SUPREME COURT OF QUEENSLAND

CITATION:	*Dennison v Brisbane City Council (No. 2)* [2026] QSC 180
PARTIES:	**VICTOR GEORGE DENNISON** (plaintiff) **v** **BRISBANE CITY COUNCIL** (defendant)
FILE NO:	1809 of 2022
DIVISION:	Trial Division
PROCEEDING:	Claim
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	27 July 2026
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers
JUDGE:	Crowley J
ORDER:	**1. There be no order as to costs incurred before 19 December 2024.** **2. The plaintiff is to pay 50 per cent of the defendant's costs of the proceeding incurred after 19 December 2024 on the standard basis.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the general principle is costs follow the event unless the court orders otherwise – where the purpose of an award of costs is to indemnify the successful party from the expense that it would not otherwise have incurred – where costs are not awarded to punish the unsuccessful party – where a successful party has been unsuccessful on some issues will not deprive the successful party of its costs – where the court may judicially exercise a discretion to make an order in the interest of justice – whether in all the circumstances it is just to depart from the usual rule – where the defendant submits that the rejection of its offers by the plaintiff justifies an award of costs on the indemnity basis or alternatively on the standard basis – where the plaintiff submits he was justified in the circumstance at the time to refuse the defendant's offers – whether the plaintiff acted unreasonably in the circumstances

	Civil Liability Act 2003 (Qld) s 36 *Personal Injuries Proceedings Act 2002* (Qld) s 40 *Uniform Civil Procedure Rules 1999* (Qld) r 352, r 353, r 354, r 355, r 356, r 357, r 358, r 359, r 360, r 361, r 362, r 363, r 364, r 365, r 681, r 702, r 703
	Calderbank v Calderbank [1975] 3 All ER 333, cited *Courtney v Chalfen* [2021] QCA 25, cited *Hamcor Pty Ltd v State of Queensland* [2014] QSC 224, cited *Interchase Corporation Limited (in liq.) v Grosvenor Hill (Queensland) Pty Ltd (No. 3)* [2003] 1 Qd R 26, cited *Oshlack v Richmond River Council* (1998) 193 CLR 72, cited *Queensland Bulk Water Supply Authority (t/as Seqwater) v Rodriguez & Sons Pty Ltd* [2021] NSWCA; (2021) 393 ALR 162, cited *SHA Premier Constructions Pty Ltd v Niclin Construction Pty Ltd (No 2*) [2020] QSC 323, cited *Thiess v TCN Channel Nine Pty Ltd (No 5)* [1994] 1 Qd R 156, cited *West v Blackgrove* [2012] QCA 321, cited
COUNSEL:	C Heyworth-Smith KC, with D Cormack, for the plaintiff D Schneidewin, with K Grimshaw, for the defendant
SOLICITORS:	Hall Payne Lawyers for the plaintiff Barry Nilsson Lawyers for the defendant

[1] The plaintiff, Mr Dennison, brought an action for damages for personal injuries he claimed he sustained as a result of a negligent breach of a duty to take reasonable care on the part of the defendant, the Brisbane City Council.

[2] The trial of the matter took pace before me on 14, 15, 16 and 17 October 2025. On 1 May 2026 I gave judgment for the defendant and indicated that I would hear the parties further on costs: *Dennison v Brisbane City Council* [2026] QSC 83 (**principal judgment)**. These reasons deal with the question of costs and should be read with the principal judgment.

[3] Mr Dennison claimed the BCC had failed to take reasonable care for the safety of users of a footpath, across which the BCC had erected a temporary mesh barricade to protect a section of curing concrete. The concrete had been laid by a BCC work crew late in the afternoon of 17 December 2009, after its workers had earlier performed some underground earthworks at the site. The barricade was left in place overnight while the site was unattended. It posed a hazard and a risk to users of the footpath. In

the dark early hours of the morning on 18 December, Mr Dennison collided with the barricade whilst riding his bicycle along the footpath. As a result of that collision, he fell from his bicycle onto one of the supporting stakes holding up the barricade. He sustained significant injuries, which I found were caused by the BCC's negligence in failing to properly warn users of the footpath about the hazard and risk posed by the barricade.

