



## HIGH COURT OF AUSTRALIA

13 November 2024

BIRD v DP (A PSEUDONYM)  
[2024] HCA 41

Today, the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria, which dismissed an appeal by the nominated defendant for the Roman Catholic Diocese of Ballarat ("the Diocese") against a decision of the Supreme Court of Victoria, which held that the Diocese was vicariously liable for sexual assaults committed by one of its priests.

In 1971, the respondent ("DP") was sexually abused by a priest of the Diocese during pastoral visits to his parents' home. The priest was not an employee or "agent" of the Diocese, and his actions were not done with the express or implied authorisation of the Diocese. The relationship between the priest and the Diocese, governed by Canon Law, permitted the Diocese to exercise control over the priest. An integral part of the priest's role was pastoral visits to parishioners' homes.

The principal issue on the appeal to the High Court was whether the relationship between the priest and the Diocese, in the absence of an employment relationship, could give rise to a finding of vicarious liability on the part of the Diocese for the assaults committed by the priest. A majority of the High Court held that the principles of vicarious liability are confined to employment relationships, holding that the High Court has repeatedly refused to extend the boundaries of the doctrine of vicarious liability to include independent contractors, or by reference to policy considerations. Expanding the doctrine to accommodate relationships that are "akin to employment" would produce uncertainty and indeterminacy. As the priest was not an employee, there could be no finding of vicarious liability on the part of the Diocese.

The High Court held that the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic) did not provide a basis for imposing vicarious liability. That Act remedied a historical impediment to the redress of abuse occurring in the context of unincorporated associations, being the lack of a legal person capable of being sued. It did not alter the substantive law of vicarious liability. A relationship of employment is still required.

The High Court unanimously declined to consider DP's further contention that the Diocese owed him a non-delegable duty of care. That contention was not pleaded at first instance or raised in the courts below and the Diocese would be irretrievably prejudiced if it were advanced for the first time on appeal to the High Court.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*