are to be discharged for the benefit of the whole community. The Act recognises the obligations the community has to assist the police and the obligations the police have to act in conjunction or partnership with the community. The Act provides a disciplinary regime for the protection of the community and to maintain public confidence in the Police Service. The police disciplinary regime provided for in the Act militates against a conclusion that a statutory duty was intended for the reason identified at paragraph [33] below. The Act is clearly intended to promote the general good.”

[The paragraph [33] to which his Honour referred was referenced to the latter statute. In it he said:

“Sections 7 and 804 of the Act are also of significance in assisting to determine whether an action lies for breach of statutory duty. This is because, ‘Availability of other protections and remedies against a wrongful exercise of power has been treated as a factor militating against the existence of a statutory duty...’.⁶ Section 7(1) provides that the legislature’s intention is that the police should comply with the Act. To ensure compliance with that intention, s 7(2) provides that a police officer who contravenes the Act may be dealt with as provided by law. Various examples⁷ are provided after s 7(2) including that a police officer may be dealt with under the *Police Service Administration Act* for misconduct. This remedy for non-compliance militates against a conclusion that a statutory duty is intended.”]

- [17] Further, with regard to the latter statute, Copley J set out the purposes enacted in s 5 thereof and concluded:

“[32] Nothing in these purposes discloses a legislative intention to confer a right of action on an individual who feels aggrieved by the exercise of police powers. The Act is directed towards the general good because, among other matters, it aims to protect the rights of all members of the community against whom police exercise powers. In consolidating police powers, the Act seeks to make those powers clear and comprehensible for the benefit both of the police and the community served by the police. In furnishing police with the powers necessary for modern policing, the Act seeks to give police the powers needed to perform the functions of policing for the benefit of all. The Act also seeks to protect the rights of all persons in their dealings with the police.”

- [18] As to negligence, his Honour determined that on the facts alleged in the statement of claim, no case giving rise to a common law duty of care on the part of the police to Mr Dorante-Day had been pleaded. His Honour said:

⁶ *Polar Aviation Pty Ltd v Civil Aviation Safety Authority (No 4)* [2011] FCA 1126; (2011) 203 FCR 293 at [81].

⁷ An example is part of an Act: *Acts Interpretation Act 1954* (Qld) s 14(3).

“[39] The statutory functions of the Police Service include the ‘detection of offenders and the bringing of offenders to justice’.⁸ In receiving the plaintiff’s ‘evidence’ of alleged offences on 18 November 2021, and in considering the material provided by the plaintiff between that date and 3 December 2021, the police were exercising the function of determining if offenders had offended and needed to be brought to justice. This function was discharged in the performance of public functions and not on behalf of the complainant (the plaintiff). There is no basis to conclude that a duty was owed to the plaintiff in considering whether offences had been committed which warranted prosecution.

[40] On the pleaded facts, the plaintiff was not in the position of a person towards whom any undertaking had been given that the police would take action on his complaint. His claim did not rely on any particular or special relationship with the police or a particular police officer.”

[19] Finally, Copley J held that, upon a proper construction of s 59 of the *Human Rights Act 2019* (Qld), no right to damages for unlawful conduct incompatible with human rights would arise in this case independently of proof of a cause of action for breach of statutory duty or for negligence.⁹

Propositions advanced by Mr Dorante-Day

[20] At the hearing of the appeal, Mr Dorante-Day relied on his written submissions, including those by way of reply. In summary, the following propositions are advanced in those submissions:

1. That s 315 of the *Adoption Act* (together with s 308 thereof) “provides, as defined in [*Smith v State of Victoria*¹⁰] and [*Fuller-Wilson v State of New South Wales*¹¹], a novel duty of care and more importantly a statutory obligation upon the QPS and DPP to act.”¹²;
2. That summary dismissal was not appropriate here because, by reference to *Fuller-Wilson*, “it was arguable that a duty of care might turn upon factual issues not revealed by the pleadings...”¹³ (footnotes omitted); and
3. The “QPS staff members ..., the Police Commissioner, and even Crown law, all had an onus and a statutory obligation (a duty) to address the breach of Adoption law and to seek further clarification and investigate.”¹⁴

Consideration of Mr Dorante-Day’s propositions

[21] The propositions advanced by Mr Dorante-Day do not challenge in a reasoned way the conclusions expressed by Copley J with respect to the absence of a conferment of

⁸ *Police Service Administration Act 1990* s 2.3(d).

⁹ At Reasons [46]-[50].

¹⁰ [2018] VSC 475 at [171]-[172].

¹¹ [2018] NSWCA 218 at [83].

¹² Mr Dorante-Day’s Amended Outline of Argument at [24].

¹³ Ibid [25].