[4] However, as part of its defence at trial, the BCC contended that it was not liable because of the operation of s 36 of the *Civil Liability Act 2003* (Qld) (**CLA**). As I explained the principal judgment, that provision essentially operates to require a plaintiff to prove a higher degree of negligence to establish a defendant's liability in a case based upon an alleged wrongful exercise of a function by a public authority. Substantial issues at trial were whether s 36 applied and, if so, whether Mr Dennison had demonstrated that the BCC's conduct met the relevant threshold required by s 36(2).

[5] I ultimately found in favour of the BCC on the basis that s 36 applied and that Mr Dennison had not discharged the onus cast upon him under that section to demonstrate that the conduct of the BCC was so unreasonable that no public authority with similar functions could possibly have considered the BCC's conduct to be a reasonable exercise of the function. Were it not for the operation of s 36, I would have found the BCC liable and would have awarded damages in the amount of $675,926.77.

[6] To decide the remaining costs issue, I made directions for the parties to file written submissions and determined the matter would be decided on the papers without further oral hearing. The parties filed written submissions as directed, which I have read and considered.

[7] The BCC's fundamental position is that it was the successful party in the litigation, and it should therefore have its costs. It submits the appropriate order is that Mr Dennison pay its costs of the proceeding:

(a) on the indemnity basis, having regard to the mandatory written final offers (**MFOs**) exchanged by the parties in accordance with the *Personal Injuries Proceedings Act 2002* (Qld) (**PIPA**); or

(b) alternatively, on the standard basis up to 1 June 2021, and on the indemnity basis thereafter, having regard to Mr Dennison's rejection of a Calderbank offer made by the BCC on 1 June 2021; or

(c) alternatively, on the standard basis.

[8] In contrast, Mr Dennison submits the appropriate order as to costs is:

(a) the BCC pays his costs on the standard basis until 19 December 2024; and

(b) he then pays 25 per cent of the BCC's costs on the standard basis thereafter; or

(c) as an alternative to (a) and (b) above, there be no order as to costs until 19 December 2024 and he thereafter pays 50 per cent of the BCC's costs on the standard basis.

[9] The foundation for Mr Dennison's submissions is the BCC's belated reliance upon s 36 of the CLA as a "defence" to his claim. The BCC first pleaded reliance on s 36 in an Amended Defence filed on 19 December 2024.

Chronology of events

[10] In order to assess the parties competing submissions, it is necessary to further consider the course of the proceeding and sequence of relevant events.

[11] In mid-2011, Mr Dennison commenced the pre-litigation process stipulated by the PIPA. On 17 June 2014, the parties participated in a compulsory conference. On that date, the following MFOs were made:

(a) Mr Dennison - $550,000.00, inclusive of all statutory refunds, plus costs to be agreed and/or assessed; and

(b) The BCC - $NIL, consistent with its denial of liability and the requirements of s 40(3) of the PIPA.

[12] Neither MFO was accepted. Thereafter, on 9 July 2014, Mr Dennison commenced his claim in the District Court.

[13] On 14 August 2014, the BCC filed a Notice of Intention to Defend and its Defence in the District Court. The BCC did not plead reliance on s 36 of the CLA at that time.

[14] On 1 October 2014, Dalton J (as her Honor then was) delivered judgment in *Hamcor Pty Ltd v State of Queensland* [2014] QSC 224 (***Hamcor***). As I noted in my principal judgment, Dalton J considered the operation of s 36 of the CLA in that case, ultimately concluding that as a matter of statutory interpretation it only applied to cases involving an alleged breach of statutory duty. At trial, Mr Dennison relied upon *Hamcor* and the reasoning of Dalton J to argue that s 36 did not apply to his claim. I rejected that contention and concluded that on its proper construction s 36 was not limited simply to claims premised upon an alleged breach of statutory duty.

[15] On 8 March 2017, Mr Dennison made a settlement offer, in accordance with Part 5 of Chapter 9 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), in the sum of $420,000.00 plus costs. The BCC did not accept that offer.

[16] On 1 June 2021, the BCC made an offer, in accordance with the principles set out in *Calderbank v Calderbank* [1975] 3 All ER 333, to settle on terms that each party walk away and bear their own costs incurred to date. Mr Dennison did not accept that offer.

[17] On 8 September 2021, the New South Wales Court of Appeal delivered judgment in *Queensland Bulk Water Supply Authority (t/as Seqwater) v Rodriguez & Sons Pty Ltd* [2021] NSWCA; (2021) 393 ALR 162 (***Rodriguez***). The Court in *Rodriguez* considered *Hamcor* and declined to follow Dalton J's reasoning, instead deciding that the operation of s 36 of the CLA was not just confined to cases premised upon a breach of statutory duty and was available to be pleaded in a case where civil liability by reason of a negligent breach of a duty of care was alleged. As I further noted in my principal judgment, I agreed with the Court's reasoning in *Rodriguez*.

[18] On 10 February 2022, an order was made transferring the proceedings from the District Court to the Supreme Court.

[19] On 29 March 2023, Mr Dennison served a further UCPR offer to settle, in the sum of $380,000.00, plus costs and administration/management fees. The BCC did not accept that offer.

[20] On 19 December 2024, the BCC filed an Amended Defence, pleading reliance upon s 36 of the CLA for the first time.

[21] At the commencement of the trial on 17 October 2025, further amended pleadings were filed by each of the parties with leave. The Second Further Amended Defence of the BCC maintained the plea that s 36 of the CLA applied and thus that its acts or omissions would not expose it to liability unless its conduct was so unreasonable that no public authority having similar functions could possibly consider its conduct to be a reasonable exercise of its functions.

Relevant principles on costs

[22] The general principles in respect of costs are not in dispute.

[23] Under r 681(1) of the UCPR*,* the general rule is that costs are in the discretion of the court but "follow the event, unless the court orders otherwise". Rule 681(2) provides that r 681(1) applies unless the UCPR provides otherwise.

[24] The word "event" in this context is to be approached distributively, with the consequence that it refers to the event of an issue, or each separate issue if there is more than one, in the action.[1] The "event" is not simply the ultimate result or judgment.

[25] The successful party in the litigation is ordinarily entitled to an award of costs in its favour. The primary purpose of an award of costs is to indemnify the successful party from the expense that it would not otherwise have incurred. Costs are not awarded to punish an unsuccessful party. The rationale for the general principle is grounded in reasons of fairness and policy. Fairness dictates that an unsuccessful party typically bears liability for the costs of the unsuccessful litigation.[2]

[26] The fact that a successful party has been unsuccessful on some issues will not ordinarily be sufficient to deprive the successful party of its costs.[3] Nevertheless, the court has a discretion to make another order, if that is required in the interests of

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1 *Interchase Corporation Limited (in liq.) v Grosvenor Hill (Queensland) Pty Ltd (No. 3)* [2003] 1 Qd R 26, [83]-[84].

2 *Oshlack v Richmond River Council* (1998) 193 CLR 72, 97 [67] (McHugh J, Brennan CJ agreeing).

3 *Courtney v Chalfen* [2021] QCA 25, [5].

justice.[4] Whilst the court's discretion is unfettered, it must be exercised judicially, without caprice and having regard only to relevant considerations.[5]

[27] Where an order for costs is made, r 702 of the UCPR provides that, unless the court otherwise orders, costs are to be assessed on the standard basis. Under r 703 of the UCPR the court may order costs to be assessed on the indemnity basis.