¹⁴ Ibid [27].

a cause of action on any individual for any breach of the relevant provisions of the *Police Service Administration Act* or the *Police Powers and Responsibilities Act*.

- [22] Furthermore, s 315 of the *Adoption Act*¹⁵ makes it an indictable offence to publish identifying material that identifies, or is likely to lead to the identification, of a person as having been adopted. Of itself, this provision does not confer, expressly or implicitly, a statutory cause of action against an offender. Plainly, it cannot be read with the statutory provisions referred to in the immediately preceding paragraph to confer a statutory cause of action with respect to the investigation of a complaint of an offence against s 315. Thus, insofar as Mr Dorante-Day's first proposition implies that he has a statutory cause of action arising from s 315, it is plainly incorrect.
- [23] This proposition also references a common law duty of care on the part of the QPS which Mr Dorante-Day suggests arose in his favour by analogy with the decisions in *Smith* and *Fuller-Wilson*. In those two instances, it was held to be inappropriate to terminate the claims summarily. However, the circumstances of those cases are demonstrably different from those here.
- [24] In *Smith*, a mother and her three children sued the State of Victoria for negligence. The plaintiffs were said to have been victims of repeated instances of family violence at the hands of the mother's partner (who was also the father of the children). The instances of family violence were known to police. Between 2006 and 2012, the police had sought and obtained "intervention orders" against the father on four occasions. The orders were breached at various times and there continued to be instances of domestic violence perpetrated by the father.
- [25] The State of Victoria was said to be liable in negligence on account of a failure by police to take reasonable steps to prevent the intervention orders being breached and to prevent family violence by repeat offending. It was failure of the police that (allegedly) caused the plaintiffs to suffer psychological harm. The defendant brought an application for summary dismissal or, alternatively, an order that the allegations of a common law duty of care be struck out. Dixon J dismissed the application on the basis that he was not convinced that a duty of care could not be made out having regard to the pleaded facts if proved at trial.
- [26] In *Fuller-Wilson*, a relative of the plaintiffs had been killed in a motor vehicle accident. The plaintiffs visited the scene of the accident. They found parts of their relative (his foot and his ankle) at the scene. It was said that the police were negligent in failing to remove the remains from the scene of the accident and in failing to warn the plaintiffs that remains might still be at the scene. It was because of those alleged breaches that the plaintiffs claimed to have suffered psychological injuries. On appeal, the New South Wales Court of Appeal found that the primary judge had erred in dismissing the plaintiffs' claim summarily.
- [27] By contrast, the events complained of in Mr Dorante-Day's case with regard to the publication of identifying material occurred before Mr Dorante-Day sought to engage with police. As his Honour noted,¹⁶ there were no circumstances pleaded that would arguably have established any relevant particular or special relationship with the police or with individual police officers.

¹⁵ Read with s 308 thereof.

¹⁶ At Reasons [40].

- [28] For these reasons, Mr Dorante-Day's first proposition cannot be accepted.
- [29] Mr Dorante-Day's third proposition is also incorrect for similar reasons. In this context, the following observations of Nicholson J (with whom Kourakis CJ and Hinton J agreed) in *Groom v State of South Australia*¹⁷ are pertinent. His Honour said:¹⁸
- “On the present state of the authorities, and as a general rule, neither SAPOL nor the DPP owe a citizen a duty of care in respect of prosecutorial or investigative functions. The appellant has not pleaded any acts which would serve to distinguish, in any material way, his situation from this general position.” (footnotes omitted).
- [30] Furthermore, the reliance placed by Mr Dorante-Day on the decision in *Fairfax Media Publications Pty Ltd v Voller*¹⁹ is misplaced. In that case, the High Court held that the creator of a Facebook or similar page may be liable in defamation in respect of comments posted on it by third parties. However, neither the QPS nor the DPP is, in any relevant sense, in a position analogous to that of the creator of a page of that type.
- [31] As to the second proposition, whatever may have been the position in *Smith and Fuller-Wilson*, here there is no contention that there exists an unpleaded fact or unpleaded facts which, if pleaded and proved, could give rise to a duty of care. This proposition lacks relevance here.

Disposition

- [32] None of the propositions advanced by Mr Dorante-Day has succeeded. He has failed to establish any of his grounds of appeal based as they are on those propositions. His appeal must therefore be dismissed.

Orders

- [33] I would propose the following orders:
1. Appeal dismissed.
 2. The appellant is to pay the respondent's costs of the appeal.
- [34] **COOPER J:** I agree with Gotterson AJA.

¹⁷ [2017] SASCFC 35.

¹⁸ At [36].

¹⁹ [2021] HCA 27; (2021) 273 CLR 346.