[28] Depending on the circumstances, the refusal of an offer to settle may justify an order for indemnity costs. Here, the two relevant offers the BCC relies upon to argue that Mr Dennison should pay its costs on the indemnity basis are the MFOs made by the parties and its Calderbank offer.

[29] Under s 40(8) of the PIPA, the Court must have regard to MFOs in making a decision about costs. As noted in *Bulsey v Queensland* [2016] QCA 158 at [40]-[42] by McMeekin J (Fraser JA and Atkinson JA agreeing):

> "[40] …[S]uch offers themselves can provide a proper basis for an award of indemnity costs although that result is not inevitable. The accepted test is whether the refusal to accept the offer was imprudent or unreasonable, and a significant factor in making that assessment is the "relevant strengths and weaknesses of the cases that ought to have been apparent to the parties when the offer was made": see *Lawes v Nominal Defendant* [2007] QSC 103 per Byrne J (as his Honour then was) and the authorities cited.
>
> [41] The significance of the legislative provisions and evident purpose should not be overlooked. The purposes of the PIPA are set out in s 4 of that Act and include providing a procedure for the speedy resolution of claims for damages for personal injury to which the Act applies; promoting settlement of claims at an early stage wherever possible; and 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. Offers made under the PIPA process should be made at a time, if the parties have complied with their obligations (see for example s 20), when the "relevant strengths and weaknesses of the cases … ought to have been apparent to the parties."

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4 *West v Blackgrove* [2012] QCA 321, [49] (Muir JA, Holmes JA and Daubney J agreeing).

5 *Thiess v TCN Channel Nine Pty Ltd (No 5)* [1994] 1 Qd R 156, 207 (McPherson SPJ, Moynihan and Byrne JJ).

> [42] Finally it ought not be overlooked that the legislation requires the court to consider mandatory final offers when considering costs. Section 40(8) provides: "However, the court must, if relevant, have regard to the mandatory final offers in making a decision about costs." To give effect to the legislative injunction in s 40(8) where an offer has been made by a plaintiff that was less favorable to the plaintiff than the eventual judgment it would be necessary, at least in the usual case, to adopt the only alternative basis allowed for in the rules – costs on the indemnity basis. Otherwise the offer would be disregarded. Cases in the trial division where such offers have been considered include *Monement v Faux & Anor* [2005] QSC 342 at [26] per Douglas J for a decision under the *Motor Accident Insurance Act 1994* (Qld) regime and *Pollock v Thiess Pty Ltd & Ors (No 3)* [2014] QSC 121 for a decision of my own under the PIPA regime."

[30] Whilst these observations were made in the context of an offer made by a plaintiff, there is no reason to consider they would not be equally applicable in the case of an offer made by a defendant.

[31] In *SHA Premier Constructions Pty Ltd v Niclin Construction Pty Ltd (No 2*) [2020] QSC 323 at [10] – [14], Bond J (as his Honour then was), collated the following principles that apply to a Calderbank offer –

> "[10] First, the usual rule is that where the Court orders the costs of one party to litigation to be paid by another party, the order is for assessment of those costs on the standard basis.
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> [11] Second, the Court will depart from the usual rule where the circumstances of the case warrant that course.
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> [12] Third, one feature which may justify a departure from the usual rule is the rejection of a Calderbank offer to compromise. However, it is wrong to think that an offeree's rejection of a Calderbank offer gives rise to a presumption that the offeree should pay the offeror's costs on an indemnity basis if the offeree obtains a less favourable result than contained in the offer. Rather, the correct approach is to consider whether the rejection of the Calderbank offer, in all the circumstances, justifies a departure from the usual rule.
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> [13] Fourth, the balance between the competing policy considerations of, on the one hand, appropriately encouraging settlement and, on the other, not discouraging potential litigants from bringing their disputes to the courts, is found by applying a test of "reasonableness". The policy rationale for requiring the offeree to indemnify

the offeror for costs incurred after the offeree's unreasonable rejection of an offer is that, from the time of the unreasonable rejection, notionally the real cause and occasion of the litigation is the unreasonable attitude adopted by the offeree.

[14] Fifth, deciding the critical question of whether the offeree's rejection of the offer is unreasonable in all the circumstances will always involve matters of judgment and impression. However, the discretion as to costs must be exercised judicially and is subject to review in accordance with the principles set out in House v The King (1936) 55 CLR 499 at 505. Without being exhaustive concerning the considerations which should be taken into account, a court should ordinarily have regard to at least the following matters:

(a) the stage of the proceeding at which the offer was received;

(b) the time allowed to the offeree to consider the offer;

(c) the extent of the compromise offered;

(d) the offeree's prospects of success, assessed as at the date of the offer;

(e) the clarity with which the terms of the offer were expressed; and

(f) whether the offer foreshadowed an application for indemnity costs in the event of the offeree rejecting it."

Submissions

[32] The BCC submits that Mr Dennison's refusal of its MFO and its Calderbank offer are factors that each justify an order for indemnity costs. As a general proposition, Mr Dennison accepts that the refusal of such offers may provide a basis for departure from the ordinary rule as to costs. However, he contends that on either basis an order for indemnity costs would only be considered if Mr Dennison's refusal of the BCC's offer was "unreasonable" in all the circumstances.

[33] The BCC's primary position is that costs ought to be awarded in the indemnity basis having regard to the MFO's made by each party. It submits that Mr Dennison made an MFO that was more favourable to him than the eventual judgment, whereas conversely the BCC made an MFO which was less favourable to it than the eventual judgment (because the MFO did not require Mr Dennison to pay costs). The BCC

further submits that Mr Dennison's conduct in rejecting its MFO was unreasonable or imprudent for the following reasons:

(a) a significant issue at trial was the application and operation of s 36 of the CLA. Mr Dennison placed significant reliance on *Hamcor*, to argue at trial that s 36 did not apply. However, *Hamcor* was delivered after the exchange of MFOs. There was therefore no judicial authority in support of the position ultimately adopted by Mr Dennison at trial at the time he rejected the BCC's MFO. Therefore, acting reasonably, Mr Dennison must have, or at least should have, acknowledged that there was a real prospect that s 36 of the CLA applied at the time he rejected the BCC's MFO;

(b) as a corollary to this proposition, Mr Dennison must also have realised, or should have realised, that he would bear the onus of proving the BCC's conduct contravened s 36 of the CLA;

(c) but notwithstanding that he would bear that onus, Mr Dennison must also have realised when he rejected the BCC's MFO that he had no, or at least very limited, admissible evidence available to him to show what a reasonable council in the position of the BCC would have done, or what it could properly have considered, in the circumstances.

[34] In those circumstances, the BCC says that Mr Dennison's conduct was unreasonable and imprudent. He made an MFO that reflected more than 80 per cent of the total value of the claim as quantified at trial and he rejected the BCC's MFO. Accordingly, it submits, Mr Dennison should be ordered to pay its costs on the indemnity basis.

[35] Alternatively, the BCC submits that Mr Dennison should pay its costs on the standard basis up until 1 June 2021, and thereafter on the indemnity basis by reason of his unreasonable rejection of its Calderbank offer, which occurred in circumstances where:

(a) the offer was made around 10 years after the PIPA claim was commenced, during which the parties had the opportunity to inform themselves of the relative strengths and weaknesses of their respective cases by way of the pre-proceeding regime imposed by the PIPA;

(b) the offer was open for acceptance for a period of 14 days, which was a reasonable time to consider it having regard to the stage of the proceedings;

(c) the offer that the parties bear their own costs was a real compromise for the BCC, given that the matter had been ongoing for a significant period of time and in light of the ultimate outcome at trial;

(d) as noted above, Mr Dennison ought to have realised the weaknesses in his case because of the potential application and operation of s 36 of the CLA, regardless of the fact that neither the judgment in *Hamcor* nor that in *Rodriquez* had been delivered at that stage;

(e) the offer was made in very clear terms, accompanied by a copy of a release required to be signed as a condition of acceptance of the offer;

(f) the offer clearly expressed that it was the BCC's intention to rely upon the making of the offer to support a claim for "all its defence costs incurred during the life of the matter, including those during the PIPA process".

[36] Finally, in the event that neither of these alternative bases for seeking indemnity costs, in whole or in part, are accepted, the BCC seeks its costs on the standard basis. Its ultimate submission is that it is entitled to its costs one way or the other and the real argument is with respect to the type of costs order to be made.

[37] Mr Dennison's primary submission is premised on the fact that whilst the BCC ultimately succeeded at trial only on the s 36 issue, it had formed no part of its defence until it filed its amended defence on 19 December 2024. It is in that context that it submits the previous offers of the BCC are irrelevant as they pre-date the incorporation of the s 36 defence. He also submits the late introduction of the s 36 point is relevant to an assessment of whether he unreasonably rejected the BCC's offers. He stresses that it is necessary to consider the reasonableness of his conduct having regard to what circumstances existed at the time the offers were made, including his own prospects for success. In that respect, he submits that the factors identified by Bond J in *SHA Premier Constructions Pty Ltd* are applicable to both his rejection of the BCC's MFO and its Calderbank offer.

[38] Mr Dennison argues that when viewed retrospectively, as at the dates of the offers, he would have won his claim as the BCC had not yet raised the s 36 point in its pleadings. It follows therefore, he submits, that it cannot have been unreasonable for him to have rejected its offers at the times they were made. He further notes that at the date of the BCC's MFO, neither *Hamcor* nor *Rodriguez* had been decided, and the BCC's Calderbank offer was subsequently made after the judgment in *Hamcor* but before delivery of the judgment *Rodriquez.* Therefore, he submits, there was relevant authority at the time to support his position that s 36 had no application (*Hamcor)* and there was no other authority to the contrary (i.e. *Rodriguez).* Accordingly, he submits, it was entirely reasonable for him to reject the Calderbank offer at that stage. As he pithily puts it, at the time of each offer he was "holding the winning hand".

[39] Mr Dennison further submits that the BCC's contention that he acted unreasonably in rejecting its offers does not sit well with the fact that it did not identify s 36, and placed no reliance upon it for its defence, until 19 December 2024. He similarly submits that it is therefore irrelevant to consider what evidence may or may not have been available or put forward by Mr Dennison with respect to s 36 at the time of the making of either offer, given that it was not raised as an issue until 19 December 2024.

[40] It is for these reasons that Mr Dennison submits that the various offers made by the BCC ought to have no effect on the costs order to be made in the proceedings and that the belated addition of the s 36 defence ought to instead preclude an order in the BCC's favour for any costs incurred prior to 19 December 2024.

[41] The alternative submission made by Mr Dennison is that given the BCC failed on every other issue of fact or law apart from the s 36 point (and his case would otherwise have been accepted), that a pragmatic approach should be adopted to the order for costs. He argues there were a number of events or issues in the action, and each was determined against the BCC, save for the section 36 point. Mr Dennison identified the various issues to be determined at trial as:

(a) what occurred on the morning of 18 December 2009 and what was the mechanism of the accident;

(b) what the BCC had in fact installed on the footpath the day before and what were the surroundings at the time of the accident;

(c) whether the BCC was negligent;

(d) whether the BCC's negligence caused Mr Dennison's injuries; and

(e) whether the BCC was afforded a defence by s 36 of the CLA.

[42] Mr Dennison argues that the BCC compelled him to litigate each of these issues and he succeeded (and the BCC failed) on the first four.

[43] Mr Dennison therefore submits the BCC should not have its costs in respect of each of these "events", and that it should not have any costs at all before 19 December 2024, as until that time all of the liability matters in issue were matters which were ultimately determined in his favour at trial. He submits that thereafter the BCC could have conceded the other issues going to the occurrence of the accident and the finding of negligence and could have pursued a defence solely on the basis of s 36, which would have resulted in a much-truncated trial. Instead, as all matters were disputed and had to be litigated, Mr Dennison says a great deal of the costs involved in the trial were incurred as a result of matters upon which the BCC ultimately failed. In support of his argument, he further points out that whilst he bore the onus in respect of the identified liability issues, almost all of the evidence on these issues emanated from the BCC's "side of the record". Accordingly, he submits, the BCC could have been in no doubt as to the evidence available at trial for the findings which underpinned the conclusion that it had been negligent.

[44] It is in those circumstances that Mr Dennison submits this is a case where a costs order in his favour should be made, until the point in time when the BCC revealed reliance upon the s 36 defence; and thereafter he should only have to pay a proportion of the BCC's costs. Alternatively, he says, there should be no order as to costs before 19 December 2024; and thereafter he should pay no more than 50 per cent of the defendant's costs.

Consideration

[45] I accept Mr Denison's submission that his rejection of the BCC's offers was not unreasonable. It is quite clear that the BCC did not advance the s 36 point as part of

its case to deny liability until it was pleaded in the Amended Defence filed on 19 December 2024. That was at a late stage in the proceeding and well after the exchange of MFOs and the BCC's Calderbank offer.

[46] Further, at the time he rejected the BCC's MFO there was no relevant authority on the application of s 36 of the CLA. I do not accept the BCC's submission that notwithstanding the absence of such authority, Mr Dennison should have appreciated the risk that s 36 could apply and should have realised that he would be unable to discharge the burden imposed upon him by s 36(2). The reasonableness or otherwise of his rejection of the BCC's offer is to be assessed according to the prevailing circumstances at the time the offer was made. The BCC did not reveal its reliance on s 36 in the pre-proceeding phase. It did not form part of the case against Mr Dennison at the time the BCC made its MFO. He would otherwise have succeeded in his claim at trial had the BCC not availed itself of s 36. Further, the heading of s 36 plainly suggests that it applies only to a case involving a breach of statutory duty. It is unreasonable to think that in these circumstances Mr Dennison should have contemplated that s 36, which was not raised by the BCC, might apply, and to consider the risk of rejecting the BCC's MFO and proceeding with litigation as if it did apply. In my view, his rejection of the MFO was neither imprudent nor unreasonable in the circumstances.

[47] The same may be said of his rejection of the BCC's Calderbank offer. The offer was made at a time when the only relevant Queensland authority was *Hamcor*, which supported his argument that s 36 did not apply to his claim. The Court of Appeal judgment in *Rodriguez* had not been delivered at that time. And of course, the BCC had still not pleaded the s 36 point in its defence at that stage.

[48] In my view, Mr Dennison's rejection of the BCC's offers does not justify an order that he pay its costs, in whole or part, on the indemnity basis.

[49] Nevertheless, the BCC was ultimately the successful party in the litigation and there should be a costs order in its favour, payable on the standard basis. However, as Mr Dennison submits, aside from the s 36 issue, the BCC failed on every other point concerning liability. Although the s 36 issue was ultimately determinative of the question of liability, the point was only raised late in the proceeding and the BCC otherwise put in issue a range of other issues that I decided against it. There was no

real explanation for this. Subsequently, a substantial part of the trial, and the costs associated with the litigation, were therefore consumed by issues upon which the BCC failed. Whilst costs follow the event, there were several liability issues here which can be considered as separate "events". To my mind, that has consequences for the just and appropriate orders to be made in respect of costs.

Orders

[50] In my view, the just and appropriate orders are:

1. There should be no order as to costs before 19 December 2024; and

2. The plaintiff is to pay 50 per cent of the defendant's costs of the proceeding incurred after 19 December 2024 on the standard basis.